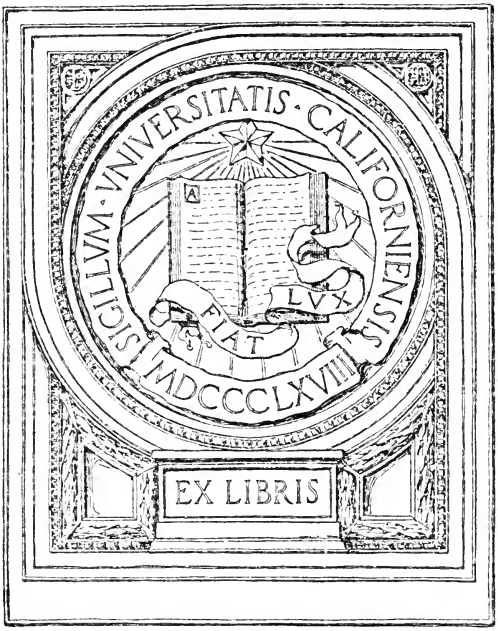


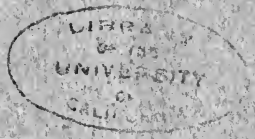
NEW YORK STATE DEPARTMENT OF LABOR

LABOR LAWS

OF

NEW YORK STATE

1913



PRINTED IN ADVANCE FROM THE THIRTEENTH ANNUAL REPORT OF THE COMMISSIONER OF LABOR

JAMES M. LYNCH
COMMISSIONER

ALBANY
J. B. LYON COMPANY, PRINTERS
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Introductory Note.

In this compilation are included all the laws in force concerning labor with amendments to and including 1913. Of first importance, of course, is the general Labor Law, but in addition to that statute there is a large number of laws which also directly or indirectly affect labor and these are given, classified by subjects, following the general Labor Law. The texts are given as in the Consolidated Laws of 1909 and 1910, or as since amended. References are given to all such amendments. For references to the sources, both original acts and amendments, of the various provisions as enacted in the Consolidated Laws, see a similar compilation in the Annual Report of the Commissioner of Labor for 1909 (Appendix VI).

In notes are given cross references to laws, and references to court decisions or opinions of the Attorney-General construing the laws. The latter may be found in the reports of the Attorney-General or in the reports of the Commissioner of Labor for the years indicated.

CONTENTS.

THE LABOR LAW.

CHAPTER 36 OF THE LAWS OF 1909, CONSTITUTING CHAPTER THIRTY-ONE OF THE CONSOLIDATED LAWS, AS AMENDED.

LABOR LAW.

ARTICLE 1.

Short Title; Definitions.

§ 1. **Short title.**— This chapter shall be known as the "Labor Law."

§ 2. **Definitions.**— Employee. The term "employee," when used in this chapter, means a mechanic, workingman or laborer who works for another for hire.

Employer. The term "employer," when used in this chapter, means the person employing any such mechanic, workingman or laborer, whether the owner, proprietor, agent, superintendent, foreman or other subordinate.

Factory; work for a factory. The term "factory," when used in this chapter, shall be construed to include any mill, workshop, or other manufacturing or business establishment and all buildings, sheds, structures or other places used for or in connection therewith, where one or more persons are employed at labor, except power houses, barns, storage houses, sheds and other structures used in connection with railroad purposes, other than construction or repair shops, subject to the jurisdiction of the public service

commission under article three of the public service commissions law. Work shall be deemed to be done for a factory within the meaning of this chapter whenever it is done at any place, upon the work of a factory or upon any of the materials entering into the product of the factory, whether under contract or arrangement with any person in charge of or connected with such factory directly or indirectly through the instrumentality of one or more contractors or other third persons.

Factory building. The term "factory building," when used in this chapter, means any building, shed or structure which, or any part of which, is occupied by or used for a factory.

Mercantile establishment. The term "mercantile establishment," when used in this chapter, means any place where goods, wares or merchandise are offered for sale.

Tenement house. The term "tenement house," when used in this chapter, means any house or building, or portion thereof, which is either rented, leased, let or hired out, to be occupied, or is occupied in whole or in part as the home or residence of three families or more living independently of each other and doing their cooking upon the premises, and includes apartment houses, flat houses and all other houses so occupied, and for the purposes of this chapter shall be construed to include any building on the same lot with any such tenement house and which is used for any of the purposes specified in section one hundred of this chapter.

Whenever, in this chapter, authority is conferred upon the commissioner of labor, it shall also be deemed to include his deputies or a deputy acting under his direction. [*As am'd by L.* 1913, *ch.* 519.]

"Tenant factory" is defined in § 94, *post.* The definition of "tenement house" here differs slightly from that in the Tenement House Law, ch. 61 of the Consolidated Laws, § 2.

The term "employer" includes the officers, agents and employees of municipalities (opinion of Attorney-General, September 29, 1913).

Gas and electric light plants, whether privately or municipally owned, and power houses, other than those used in connection with railroads, are "factories," but water works pumping stations are not (opinion of Attorney-General, September 29, 1913).

Departments, maintained in department stores, clothing stores and millinery shops in which articles are made, are factories (opinion of Attorney-General, May 23, 1913.)

A commercial ice house using machinery, etc., is a "factory:" Rabe v. Consol. Ice Co., 151 U. S. C. C. A. 535 (1902). Bakeries and confectioneries are "factories:" see § 111, *post;* also laundries, § 92, *post.*

A tugboat is not a "business establishment" within the meaning of the definition of a factory: Shannahan v. Empire Engineering Corporation, 204 N. Y. 543.

ARTICLE 2.

General Provisions.

§ 3. **Hours to constitute a day's work.**— Eight hours shall constitute a legal day's work for all classes of employees in this state except those engaged in farm and domestic service unless otherwise provided by law. This section does not prevent an agreement for over work at an increased compensation except upon work by or for the state or a municipal corporation, or by contractors or subcontractors therewith. Each contract to which the state or a municipal corporation or a commission appointed pursuant to law is a party which may involve the employment of laborers, workman or mechanics shall contain a stipulation that no laborer, workman or mechanic in the employ of the contractor, subcontractor or other person doing or contracting to do the whole or a part of the work contemplated by the contract shall be permitted or required to work more than eight hours in any one calendar day except in cases of extraordinary emergency caused by fire, flood or danger to life or property. The wages to be paid for a legal day's work as hereinbefore defined to all classes of such laborers, workmen or mechanics upon all such public works, or upon any material to be used upon or in connection therewith, shall not be less than the prevailing rate for a day's work in the same trade or occupation in the locality within the state where such public work on, about or in connection with which such labor is performed in its final or completed form is to be situated, erected or used* [; nor in any case, less than two dollars per day if such laborers, workmen or

* The clause in brackets was inserted by L. 1913, ch. 467, approved May 9, but was not included in the amendment made by L. 1913, ch. 494, approved May 14. An opinion of the Attorney-General rendered to the State Engineer, dated June 23, holds that chapter 494 being enacted later, and not containing the change made by chapter 467, virtually repeals the latter.

mechanics are employed upon, about or in connection with the canals of the state, or in the construction, enlargement or improvement of canals]. Each such contract hereafter made shall contain a stipulation that each such laborer, workmen or mechanic, employed by such contractor, subcontractor or other person on, about or upon such public work, shall receive such wages herein provided for. Each contract for such public work hereafter made shall contain a provision that the same shall be void and of no effect unless the person or corporation making or performing the same shall comply with the provisions of this section; and no such person or corporation shall be entitled to receive any sum nor shall any officer, agent or employee of the state or of a municipal corporation pay the same or authorize its payment from the funds under his charge or control to any such person or corporation for work done upon any contract, which in its form or manner of performance violates the provisions of this section, but nothing in this section shall be construed to apply to stationary firemen in state hospitals nor to other persons regularly employed in state institutions, except mechanics, nor shall it apply to engineers, electricians and elevator men in the department of public buildings during the annual session of the legislature, nor to the construction, maintenance and repair of highways outside the limits of cities and villages. [*As am'd by L.* 1909, *ch.* 292; *L.* 1913, *ch.* 467, *and L.* 1913, *ch.* 494.]

The Legislature is expressly empowered to regulate conditions of employment on public work by the State Constitution, Article XII, § 1 (given under PUBLIC WORKS AND CONTRACTS, *post*).

The constitutionality of the section was sustained in 1904, so far as it relates to the *direct* employees of the state or of a municipality: Ryan v. City of New York, 177 N. Y. 271. The section is constitutional under both State and Federal constitutions: People ex rel. Williams Engineering and Contracting Co. v. Metz, 193 N. Y. 148 (1908). The United States Supreme Court has affirmed the constitutionality of a similar statute of Kansas (Atkins v. Kansas, 191 U. S. 207), and the eight-hour law of the United States (Ellis v. U. S., 27 Sup. Ct. Rep. p. 600, 1907).

The section applies only to *public work* and not to "articles of common merchandise," or to "marketable commodities," like gas and electricity: Downey v. Bender, 57 App. Div. 310 (1901); see also the Attorney-General's opinion of June 26, 1906. The section does not apply to the manufacture of materials purchased by a contractor for public work: Bohnen v. Metz, 126 App. Div. 807, affirmed, 193 N. Y. 676. But the section does apply to the manufacture of articles to be used on public work when such articles are manufactured in the contractor's own factory (opinion of Attorney-General as to manufacture of fire escapes, April 23, 1909; as to manufacture of wood work, February 14, 1913).

An armory is a state "institution" and therefore exempt from the provisions of the section: Matter of Burns v. Fox, 98 App. Div. 507 (Nov. 1904). Firemen are not "employees" within the meaning of the statute, which relates only to *mechanics* or *laborers* working for hire: Sweeney v. Sturgis, 78 App. Div. 460, affirmed (May, 1903) 175 N. Y. 8. The wages clause does not apply to school janitors: Farrell v. Board of Education, 113 App. Div. 405. The clause may apply to them, however, where special laws, instead of the general education law, govern the educational system (opinion of Attorney-General, February 7, 1913).

The section does not apply to printers regularly employed in a state hospital (opinion of Attorney-General, March 8, 1912); nor to employees in nurseries maintained by the State Conservation Commission (opinion of Attorney-General, April 18, 1912); nor to work done in connection with the construction and maintenance of bridges upon highways outside the limits of cities and villages (opinion of Attorney-General, May 6, 1912). The section applies, however, to the work of repair and preparation in winter by contractors engaged on barge canal work

(opinion of Attorney-General, February 1, 1911); and to work done under the direction of a grade crossing commission appointed by the state (opinion of Attorney-General, March 25, 1913).

Relative to the meaning of the terms "locality" and "prevailing rate of wages" in a particular case, see opinion of Attorney-General, February 27, 1912.

"Extraordinary emergency" is defined in United States v. Sheridan Kirk Contract Co., U. S. Dist. Court, 149 Fed. Rep. 813; Penn Bridge Co. v. United States, Court of Appeals of D. C., 35 Wash. Law Reporter, 287. As to what constitutes overtime in case of emergency work on part of employees of municipal department of water supply, see Grady v. City of New York, 182 N. Y. 18 (May 30, 1905). The commissioner of labor is not empowered to issue permits for emergency work (opinion of Attorney-General, June 8, 1911.)

The section does not apply to work done out of the state for a New York contractor: Ewen v. Thompson-Starrett Co., 208 N. Y. 245 (1913).

A city employee may waive his right to the prevailing rate of wages: Ryan v. City of New York, 177 N. Y. 271; Byrnes v. City of New York, 150 App. Div 338.

§ 4. Violations of the labor law.— Any officer, agent or employee of this state or of a municipal corporation therein having a duty to act in the premises who violates, evades or knowingly permits the violation or evasion of any of the provisions of this chapter shall be guilty of malfeasance in office and shall be suspended or removed by the authority having power to appoint or remove such officer, agent or employee; otherwise by the governor. Any citizen of this state may maintain proceedings for the suspension or removal of such officer, agent or employee or may maintain an action for the purpose of securing the cancellation or avoidance of any contract which by its terms or manner of performance violates this chapter or for the purpose of preventing any officer, agent or employee of such municipal corporation from paying or authorizing the payment of any public money for work done thereupon.

See notes to § 3; also § 21, *post;* and Penal Law, § 1271, subd. 1, under PENALTIES FOR VIOLATION OF THE LABOR LAW, *post.*

§ 5. Hours of labor in brickyards.— Ten hours, exclusive of the necessary time for meals, shall constitute a legal day's work in the making of brick in brickyards owned or operated by corporations. No corporation owning or operating such brickyard shall require employees to work more than ten hours in any one day, or to commence work before seven o'clock in the morning. But overwork and work prior to seven o'clock in the morning for extra compensation may be performed by agreement between employer and employee.

Violation a misdemeanor: Penal Law, § 1271, subd. 3.

§ 6. Hours of labor on street surface and elevated railroads.— Ten consecutive hours' labor, including one-half hour for dinner, shall constitute a day's labor in the operation of all street surface and elevated railroads, of whatever motive power, owned or operated by corporations in this state, whose main line of travel or whose routes lie principally within the corporate limits of cities of the first and second class. No employee of any such corporation shall be permitted or allowed to work more than ten consecutive hours, including one-half hour for dinner, in any one day of twenty-four hours.

In cases of accident or unavoidable delay, extra labor may be performed for extra compensation.

Violation a misdemeanor: Penal Law, § 1271, subd. 2. Under former law, violation was not a crime: People v. Phyfe, 10 Crim. 246.

§ 7. Regulation of hours of labor on steam surface and other railroads. —Ten hours' labor, performed within twelve consecutive hours, shall con-

stitute a legal day's labor in the operation of steam surface, electric, subway and elevated railroads operated within this state, except where the mileage system of running trains is in operation. No person or corporation operating any such railroad of thirty miles in length, or over, in whole or in part within this state, shall permit or require any conductor, engineer, fireman, trainman, motorman or assistant motorman, engaged in or connected with the movement of any train on any such railroad, to be or remain on duty for a longer period than sixteen consecutive hours, and whenever any such conductor, engineer, fireman, trainman, motorman or assistant motorman shall have been continuously on duty for sixteen hours he shall be relieved and not required or permitted again to go on duty until he has had at least ten consecutive hours off duty, and no such conductor, engineer, fireman, trainman, motorman or assistant motorman who has been on duty sixteen hours in the aggregate in any twenty-four hour period shall be required or permitted to continue or again go on duty without having had at least eight consecutive hours off duty, except when by casualty occurring after he has started on his trip, and except when by accident or unexpected delay of trains scheduled to make connection with the train on which he is serving, he is prevented from reaching his terminal. The commissioner of labor shall appoint a sufficient number of inspectors to enforce the provisions of this section. [*As am'd by L.* 1913, *ch.* 462.]

Violation a misdemeanor (Penal Law, § 1271, subd. 4); also evidence of negligence in action for personal injuries sustained by employee, Pelin v. N. Y. C. & H. R. R. R. Co., 102 App. Div. 71 (1905).

§ 8. **Regulation of hours of labor of block system telegraph and telephone operators and signalmen on surface, subway and elevated railroads.**— The provisions of section seven of this chapter shall not be applicable to employees mentioned herein. It shall be unlawful for any corporation or receiver, operating a line of railroad, either surface, subway or elevated, in whole or in part in the state of New York, or any officer, agent or representative of such corporation or receiver to require or permit any telegraph or telephone operator who spaces trains by the use of the telegraph or telephone under what is known and termed the "block system" (defined as follows): Reporting trains to another office or offices or to a train dispatcher operating one or more trains under signals, and telegraph or telephone levermen who manipulate interlocking machines in railroad yards or on main tracks out on the lines or train dispatchers in its service whose duties substantially, as hereinbefore set forth, pertain to the movement of cars, engines or trains on its railroad by the use of the telegraph or telephone in dispatching or reporting trains or receiving or transmitting train orders as interpreted in this section, to be on duty for more than eight hours in a day of twenty-four hours, and it is hereby declared that eight hours shall constitute a day of employment for all laborers or employees engaged in the kind of labor aforesaid; except in cases of extraordinary emergency caused by accident, fire, flood or danger to life or property, and for each hour of labor so performed in any one day in excess of such eight hours, by any such employee, he shall be paid in addition at least one-eighth of his daily compensation. Any person who is employed as signalman, towerman, gateman, telegraph or telephone operator in a railroad signal tower or public railroad station to receive or transmit a telegraphic or tele-

phonic message or train order for the movement of trains and who works eight hours or more in any twenty-four each and every day continuously, and all gatemen so employed must have at least two days of twenty-four hours each in every calendar month for rest with the regular compensation; subject to the foregoing provisions relating to extra service in cases of emergency. Any person or persons, company or corporation, who shall violate any of the provisions of this section, shall, on conviction, be fined in the sum of not less than one hundred dollars, and such fine shall be recovered by an action in the name of the state of New York, for the use of the state, which shall sue for it against such person, corporation or association violating this section, said suit to be instituted in any court in this state having appropriate jurisdiction. Such fine, when recovered as aforesaid, shall be paid without any deduction whatever, one-half thereof to the informer, and the balance thereof to be paid into the free school fund of the state of New York. The provisions of this section shall not apply to any part of a railroad where not more than eight regular passenger trains in twenty-four hours pass each way; provided, moveover, that where twenty-freight trains pass each way generally in each twenty-four hours then the provisions of this section shall apply, notwithstanding that there may pass a less number of passenger trains than hereinbefore set forth, namely eight. [*As am'd by L.* 1913, *ch.* 466.]

The section is constitutional as a proper exercise of the police power and does not conflict with the U. S. law on the same subject: New York v. Erie R. R. Co., 198 N. Y. 369.

Violation of the section subjects the offender to a civil action for recovery of the penalty and also to criminal prosecution under § 1275, Penal Law.

The eight-hour clause does not apply to conductors and engineers temporarily acting as telephone operators in the movement of trains (opinion of Attorney-General, March 26, 1912); nor does it apply to towermen who control the movement of trains by means of levers (opinion of Attorney-General, August 14, 1913).

§ 8-a. **One day of rest in seven.**— (1) Every employer of labor engaged in carrying on any factory or mercantile establishment in this state shall allow every person, except those specified in subdivision two, employed in such factory or mercantile establishment at least twenty-four consecutive hours of rest in every seven consecutive days. No employer shall operate any such factory or mercantile establishment on Sunday unless he shall have complied with subdivision three. Provided, however, that this section shall not authorize any work on Sunday not now or hereafter authorized by law.

2. This section shall not apply to

(a) Janitors;

(b) Watchmen;

(c) Employees whose duties include not more than three hours' work on Sunday in (1) Setting sponges in bakeries; (2) Caring for live animals; (3) Maintaining fires; (4) Necessary repairs to boilers or machinery.

(d) Superintendents or foremen in charge.

3. Before operating on Sunday, every employer shall post in a conspicuous place on the premises a schedule containing a list of his employees who are required or allowed to work on Sunday and designating the day of rest for each, and shall file a copy of such schedule with the commissioner of labor. The employer shall promptly file with the said commissioner a copy of every

change in such schedule. No employee shall be required or allowed to work on the day of rest so designated for him.

4. Every employer shall keep a time-book showing the names and addresses of all employees and the hours worked by each of them in each day, and such time-book shall be open to inspection by the commissioner of labor.

5. The industrial board at any time when the preservation of property, life or health requires, may except specific cases for specified periods from the provisions of this act by written orders which shall be recorded as public records. [*Added by L.* 1913, *ch.* 740.]

See section 2 and notes thereon as to the meaning of the terms "employer," "factory" and "mercantile establishment."

In an opinion of the Attorney-General of September 29, 1913, and a memorandum of October 6, the following rulings on this section are given: it applies to gas and electric plants whether owned privately or municipally, but does not apply to water pumping stations; it applies to drug stores as it virtually repeals section 236 of the Public Health Law which provided for one day of rest in two weeks; it does not apply to telegraph and telephone companies (except employees working in shops), to railroads or street railways (except employees working in shops), to restaurants, lunch rooms or hotel dining-rooms, to cold storage plants, to farm work, or to chauffeurs.

§ 9. **Payment of wages by receivers.**— Upon the appointment of a receiver of a partnership or of a corporation organized under the laws of this state and doing business therein, other than a moneyed corporation, the wages of the employees of such partnership or corporation shall be preferred to every other debt or claim.

See also Debtor and Creditor Law, ch. 12 of the Consolidated Laws, §§ 27, 28, and Lien Law, § 13.

Term "employees" includes operatives and laborers (Palmer v. Van Santvoord, 153 N. Y. 612), traveling salesmen (Matter of Fitzgerald, 21 Misc. 226), bookkeepers employed at salary of $100 a month (People v. Beveridge Brewing Co., 91 Hun 313, and Matter of Luxton & Black Co., 35 App. Div. 243), etc.

Term "wages" does not cover amounts credited to employees under a system of profit sharing (Dolge v. Dolge, 70 App. Div. 517).

§ 10. **Cash payment of wages.**— Every manufacturing, mining, quarrying, mercantile, railroad, street railway, canal, steamboat, telegraph and telephone company, every express company, every corporation engaged in harvesting and storing ice, and every water company, not municipal, and every person, firm or corporation, engaged in or upon any public work for the state or municipal corporation thereof, either as a contractor or a subcontractor therewith, shall pay to each employee engaged in his, their or its business the wages earned by such employee in cash. No such company, person, firm or corporation shall hereafter pay such employees in scrip, commonly known as store money-orders. No person, firm or corporation engaged in carrying on public work under contract with the state or with any municipal corporation of the state, either as a contractor or subcontractor therewith, shall, directly or indirectly, conduct or carry on what is commonly known as a company store, if there shall, at the time, be any store selling supplies within two miles of the place where such contract is being executed. Any person, firm or corporation violating the provisions of this section shall be guilty of a misdemeanor.

Penalty: See § 12, *post*, and Penal Law, § 1272, *post*.

On subject of constitutionality, see Knoxville Iron Co. v. Harbison, 183 U. S. 13, in which the United States Supreme Court sustained the Tennessee anti-truck law.

Payment by check is not a compliance with the section. (Opinion of Attorney-General in his report for 1899, p. 335).

§ 11. When wages are to be paid.— Every corporation or joint-stock association, or person carrying on the business thereof by lease or otherwise, shall pay weekly to each employee the wages earned by him to a day not more than six days prior to the date of such payment.

But every person or corporation operating a steam surface railroad shall, on or before the first day of each month, pay the employees thereof the wages earned by them during the first half of the preceding month ending with the fifteenth day thereof, and on or before the fifteenth day of each month pay the employees thereof the wages earned by them during the last half of the preceding calendar month.

Penalty: See § 12, *post*, and Penal Law, § 1272.

The semi-monthly pay law in the second paragraph of this section is constitutional as within the reserved power of the state to amend corporate charters: N. Y. C. R. R. Co. v. Williams, 199 N. Y. 108.

Any corporation operating a steam surface railroad and also engaged in mining or any other business than the operation of such surface railroad must pay its employees not engaged in operating such road in accordance with the general provisions of this section. (Opinion of Attorney-General, June 4, 1906.) Does not apply to a municipal corporation. (People ex rel. Van Valkenburg v. Myers, 33 N. Y. St. Rep. 18; People v. City of Buffalo, 57 Hun 577.)

The section applies to foreign corporations doing business in this state. Clerks, stenographers, salesmen and draftsmen are "employees" receiving "wages" (opinion of Attorney-General, December 12, 1912); applies to a corporation which has entered into a partnership with individuals (opinion of Attorney-General, April 16, 1913).

A contract that employees shall forfeit one week's wages in case they leave employer without stipulated notice is illegal (opinion of Attorney-General, March 8, 1913).

§ 12. Penalty for violation of preceding section.— If a corporation or joint-stock association, its lessee or other person carrying on the business thereof, shall fail to pay the wages of all its employees as provided in this article, it shall forfeit to the people of the state the sum of fifty dollars for each such failure, to be recovered by the commissioner of labor in his name of office in a civil action. [*As am'd by L.* 1909, *ch.* 206.]

Violation also a misdemeanor: Penal Law, § 1272.

§ 13. Assignment of future wages.—No assignment of future wages, payable weekly, or monthly in case of a steam surface railroad corporation, shall be valid if made to the corporation or association from which such wages are to become due, or to any person on its behalf, or if made or procured to be made to any person for the purpose of relieving such corporation or association from the obligation to pay weekly, or monthly in case of a steam surface railroad corporation. Charges for groceries, provisions or clothing shall not be a valid off-set for wages in behalf of any such corporation or association. No such corporation or association shall require any agreement from any employee to accept wages at other periods than as provided in this article as a condition of employment.

See Personal Property Law, § 42, under "Assignment of wages" under POLITICAL AND LEGAL RIGHTS, ETC., *post*.

A contract that part of the wages shall be withheld weekly until the end of the month is illegal (opinion of Attorney-General, September 18, 1913).

§ 14. Preference in employment of persons upon public works.— In the construction of public works by the state or a municipality, or by persons contracting with the state or such municipality, only citizens of the United

States shall be employed; and in all cases where laborers are employed on any such public works, preference shall be given citizens of the state of New York. In each contract for the construction of public works a provision shall be inserted, to the effect that, if the provisions of this section are not complied with, the contract shall be void. All boards, officers, agents or employees of cities of the first class of the state, having the power to enter into contracts which provide for the expenditure of public money on public works, shall file in the office of the commissioner of labor the names and addresses of all contractors holding contracts with said cities of the state. Upon the letting of new contracts the names and addresses of such new contractors shall likewise be filed. Upon the demand of the commissioner of labor a contractor shall furnish a list of the names and addresses of all subcontractors in his employ. Each contractor performing work for any city of the first class shall keep a list of his employees, in which it shall be set forth whether they are naturalized or native born citizens of the United States, together with, in case of naturalization, the date of naturalization and the name of the court where such naturalization was granted. Such lists and records shall be open to the inspection of the commissioner of labor. A violation of this section shall constitute a misdemeanor and shall be punishable by a fine of not less than fifty dollars nor more than five hundred dollars, or by imprisonment for not less than thirty nor more than ninety days, or by both such fine and imprisonment.

The statute of 1894 making it a crime for a contractor with a municipal corporation for the construction of public works, to employ alien laborers thereon, was held in 1895 to be an unconstitutional invasion of personal rights and also a violation of a treaty of the United States with Italy: People v. Warren, 13 Misc. 615.

The present law was held unconstitutional in the County Court of Orleans Co. in People v. Ludington's Sons (74 Misc. 373). See also opinion of Attorney-General in Report of the Commissioner of Labor, 1911, p. 368.

As to the preference clause, see City of Chicago v. Hurlbut, 68 N. E. 786 (1903); but Massachusetts enacted a law giving preference to resident labor in 1904 (ch. 311).

§ 15. Labels, brands and marks used by labor organizations.— A union or association of employees may adopt a device in the form of a label, brand, mark, name or other character for the purpose of designating the products of the labor of the members thereof. Duplicate copies of such device shall be filed in the office of the secretary of state, who shall, under his hand and seal, deliver to the union or association filing or registering the same a certified copy and a certificate of the filing thereof, for which he shall be entitled to a fee of one dollar. Such certificate shall not be assignable by the union or association to whom it is issued.

This act is constitutional and the infringement of a registered label will be restrained by injunction: Perkins v. Heert, 158 N. Y. 306.

§ 16. Illegal use of labels, brands and marks a misdemeanor; injunction proceedings.— A person who (1) shall in any way use or display the label, brand, mark, name or other character, adopted by any such union or association as provided in the preceding section, without the consent or authority of such union or association; or (2) shall counterfeit or imitate any such label, brand, mark, name or other character, or knowingly sells or disposes of, or keeps or has in his possession with intent to sell or dispose of, any goods, wares, merchandise or other products of labor, upon which any such counterfeit or

imitation is attached, affixed, printed, stamped or impressed, or knowingly sells or disposes of, or keeps or has in his possession with intent to sell or dispose of any goods, wares, merchandise or other products of labor contained in any box, case, can or package, to which or on which any such counterfeit or imitation is attached, affixed, printed, painted, stamped or impressed, is guilty of a misdemeanor, and shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars, or by imprisonment for not less than three months nor more than one year, or by both such fine and imprisonment. After filing copies of such device, such union or association may also maintain an action to enjoin the manufacture, use, display or sale of counterfeit or colorable imitations of such device, or of goods bearing the same, or the unauthorized use or display of such device, or of goods bearing the same, and the court may restrain such wrongful manufacture, use, display or sale, and every unauthorized use or display by others of the genuine devices so registered and filed, if such use or display is not authorized by the owner thereof, and may award to the plaintiff such damages resulting from such wrongful manufacture, use, display or sale as may be proved, together with the profits derived therefrom.

Knowledge or intent is not an ingredient of an offense of counterfeiting a registered label: Bulena v. Newman, 10 Misc. 460. A colorable imitation of a union label, even though it have distinguishing words or names, contravenes this section: Myrup v. Friedman, 58 Misc. 323.

§ 17. **Seats for female employees.**— Every person employing females in a factory or as waitresses in a hotel or restaurant shall provide and maintain suitable seats, with proper backs where practicable, for the use of such female employees, and permit the use thereof by such employees to such an extent as may be reasonable for the preservation of their health. Where females are engaged in work which can be properly performed in a sitting posture, suitable seats, with backs where practicable, shall be supplied in every factory for the use of all such female employees and permitted to be used at such work. The industrial board may determine when seats, with or without backs, are necessary and the number thereof. [*As am'd by L.* 1913, *ch.* 197.]

Cf. § 170, *post.*

§ 18. **Scaffolding for use of employees.**— A person employing or directing another to perform labor of any kind in the erection, repairing, altering or painting of a house, building or structure shall not furnish or erect, or cause to be furnished or erected for the performance of such labor, scaffolding, hoists, stays, ladders or other mechanical contrivances which are unsafe, unsuitable or improper, and which are not so constructed, placed and operated as to give proper protection to the life and limb of a person so employed or engaged.

Scaffolding or staging swung or suspended from an overhead support, or erected with stationary supports, more than twenty feet from the ground or floor, except scaffolding wholly within the interior of a building and which covers the entire floor space of any room therein, shall have a safety rail of suitable material, properly bolted, secured and braced, rising at least thirty-four inches above the floor or main portions of such scaffolding or staging and extending along the entire length of the outside and the ends

thereof, with such openings as may be necessary for the delivery of materials, and properly attached thereto, and such scaffolding or staging shall be so fastened as to prevent the same from swaying from the building or structure. [*As am'd by L.* 1911, *ch.* 693.]

Violation is a misdemeanor (Penal Law, § 1276, *post*), and renders master liable in case of injury to employees (§ 202, *post*).

The question of what constitutes a structure or a scaffold under this section is one to be decided according to the circumstances of each case and has led to numerous decisions. As to the general principles upon which these questions must be determined see Caddy v. Interborough Rapid Transit Co., 195 N. Y. 415 (1909).

As to relative liability of contractor and sub-contractor see Quigley v. Thatcher, 207 N. Y. 66.

§ 19. **Inspection of scaffolding, ropes, blocks, pulleys and tackles in cities.**— Whenever complaint is made to the commissioner of labor that the scaffolding or the slings, hangers, blocks, pulleys, stays, braces, ladders, irons, or ropes of any swinging or stationary scaffolding used in the construction, alteration, repairing, painting, cleaning or pointing of buildings within the limits of a city are unsafe or liable to prove dangerous to the life or limb of any person, such commissioner of labor shall immediately cause an inspection to be made of such scaffolding, or the slings, hangers, blocks, pulleys, stays, braces, ladders, irons or other parts connected therewith. If, after examination, such scaffolding or any of such parts is found to be dangerous to life or limb, the commissioner of labor shall prohibit the use thereof, and require the same to be altered and reconstructed so as to avoid such danger. The commissioner of labor or deputy factory inspector making the examination shall attach a certificate to the scaffolding, or the slings, hangers, irons, ropes, or other parts thereof, examined by him, stating that he has made such examination, and that he has found it safe or unsafe, as the case may be. If he declares it unsafe, he shall at once, in writing, notify the person responsible for its erection of the fact, and warn him against the use thereof. Such notice may be served personally upon the person responsible for its erection, or by conspicuously affixing it to the scaffolding, or the part thereof declared to be unsafe. After such notice has been so served or affixed, the person responsible therefor shall immediately remove such scaffolding or part thereof and alter or strengthen it in such manner as to render it safe, in the discretion of the officer who has examined it, or his superiors. The commissioner of labor and any of his deputies whose duty it is to examine or test any scaffolding or part thereof, as required by this section, shall have free access, at all reasonable hours, to any building or premises containing them or where they may be in use. All swinging and stationary scaffolding shall be so constructed as to bear four times the maximum weight required to be dependent therefrom or placed thereon, when in use, and not more than four men shall be allowed on any swinging scaffolding at one time.

Violation is a misdemeanor (Penal Law, § 1276, *post*) and renders master liable in case of injury to employees (§ 202, *post*).

§ 20. **Protection of persons employed on buildings in cities.**— All contractors and owners, when constructing buildings in cities, where the plans and specifications require the floors to be arched between the beams thereof, or where the floors or filling in between the floors are of fire-proof material or

brickwork, shall complete the flooring or filling in as the building progresses. If the plans and specifications of such buildings do not require filling in between the beams of floors with brick or fire-proof material all contractors for work, in the course of construction, shall lay the underflooring thereof on each story as the building progresses. Where double floors are not to be used, such contractor shall keep planked over the floors two stories below the story where the work is being performed. If the floor beams are of iron or steel, the contractors for the iron or steel work of buildings in course of construction or the owners of such buildings shall thoroughly plank over the entire tier of iron or steel beams and extending not less than six feet beyond such beams on which the structural iron or steel work is being erected, except such spaces as may be reasonably required for the proper construction of such iron or steel work, and for the raising or lowering of materials to be used in the construction of such building, or such spaces as may be designated by the plans and specifications for stairways and elevator shafts. If elevators, elevating machines or hod-hoisting apparatus are used within a building in the course of construction, for the purpose of lifting materials to be used in such construction, the contractors or owners shall cause the shafts or openings in each floor to be inclosed or fenced in on all sides by a barrier at least eight feet in height, except on two sides which may be used for taking off and putting on materials, and those sides shall be guarded by an adjustable barrier not less than three nor more than four feet from the floor and not less than two feet from the edge of such shaft or opening. If a building in course of construction is five stories or more in height, no lumber or timber needed for such construction shall be hoisted or lifted on the outside of such building. The chief officer, in any city, charged with the enforcement of the building laws of such city and the commissioner of labor are hereby charged with enforcing the provisions of this section and sections eighteen and nineteen, and said chief officer in any city charged with the enforcement of the building laws of such city shall have the same powers for the enforcement of these sections as are vested in the commissioner of labor. [*As am'd by L.* 1911, *ch.* 693 *and L.* 1913, *ch.* 492.]

Violation is a misdemeanor (Penal Law, § 1277, *post*) **and renders master liable in case of injury to employees** (§ 202, *post*).

As to relative liability of owner and contractor, see *e. g.* Rooney v. Brogan Construction Co., 194 N. Y. 32 (1909).

§ 20-a. Accidents to be reported.— The person in charge of any building, construction, excavating or engineering work of any description, including the work of repair, alteration, painting or renovating, shall keep a correct record of all deaths, accidents or injuries sustained by any person working thereon, in such form as may be required by the commissioner of labor. Such record shall be open to the inspection of the commissioner of labor and a copy thereof shall be furnished to the said commissioner on demand. Within forty-eight hours after the time of the accident, death or injury, a report thereof shall be made in writing to the commissioner of labor, stating as fully as possible the cause of the death or injury, and the place where the injured person has been sent, with such other or further information relative thereto as may be required by the said commissioner, who may investigate the causes thereof and require such pre-

cautions to be taken as will prevent the recurrence of similar happenings. No statement contained in any such report shall be admissible in evidence in any action arising out of the death or accident therein reported. [*Added by L.* 1910, *ch.* 155.]

Compare § 87 (factory accidents) and § 126 (mine and quarry accidents).

The section applies to house wrecking (opinion of Attorney-General of May 17, 1911); also to maintenance of way on railroad work (opinion of Attorney-General, January 10, 1913).

*§ 20-b. **Protection of employees.**— All factories, factory buildings, mercantile establishments and other places to which this chapter is applicable, shall be so constructed, equipped, arranged, operated and conducted in all respects as to provide reasonable and adequate protection to the lives, health and safety of all persons employed therein. The industrial board shall, from time to time, make such rules and regulations as will carry into effect the provisions of this section. [*Added by L.* 1913, *ch.* 145.]

*§ 20-b. **Switchboards to be protected.**— All buildings having installed therein a switchboard of two hundred and twenty volts or over shall have, on the floor or upon such platform or other standing place as the switchboard may be located or attached, a rubber mat the length of the switchboard and of sufficient width to allow a person to walk or stand thereon while working at the switchboard or making tests. [*Added by L.* 1913, *ch.* 543.]

§ 21. **Commissioner of labor to enforce provisions of article.**— The commissioner of labor shall enforce all the provisions of this article. He shall investigate complaints made to him of violations of such provisions and if he finds that such complaints are well founded he shall issue an order directed to the person or corporation complained of, requiring such person or corporation to comply with such provisions. If such order is disregarded the commissioner of labor shall present to the district attorney of the proper county all the facts ascertained by him in regard to the alleged violation, and all other papers, documents or evidence pertaining thereto, which he may have in his possession. The district attorney to whom such presentation is made shall proceed at once to prosecute the person or corporation for the violations complained of, pursuant to this chapter and the provisions of the penal law. If complaint is made to the commissioner of labor that any person contracting with the state or a municipal corporation for the performance of any public work fails to comply with or evades the provisions of this article respecting the payment of the prevailing rate of wages, the requirements of hours of labor or the employment of citizens of the United States or of the state of New York, the commissioner of labor shall if he finds such complaints to be well founded, present evidence of such non-compliance to the officer, department or board having charge of such work. Such officer, department or board shall thereupon take the proper proceedings to revoke the contract of the person failing to comply with or evading such provisions.

See §§ 3 and 4, *ante*; and Penal Law, § 1271, subd. 1, *post*.

The determination of the commissioner of labor as to a violation of the section by contractor is merely advisory to and not conclusive upon the municipality in question: *In re* Keystone State Construction Co. v. Williams, 152 App. Div. 575; aff'd, 207 N. Y. 767.

*As in original, both §§ numbered 20-b.

*§ 22. **Physical examination of employees.**— Whenever an employer shall require a physical examination by a physician or surgeon as a condition of employment, the party to be examined, if a female, shall be entitled to have such examination before a physician or surgeon of her own sex. If an employer shall require or attempt to require a female applicant for employment to submit to an examination in violation of the provisions of this section, he shall be guilty of a misdemeanor. [*Added by L.* 1913, *ch.* 320.]

*§ 22. **Duties relative to apprentices.**— The commissioner of labor shall enforce the provisions of the domestic relations law, relative to indenture of apprentices, and prosecute employers for failure to comply with the provisions of such indentures and of such law in relation thereto. [*As am'd by L.* 1913, *ch.* 145.]

Formerly § 67 of article 5; renumbered and transferred to article 2 without change of text.

For the law concerning apprentices here referred to see "The Apprentice System" under INDUSTRIAL EDUCATION, *post.*

ARTICLE 3.

Department of Labor.

§ 40. **Commissioner of labor.**— There shall continue to be a department of labor, the head of which shall be the commissioner of labor, who shall be appointed by the governor by and with the consent of the senate, and who shall hold office for a term of four years beginning on the first day of January of the year in which he is appointed. He shall receive an annual salary of eight thousand dollars. He shall appoint and may remove all officers, clerks and other employees in the department of labor except as in this chapter otherwise provided. [*As am'd by L.* 1911, *ch.* 729 *and L.* 1913, *ch.* 145.]

§ 41. **Deputy commissioners.**— The commissioner of labor shall forthwith upon entering upon the duties of his office, appoint and may at pleasure remove two deputy commissioners of labor. The first deputy commissioner shall receive a salary of five thousand dollars a year; the second deputy commissioner shall receive a salary of four thousand five hundred dollars a year.

The first deputy commissioner shall, during the absence or disability of the commissioner of labor, possess all the powers and perform all the duties of the commissioner except the power of appointment and removal. During the absence or disability of both the commissioner of labor and the first deputy commissioner of labor, the second deputy commissioner shall possess all the powers and perform all the duties of the commissioner except the power of appointment and removal. In addition to their duties and powers as prescribed by the provisions of this chapter, the deputy commissioners of

*As in original, both §§ numbered 22.

labor shall perform such other duties and possess such other powers as the commissioner of labor may prescribe. [*As am'd by L.* 1911, *ch.* 729 *and L.* 1913, *ch.* 145.]

§ 42. **Bureaus.**— The department of labor shall have four bureaus as follows: inspection; statistics and information; mediation and arbitration and industries and immigation. There shall be such other bureaus in the department of labor as the commissioner of labor may deem necessary. [*As am'd by L.* 1910, *ch.* 514 *and L.* 1913, *ch.* 145.]

§ 43. **Powers.**— 1. The commissioner of labor, his deputies and their assistants and each agent, chief factory inspector, factory inspector, mine inspector, tunnel inspector, chief investigator, special investigator, chief mercantile inspector, and mercantile inspector may administer oaths and take affidavits in matters relating to the provisions of this chapter. [*As am'd by L.* 1912, *ch.* 382 *and L.* 1913, *ch.* 145.]

2. No person shall interfere with, obstruct or hinder by force or otherwise the commissioner of labor, any member of the industrial board, or any officer, agent or employee of the department of labor while in the performance of their duties, or refuse to properly answer questions asked by such officers or employees pertaining to the provisions of this chapter, or refuse them admittance to any place which is affected by the provisions of this chapter. [*As am'd by L.* 1913, *ch.* 145.]

3. All notices, orders and directions of any officer, agent or employee of the department of labor other than the commissioner of labor or the industrial board given in accordance with this chapter are subject to the approval of the commissioner of labor, and may be performed or given by and in the name of the commissioner of labor and by any officer or employee of the department thereunto duly authorized by such commissioner in the name of such commissioner. [*As am'd by L.* 1913, *ch.* 145.]

4. The commissioner of labor may procure and cause to be used badges for himself and his subordinates in the department of labor while in the performance of their duties. [*As am'd by L.* 1910, *ch.* 514.]

§ 44. **Salaries and expenses.**— All necessary expenses incurred by the commissioner of labor in the discharge of his duties shall be paid by the state treasurer upon the warrant of the comptroller issued upon proper vouchers therefor. The reasonable and necessary traveling and other expenses of the deputy commissioners, their assistants, the agents and statisticians, the chief factory inspectors, the factory inspectors, chief investigator, the special investigators, the chief mercantile inspector, mercantile inspectors, and other field officers of the department while engaged in the performance of their duties shall be paid in like manner upon vouchers approved by the commissioner of labor and audited by the comptroller. [*As am'd by L.* 1910, *ch.* 514 *and L.* 1913, *ch.* 145.]

§ 45. **Branch offices.**— The commissioner of labor shall establish and maintain branch offices of the department in the city of New York and in such other cities of the state as he may deem advisable. Such branch offices shall, subject to the supervision and direction of the commissioner of labor, be in immediate charge of such officials or employees as the commissioner of labor may designate. The reasonable and necessary expenses of such offices

shall be paid as are other expenses of the commissioner of labor. [*As am'd by L.* 1911, *ch.* 729 *and L.* 1913, *ch.* 145.]

§ 46. **Reports.**— The commissioner of labor shall report annually to the legislature and shall include in his annual report or make separately in each year a report of the operation of each bureau in the department. [*As am'd by L.* 1913, *ch.* 145.]

§ 47. **Old records.**— All statistics furnished to and all complaints, reports and other documentary matter received by the commissioner of labor pursuant to this chapter or any act repealed or superseded thereby may be destroyed by such commissioner after the expiration of six years from the time of the receipt thereof.

Cf. § 2030 of the Penal Law.

§ 48. **Counsel.**— The commissioner of labor shall appoint and may at pleasure remove counsel who shall be an attorney and counsellor at law of the state of New York to represent the department of labor and to take charge of and assist in the prosecution of actions and proceedings brought by or on behalf of the commissioner of labor or the department of labor, and generally to act as legal adviser to the commissioner. Such counsel shall receive a salary of four thousand dollars a year. The commissioner of labor shall have power to appoint and at pleasure remove attorneys and counsellors at law to assist the counsel in the performance of his duties who shall receive such compensation as may be provided by law. [*As am'd by L.* 1913, *ch.* 145.]

ARTICLE 3-A.

[*Added by L.* 1913, *ch.* 145.]

Industrial Board.

§ 50. **Industrial board; organization.**— 1. There shall be an industrial board, to consist of the commissioner of labor, who shall be chairman of the board, and four associate members. The associate members shall be appointed by the governor by and with the consent and advice of the Senate. Of the associate members first appointed, one shall hold office until December first, nineteen hundred and fourteen, one until December first, nineteen hundred and fifteen, one until December first, nineteen hundred and sixteen, and one until December first, nineteen hundred and seventeen. Upon the expiration of each of said terms, the term of office of each associate member thereafter appointed shall be for four years from the first day of December. Vacancies shall be filled by appointment for the unexpired term. The associate members shall each receive a salary of three thousand dollars a year and each of said associate members shall be paid his reasonable and necessary traveling and other expenses while engaged in the performance of his duties in the manner provided in section forty-four of this chapter.

2. The board shall appoint and may remove a secretary who shall receive a salary to be fixed by the board. The commissioner of labor shall detail, from time to time, to the assistance of the board, such employees of the department of labor as the board may require. In aid of its work, the board is empowered to employ experts for special and occasional services,

and to employ necessary clerical assistants. The counsel to the department of labor shall be counsel to the board without additional compensation.

3. The board shall hold stated meetings, at least once a month during the year at the office of the department of labor in the city of Albany or in the city of New York and shall hold other meetings at such times and places as the needs of the public service may require, which meetings shall be called by the chairman or by any two associate members of the board. All meetings of the board shall be open to the public. The board shall keep minutes of its proceedings showing the vote of each member upon every question and records of its examinations and other official action.

§ 51. **Jurisdiction of board.**—The board shall have power: (1) To make investigations concerning and report upon all matters touching the enforcement and effect of the provisions of this chapter and the rules and regulations made by the board thereunder, and in the course of such investigations, each member of the board and the secretary shall have power to administer oaths and take affidavits. Each member of the board and the secretary shall have power to make personal inspections of all factories, factory buildings, mercantile establishments and other places to which this chapter is applicable.

(2) To subpoena and require the attendance in this State of witnesses and the production of books and papers pertinent to the investigations and inquiries hereby authorized and to examine them in relation to any matter which it has power to investigate, and to issue commissions for the examination of witnesses who are out of the state or unable to attend before the board or excused from attendance.

(3) To make, alter, amend and repeal rules and regulations for carrying into effect the provisions of this chapter, applying such provisions to specific conditions and prescribing specific means, methods or practices to effectuate such provisions.

(4) To make, alter, amend or repeal rules and regulations for guarding against and minimizing fire hazards, personal injuries and disease, with respect to (a) the construction, alteration, equipment and maintenance of factories, factory buildings, mercantile establishments and other places to which this chapter is applicable, including the conversion of structures into factories and factory buildings; (b) the arrangement and guarding of machinery and the storing and keeping of property and articles in factories, factory buildings and mercantile establishments; (c) the places where and the methods and operations by which trades and occupations may be conducted and the conduct of employers, employees and other persons in and about factories, factory buildings and mercantile establishments; it being the policy and intent of this chapter that all factories, factory buildings, mercantile establishments and other places to which this chapter is applicable, shall be so construed, equipped, arranged, operated and conducted in all respects as to provide reasonable and adequate protection to the lives, health and safety of all persons employed therein and that the said board shall from time to time make such rules and regulations as will effectuate the said policy and intent.

The industrial board has power to adopt rules and regulations making more stringent provisions for the safety of factories than those contained in the

Labor Law, notwithstanding the fact that the law itself provides for the same subjects (opinion of Attorney-General, August 26, 1913).

§ 52. **Rules and regulations; industrial code.**— 1. The rules and regulations adopted by the board pursuant to the provisions of this chapter shall have the force and effect of law and shall be enforced in the same manner as the provisions of this chapter. Such rules and regulations may apply in whole or in part to particular kinds of factories or workshops, or to particular machines, apparatus or articles; or to particular processes, industries, trades or occupations; and they may be limited in their application to factories or workshops to be established, or to machines, apparatus or other articles to be installed or provided in the future.

2. At least three affirmative votes shall be necessary to the adoption of any rule or regulation by the board. Before any rule or regulation is adopted, altered, amended or repealed by the board there shall be a public hearing thereon, notice of which shall be published not less than ten days, in such newspapers as the board may prescribe. Every rule or regulation and every act of the board shall be promptly published in bulletins of the department of labor or in such newspapers as the board may prescribe. The rules and regulations, and alterations, amendments and charges thereof shall, unless otherwise prescribed by the board, take effect twenty days after the first publication thereof.

3. The rules and regulations which shall be in force on the first day of January, nineteen hundred and fourteen, and the amendments and alterations thereof, and the additions thereto, shall constitute the industrial code. The industrial code may embrace all matters and subjects to which and so far as the power and authority of the department of labor extends and its application need not be limited to subjects enumerated in this article. The industrial code and all amendments and alterations thereof and additions thereto shall be certified by the secretary of the board and filed with the secretary of state.

ARTICLE 4.

[*Formerly article* 5; *renumbered by L.* 1913, *ch.* 145.]

Bureau of Inspection.

§ 53. **Bureau of inspection; inspector general; divisions.**— The bureau of inspection, subject to the supervision and direction of the commissioner of labor, shall have charge of all inspections made pursuant to the provisions of this chapter, and shall perform such other duties as may be assigned to it by the commissioner of labor. The first deputy commissioner of labor shall be the inspector general of the state, and in charge of this bureau subject to the direction and supervision of the commissioner of labor, except

that the division of industrial hygiene shall be under the immediate direction and supervision of the commissioner of labor. Such bureau shall have four divisions as follows: factory inspection, homework inspection, mercantile inspection and industrial hygiene. There shall be such other divisions in such bureau as the commissioner of labor may deem necessary. In addition to their respective duties as prescribed by the provisions of this chapter, such divisions shall perform such other duties as may be assigned to them by the commissioner of labor. [*As am'd by L.* 1911, *ch.* 729, *and L.* 1913, *ch.* 145.]

§ 54. **Inspectors.**— 1. Factory inspectors. There shall be not less than one hundred and twenty-five factory inspectors, not more than thirty of whom shall be women. Such inspectors shall be appointed by the commissioner of labor and may be removed by him at any time. The inspectors shall be divided into seven grades. Inspectors of the first grade, of whom there shall be not more than ninety-five, shall each receive an annual salary of one thousand two hundred dollars; inspectors of the second grade, of whom there shall be not more than fifty, shall each receive an annual salary of one thousand five hundred dollars; inspectors of the third grade, of whom there shall be not more than twenty-five, shall each receive an annual salary of one thousand eight hundred dollars; inspectors of the fourth grade, of whom there shall be not more than ten, shall each receive an annual salary of two thousand dollars and shall be attached to the division of industrial hygiene and act as investigators in such division; inspectors of the fifth grade, of whom there shall be not more than nine, one of whom shall be able to speak and write at least five European languages in addition to English, shall each receive an annual salary of two thousand five hundred dollars and shall act as supervising inspectors; inspectors of the sixth grade, of whom there shall be not less than three and one of whom shall be a woman, shall act as medical inspectors and shall each receive an annual salary of two thousand five hundred dollars; inspectors of the seventh grade, of whom there shall be not less than four, shall each receive an annual salary of three thousand five hundred dollars; all of the inspectors of the sixth grade shall be physicians duly licensed to practice medicine in the state of New York. Of the inspectors of the seventh grade one shall be a physician duly licensed to practice medicine in the state of New York, and he shall be the chief medical inspector; one shall be a chemical engineer; one shall be a mechanical engineer, and an expert in ventilation and accident prevention; and one shall be a civil engineer, and an expert in fire prevention and building construction. [*As am'd by L.* 1911, *ch.* 729, *L.* 1912, *ch.* 158, *and L.* 1913, *ch.* 145.]

2. Mercantile inspectors. The commissioner of labor may appoint from time to time not more than twenty mercantile inspectors not less than four of whom shall be women and who may be removed by him at any time. The mercantile inspectors may be divided into three grades but not more than five shall be of the third grade. Each mercantile inspector of the first grade shall receive an annual salary of one thousand dollars; of the second grade an annual salary of one thousand two hundred dollars; and of the third grade an annual salary of one thousand five hundred dollars. [*As am'd by L.* 1913, *ch.* 145.]

§ 55. **Division of factory inspection; factory inspection districts; chief factory inspectors.**— For the inspection of factories, there shall be two inspection districts to be known as the first factory inspection district and the second factory inspection district. The first factory inspection district shall include the counties of New York, Bronx, Kings, Queens, Richmond, Nassau and Suffolk. The second factory inspection district shall include all the other counties of the state. There shall be two chief factory inspectors who shall be appointed by the commissioner of labor and who may be removed by him at any time and each of whom shall receive a salary of four thousand dollars a year. The inspection of factories in each factory inspection district shall, subject to the supervision and direction of the commissioner of labor, be in charge of a chief factory inspector assigned to such district by the commissioner of labor. The commissioner of labor may designate one of the supervising inspectors as assistant chief factory inspector for the first district, and while acting as such assistant chief factory inspector shall receive an additional salary of five hundred dollars per annum. [*Added by L.* 1913, *ch.* 145.]

§ 56. **Idem; general powers and duties.**— 1. The commissioner of labor shall, from time to time, divide the state into sub-districts, assign one factory inspector of the fifth grade to each sub-district as supervising inspector, and may in his discretion transfer such supervising inspector from one sub-district to another; he shall from time to time, assign and transfer factory inspectors to each factory inspection district and to any of the divisions of the bureau of inspection; he may assign any factory inspector to inspect any special class or classes of factories or to enforce any special provisions of this chapter; and he may assign any one or more of them to act as clerks in any office of the department. [*As am'd by L.* 1911, *ch.* 729, *and L.* 1913, *ch.* 145.]

2. The commissioner of labor may authorize any deputy commissioner or assistant and any agent or inspector in the department of labor to act as a factory inspector with the full power and authority thereof. [*As am'd by L.* 1913, *ch.* 145.]

3. The commissioner of labor, the first deputy commissioner of labor and his assistant or assistants, and every factory inspector and every person duly authorized pursuant to sub-division two of this section may, in the discharge of his duties enter any place, building or room which is affected by the provisions of this chapter and may enter any factory whenever he may have reasonable cause to believe that any labor is being performed therein. [*As am'd by L.* 1911, *ch.* 729, *and L.* 1913, *ch.* 145.]

4. The commissioner of labor shall visit and inspect or cause to be visited and inspected the factories, during reasonable hours, as often as practicable, and shall cause the provisions of this chapter and the rules and regulations of the industrial board to be enforced therein. [*As am'd by L.* 1913, *ch.* 145.]

5. Any lawful municipal ordinance,* by-law or regulation relating to factories, in addition to the provisions of this chapter and not in conflict therewith, may be observed and enforced by the commissioner of labor.

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* With the possible exception of New York City ordinances (City of New York v. Trustees of Sailors' Snug Harbor, 85 App. Div. 355, aff'd 180 N. Y. 527, and opinion by Attorney-General, January 16, 1904).

The commissioner of labor may also assign duties to the inspectors of steam vessels when transferred by the superintendent of public works in accordance with the Navigation Law (ch. 37 of the Consolidated Laws) as follows:

§ 3. **Duties of superintendent of public works.**— The superintendent of public works shall superintend the administration of the provisions of this article, appoint the inspectors provided for in this act and exercise supervision over them in the performance of their duties so far as the same relate to the administration and enforcement of the provisions of this article. During such periods of the year as in the judgment of the superintendent of public works, the services of the inspectors provided to be appointed by this article shall not be needed in the administration of the provisions of this article, he may, upon request of the commissioner of labor, for temporary periods, transfer such inspectors to the department of labor, and during the periods in which said inspectors are so transferred, they shall be subject to the jurisdiction of the commissioner of labor and subject to detail by him as experts in the administration of the labor law. The necessary traveling expenses of said inspectors while acting under the jurisdiction of the commissioner of labor shall be paid from the funds appropriated for the administration of the department of labor, and their salaries shall be paid, as hereinafter provided, by the superintendent of public works, their vouchers to be approved by the commissioner of labor.

§ 57. **Division of homework inspection.**— The division of homework inspection shall be in charge of an officer or employee of the department of labor designated by the commissioner of labor and shall, subject to the supervision and direction of the commissioner of labor, have charge of all inspections of tenement houses and of labor therein and of all work done for factories at places other than such factories. [*Added by L.* 1913, *ch.* 145.]

§ 58. **Division of mercantile inspection.**— The division of mercantile inspection shall be under the immediate charge of the chief mercantile inspector, but subject to the direction and supervision of the commissioner of labor. The chief mercantile inspector shall be appointed and be at pleasure removed by the commissioner of labor, and shall receive such annual salary not to exceed three thousand dollars as may be appropriated therefor. [*As am'd by L.* 1910, *ch.* 516, *and L.* 1913, *ch.* 145.]

§ 59. **Id.; general powers and duties.**— 1. The commissioner of labor may divide the cities of the first and second class of the state into mercantile inspection districts, assign one or more mercantile inspectors to each such district, and may in his discretion transfer them from one such district to another; he may assign any of them to inspect any special class or classes of mercantile or other establishments specified in article twelve of this chapter, situated in cities of the first and second class, or to enforce in cities of the first or second class any special provision of such article. [*As am'd by L.* 1913, *ch.* 145.]

2. The commissioner of labor may authorize any deputy commissioner or assistant and any agent or inspector in the department of labor to act as a mercantile inspector with the full power and authority thereof. [*As am'd by L.* 1913, *ch.* 145.]

3. The commissioner of labor, the chief mercantile inspector and his assistant or assistants and every mercantile inspector or acting mercantile inspector may in the discharge of his duties enter any place, building or room in cities of the first or second class which is affected by the provisions of article twelve of this chapter, and may enter any mercantile or other establishment specified in said article, situated in the cities of the first or second

class, whenever he may have reasonable cause to believe that it is affected by the provisions of article twelve of this chapter. [*As am'd by L.* 1913, *ch.* 145.]

4. The commissioner of labor shall visit and inspect or cause to be visited and inspected the mercantile and other establishments specified in article twelve of this chapter situated in cities of the first and second class, as often as practicable, and shall cause the provisions of said article and the rules and regulations of the industrial board to be enforced therein. [*As am'd by L.* 1913, *ch.* 145.]

5. Any lawful municipal ordinance, by-law or regulation relating to mercantile or other establishments specified in article twelve of this chapter, in addition to the provisions of this chapter and not in conflict therewith, may be enforced by the commissioner of labor in cities of the first and second class. [*As am'd by L.* 1913, *ch.* 145.]

§ 60. **Division of industrial hygiene.**— The inspectors of the seventh grade shall constitute the division of industrial hygiene, which shall be under the immediate charge of the commissioner of labor. The commissioner of labor may select one of the inspectors of the seventh grade to act as the director of such division, and such director while acting in that capacity shall receive an additional compensation of five hundred dollars a year. The members of the division of industrial hygiene shall make special inspections of factories, mercantile establishments and other places subject to the provisions of this chapter, throughout the state, and shall conduct special investigations of industrial processes and conditions. The commissioner of labor shall submit to the industrial board the recommendations of the division regarding proposed rules and regulations and standards to be adopted to carry into effect the provisions of this chapter and shall advise said board concerning the operation of such rules and standards and as to any changes or modifications to be made therein. The members of such division shall prepare material for leaflets and bulletins calling attention to dangers in particular industries and the precautions to be taken to avoid them; and shall perform such other duties and render such other services as may be required by the commissioner of labor. The director of such division shall make an annual report to the commissioner of labor of the operation of the division, to which may be attached the individual reports of each member of the division as above specified, and same shall be transmitted to the legislature as part of the annual report of the commissioner of labor. [*Added by L.* 1913, *ch.* 145.]

§ 61. **Section of medical inspection.**— The inspectors of the sixth grade shall constitute the section of medical inspection which shall, subject to the supervision and direction of the director of the division of industrial hygiene, be under the immediate charge of the chief medical inspector. The section of medical inspection shall inspect factories, mercantile establishments and other places subject to the provisions of this chapter throughout the state with respect to conditions of work affecting the health of persons employed therein and shall have charge of the physical examination and medical supervision of all children employed therein and shall perform such other duties and render such other services as the commissioner of labor may direct. [*Added by L.* 1913, *ch.* 145.]

ARTICLE 5.

[*Formerly article* 4; *renumbered by L.* 1913, *ch.* 145.]

Bureau of Statistics and Information.

Section 62. Bureau of statistics and information.
63. Divisions; duties and powers.
64. Information to be furnished upon request.
65. Industrial poisoning to be reported.

§ 62. **Bureau of statistics and information.**— The bureau of statistics and information, shall be under the immediate charge of a chief statistician, but subject to the direction and supervision of the commissioner of labor. [*As am'd by L.* 1913, *ch.* 145.]

Cf. § 42, *ante.*

§ 63. **Divisions; duties and powers.**— 1. The bureau of statistics and information shall have five divisions as follows: general labor statistics; industrial directory; industrial accidents and diseases; special investigations; and printing and publication. There shall be such other divisions in such bureau as the commissioner of labor may deem advisable. Each of the said divisions shall, subject to the supervision and direction of the commissioner of labor and of the chief statistician, be in charge of an officer or employee of the department of labor designated by the commissioner of labor; and each of the said divisions, in addition to the duties prescribed in this chapter, shall perform such other duties as may be assigned to it by the commissioner of labor.

2. The division of general labor statistics shall collect, and prepare statistics and general information in relation to conditions of labor and the industries of the state.

3. The division of industrial directory shall prepare annually an industrial directory for all cities and villages having a population of one thousand or more according to the last preceding federal census or state enumeration. Such directory shall contain information regarding opportunities and advantages for manufacturing in every such city or village, the factories established therein, hours of labor, housing conditions, railroad and water connections, water power, natural resources, wages and such other data regarding social, economic and industrial conditions as in the judgment of the commissioner would be of value to prospective manufacturers, and their employees. If a city is divided into boroughs the directory shall contain such information as to each borough.

4. The division of industrial accidents and diseases shall collect and prepare statistical details and general information regarding industrial accidents and occupational diseases, their causes and effects, and methods of preventing, curing and remedying them, and of providing compensation therefor.

5. The division of special investigations shall have charge of all investigations and research work relating to economic and social conditions of labor conducted by such bureau.

6. The division of printing and publication shall print, publish and disseminate in such manner and to such extent as the commisioner of labor shall direct, such information and statistics as the commissioner of labor may direct for the purpose of promoting the health, safety and well being of persons employed at labor.

7. The commissioner of labor may subpoena witnesses, take and hear testimony, take or cause to be taken depositions and administer oaths. [*As am'd by L.* 1913, *ch.* 145.]

Subpœna, how issued, Code of Civil Procedure, § 854; how served, id., § 852; fees, id., § 3318.

Duties and powers discussed, People v. Peck, 138 N. Y. 386, which held the commissioner of labor statistics to be a public officer within the meaning of § 2050 of the Penal Law.

§ 64. **Information to be furnished upon request.**— The owner, operator, manager or lessee of any mine, factory, workshop, warehouse, elevator, foundry, machine shop or other manufacturing establishment, or any agent, superintendent, subordinate, or employee thereof, and any person employing or directing any labor affected by the provisions of this chapter, shall, when requested by the commissioner of labor, furnish any information in his possession or under his control which the commissioner is authorized to require, and shall admit him or his duly authorized representative to any place which is affected by the provisions of this chapter for the purpose of inspection. A person refusing to admit such commissioner, or person authorized by him, to any such establishment, or to furnish him any information requested, or who refuses to answer or untruthfully answers questions put to him by such commissioner, in a circular or otherwise, shall forfeit to the people of the state the sum of one hundred dollars for each refusal or untruthful answer given, to be sued for and recovered by the commissioner in his name of office. The amount so recovered shall be paid into the state treasury. [*As am'd by L.* 1913, *ch.* 145.]

§ 65. **Industrial poisonings to be reported.**— 1. Every medical practitioner attending on or called in to visit a patient whom he believes to be suffering from poisoning from lead, *phosphorous, arsenic, brass, wood alcohol, mercury or their compounds, or from anthrax, or from compressed air illness, contracted as the result of the nature of the patient's employment, shall send to the commissioner of labor a notice stating the name and full postal address and place of employment of the patient and the disease from which, in the opinion of the medical practitioner, the patient is suffering, with such other and further information as may be required by the said commissioner.

2. If any medical practitioner, when required by this section to send a notice, fails forthwith to send the same, he shall be liable to a fine not exceeding ten dollars.

3. It shall be the duty of the commissioner of labor to enforce the provisions of this section, and he may call upon the state and local boards of health for assistance. [*Added as* § 58 *by L.* 1911, *ch.* 258; *am'd and renumbered by L.* 1913, *ch.* 145.]

ARTICLE 6.

Factories.

[*The Penal Law,* § 1275 (*post*), *makes it a misdemeanor to violate or refuse to comply with the provisions of this article, which are to be strictly construed.* (*Murphy v. Bennett,* 11 *App. Div.* 298.)]

* So in original.

§ 69. **Registration of factories.**— The owner of every factory shall register such factory with the state department of labor, giving the name of the owner, his home address, the address of the business, the name under which it is carried on, the number of employees and such other data as the commissioner of labor may require. Such registration of existing factories shall be made within six months after this section takes effect. Factories hereafter established shall be so registered within thirty days after the commencement of business. Within thirty days after a change in the location of a factory the owner thereof shall file with the commissioner of labor the new address of the business, together with such other information as the commissioner of labor may require. [*Added by L.* 1912, *ch.* 335.]

§ 70. **Employment of minors.**— No child under the age of fourteen years shall be employed, permitted or suffered to work in or in connection with any factory in this state, or for any factory at any place in this state. No child between the ages of fourteen and sixteen years shall be so employed,

permitted or suffered to work unless an employment certificate, issued as provided in this article, shall have been theretofore filed in the office of the employer at the place of employment of such child. Nothing herein contained shall prevent a person engaged in farming from permitting his children to do farm work for him upon his farm. Boys over the age of twelve years may be employed in gathering produce, for not more than six hours in any one day, subject to the requirements of chapter twenty-one of the laws of nineteen hundred and nine, entitled "An act relating to education, constituting chapter sixteen of the consolidated laws," and all acts amendatory thereof. [*As am'd by L.* 1913, *ch.* 529.]

Compare §§ 626–628 of the Compulsory Education Law under CHILD LABOR, *post*, and § 162 *post*.

The prohibition is absolute; lack of intent or knowledge not a defense (opinion of Attorney-General, January 16, 1905; City of New York v. Chelsea Jute Mills, 43 Misc. 266, where it was held, March 24, 1904, that ignorance of the child's age and an honest belief on the part of the employer that it was over age, was no defense). But an officer of a corporation who has directed that no child shall be employed contrary to law is not liable if a subordinate, without his knowledge, illegally employs a child. People v. Taylor, 192 N. Y. 398 (1908).

Violation is a misdemeanor (Penal Law, § 1275, *post*) and *prima facie* evidence of negligence on the part of an employer in an action against him: Marino v. Lehmaier, 173 N. Y. 530; Koester v. Rochester Candy Works, 194 N. Y. 92 (1909); Sitts v. Waiontha Co., 94 App. Div. 38; Dragotto v. Plunkett, 113 App. Div. 648; Lee v. Sterling Silk Mfg. Co., 115 App. Div. 589 and 134 App. Div. 123; Kenyon v. Sanford Mfg. Co., 199 App. Div. 570; Fortune v. Hall, 122 App. Div. 250; Danaher v. American Mfg. Co., 126 App. Div. 385 (1908). *Cf.* also § 202, *post*.

A child under fourteen years of age may not be employed in a factory or mercantile establishment which is owned or controlled by the child's parents (opinion of Attorney-General, May 14, 1912).

§ 71. **Employment certificate how issued.**— Such certificate shall be issued by the commissioner of health or the executive officer of the board or department of health of the city, town or village where such child resides, or is to be employed, or by such other officer thereof as may be designated by such board, department or commissioner for that purpose, upon the application of the parent or guardian or custodian of the child desiring such employment. Such officer shall not issue such certificate until he has received, examined, approved and filed the following papers duly executed, viz.: The school record of such child properly filled out and signed as provided in this article; also evidence of age showing that the child is fourteen years old or upwards, which shall consist of the evidence thereof provided in one of the following subdivisions of this section and which shall be required in the order herein designated as follows:

(a) Birth certificate: A duly attested transcript of the birth certificate filed according to law with a registrar of vital statistics or other officer charged with the duty of recording births, which certificate shall be conclusive evidence of the age of such child.

(b) Certificate of graduation: A certificate of graduation duly issued to such child showing that such child is a graduate of a public school of the state of New York or elsewhere, having a course of not less than eight years, or of a school in the state of New York other than a public school, having a substantially equivalent course of study of not less than eight years' duration, in which a record of the attendance of such child has been kept as

required by article twenty of the education law, provided that the record of such school shows such child to be at least fourteen years of age.

(c) Passport or baptismal certificate: A passport or a duly attested transcript of a certificate of baptism showing the date of birth and place of baptism of such child.

(d) Other documentary evidence: In case it shall appear to the satisfaction of the officer to whom application is made, as herein provided, for an employment certificate, that a child for whom such certificate is requested, and who has presented the school record, is in fact over fourteen years of age, and that satisfactory documentary evidence of age can be produced, which does not fall within any of the provisions of the preceding subdivisions of this section, and that none of the papers mentioned in said subdivisions can be produced, then and not otherwise he shall present to the board of health of which he is an officer or agent, for its action thereon, a statement signed by him showing such facts, together with such affidavits or papers as may have been produced before him constituting such evidence of the age of such child, and the board of health, at a regular meeting thereof, may then, by resolution, provide that such evidence of age shall be fully entered on the minutes of such board, and shall be received as sufficient evidence of the age of such child for the purpose of this section.

(e) Physicians' certificates: In cities of the first class only, in case application for the issuance of an employment certificate shall be made to such officer by a child's parent, guardian or custodian who alleges his inability to produce any of the evidence of age specified in the preceding subdivisions of this section, and if the child is apparently at least fourteen years of age, such officer may receive and file an application signed by the parent, guardian or custodian of such child for physicians' certificates. Such application shall contain the alleged age, place and date of birth, and present residence of such child, together with such further facts as may be of assistance in determining the age of such child. Such application shall be filed for not less than ninety days after date of such application for such physicians' certificates, for an examination to be made of the statements contained therein, and in case no facts appear within such period or by such examination tending to discredit or contradict any material statement of such application, then and not otherwise the officer may direct such child to appear thereafter for physical examination before two physicians officially designated by the board of health, and in case such physicians shall certify in writing that they have separately examined such child and that in their opinion such child is at least fourteen years of age such officer shall accept such certificates as sufficient proof of the age of such child for the purposes of this section. In case the opinions of such physicians do not concur, the child shall be examined by a third physician and the concurring opinions shall be conclusive for the purpose of this section as to the age of such child.

Such officer shall require the evidence of age specified in subdivision (a) in preference to that specified in any subsequent subdivision and shall not accept the evidence of age permitted by any subsequent subdivision unless he shall receive and file in addition thereto an affidavit of the parent showing that no evidence of age specified in any preceding subdivision or subdivisions

of this section can be produced. Such affidavit shall contain the age, place and date of birth, and present residence of such child, which affidavit must be taken before the officer issuing the employment certificate, who is hereby authorized and required to administer such oath and who shall not demand or receive a fee therefor. Such employment certificate shall not be issued until such child further has personally appeared before and been examined by the officer issuing the certificate, and until such officer shall, after making such examination, sign and file in his office a statement that the child can read and legibly write simple sentences in the English language and that in his opinion the child is fourteen years of age or upwards and has reached the normal development of a child of its age, and is in sound health and is physically able to perform the work which it intends to do. Every such employment certificate shall be signed, in the presence of the officer issuing the same, by the child in whose name it is issued. In every case, before an employment certificate is issued, such physical fitness shall be determined by a medical officer of the department or board of health, who shall make a thorough physical examination of the child and record the result thereof on a blank to be furnished for the purpose by the state commissioner of labor and shall set forth thereon such facts concerning the physical condition and history of the child as the commissioner of labor may require. [*As am'd by L.* 1912, *ch.* 333.]

Compare § 163, *post.*

The requirement of an examination as to physical fitness is of state-wide application and is not limited to cities of the first class (opinion of Attorney-General, November 9, 1912).

The Penal Law, § 1275, *post,* makes it a misdemeanor to make a false statement in relation to an application for an employment certificate.

§ 72. **Contents of certificate.**— Such certificate shall state the date and place of birth of the child, and describe the color of the hair and eyes, the height and weight and any distinguishing facial marks of such child, and that the papers required by the preceding section have been duly examined, approved and filed and that the child named in such certificate has appeared before the officer signing the certificate and been examined.

Compare § 164, *post.*

§ 73. **School record, what to contain.**— The school record required by this article shall be signed by the principal or chief executive officer of the school which such child has attended and shall be furnished, on demand, to a child entitled thereto or to the board, department or commissioner of health. It shall contain a statement certifying that the child has regularly attended the public schools or schools equivalent thereto, or parochial schools, for not less than one hundred and thirty days during the twelve months next preceding his fourteenth birthday, or during the twelve months next preceding his application for such school record and is able to read and write simple sentences in the English language, and has received during such period instruction in reading, spelling, writing, English grammar and geography and is familiar with the fundamental operations of arithmetic up to and including fractions and has completed the work prescribed for the first six years of the public elementary school or school equivalent thereto or parochial school from which such school record is issued. Such school record shall also give the date of birth and residence of the child as shown

on the records of the school and the name of its parent or guardian or custodian. [*As am'd by L.* 1913, *ch.* 144.]

Compare § 165, *post,* and §§ 629–630 of the Education Law under CHILD LABOR, *post.*

§ 75. **Supervision over issuance of certificates.**— The board or department of health or health commissioner of a city, village or town, shall transmit, between the first and tenth day of each month, to the commissioner of labor, a list of the names of all children to whom certificates have been issued during the preceding month together with a duplicate of the record of every examination as to the physical fitness, including examinations resulting in rejection.

In cities of the first and second class all employment certificates and school records required under the provisions of this chapter shall be in such form as shall be approved by the commissioner of labor. In towns, villages or cities other than cities of the first or second class, the commissioner of labor shall prepare and furnish blank forms for such employment certificates and school records. No school record or employment certificate required by this article, other than those approved or furnished by the commissioner of labor as above provided, shall be used. The commissioner of labor shall inquire into the administration and enforcement of the provisions of this article by all public officers charged with the duty of issuing employment certificates, and for that purpose the commissioner of labor shall have access to all papers and records required to be kept by all such officers. [*As am'd by L.* 1912, *ch.* 333, *and L.* 1913, *ch.* 144.]

§ 76. **Registry of children employed.**— Each person owning or operating a factory and employing children therein shall keep or cause to be kept in the office of such factory, a register, in which shall be recorded the name, birthplace, age and place of residence of all children so employed under the age of sixteen years. Such register and the certificate filed in such office shall be produced for inspection upon the demand of the commissioner of labor. On termination of the employment of a child so registered, and whose certificate is so filed, such certificate shall be forthwith surrendered by the employer to the child or its parent or guardian or custodian. The commissioner of labor may make demand on an employer in whose factory a child apparently under the age of sixteen years is employed or permitted or suffered to work, and whose employment certificate is not then filed as required by this article, that such employer shall either furnish him, within ten days, evidence satisfactory to him that such child is in fact over sixteen years of age, or shall cease to employ or permit or suffer such child to work in such factory. The commissioner of labor may require from such employer the same evidence of age of such child as is required on the issuance of an employment certificate; and the employer furnishing such evidence shall not be required to furnish any further evidence of the age of the child. A notice embodying such demand may be served on such employer personally or may be sent by mail addressed to him at said factory, and if served by post shall be deemed to have been served at the time when the letter containing the same would be delivered in the ordinary course of the post. When the employer is a corporation such notice may be served either personally upon an officer of such corporation, or by sending it by post addressed to the office or the principal place of business of

such corporation. The papers constituting such evidence of age furnished by the employer in response to such demand shall be filed with the commissioner of labor and a material false statement made in any such paper or affidavit by any person shall be a misdemeanor. In case such employer shall fail to produce and deliver to the commissioner of labor within ten days after such demand such evidence of age herein required by him, and shall thereafter continue to employ such child or permit or suffer such child to work in such factory, proof of the giving of such notice and of such failure to produce and file such evidence shall be prima facie evidence in any prosecution brought for a violation of this article that such child is under sixteen years of age and is unlawfully employed.

Compare § 167, *post.*

§ 76-a. **Physical examination of children in factories; cancellation of employment certificates.**— 1. All children between fourteen and sixteen years of age employed in factories shall submit to a physical examination whenever required by a medical inspector of the state department of labor. The result of all such physical examinations shall be recorded on blanks furnished for that purpose by the commissioner of labor, and shall be kept on file in such office or offices of the department as the commissioner of labor may designate.

2. If any such child shall fail to submit to such physical examination, the commissioner of labor may issue an order cancelling such child's employment certificate. Such order shall be served upon the employer of such child who shall forthwith deliver to an authorized representative of the department of labor the child's employment certificate. A certified copy of the order of cancellation shall be served on the board of health or other local authority that issued the said certificate. No such child whose employment certificate has been cancelled, as aforesaid, shall, while said cancellation remains unrevoked, be permitted or suffered to work in any factory of the state before it attains the age of sixteen years. If thereafter such child shall submit to the physical examination required, the commissioner of labor may issue an order revoking the cancellation of the employment certificate and may return the employment certificate to such child. Copies of the order of revocation shall be served upon the former employer of the child and the local board of health as aforesaid.

3. If as a result of the physical examination made by a medical inspector it appears that the child is physically unfit to be employed in a factory, such medical inspector shall forthwith submit a report to that effect to the commissioner of labor which shall be kept on file in the office of the commissioner of labor, setting forth in detail his reasons therefor, and the commissioner of labor may issue an order cancelling the employment certificate of such child. Such order of cancellation shall be served, and the child's employment certificate delivered up, as provided in subdivision two hereof, and no such child while the said order of cancellation remains unrevoked shall be permitted or suffered to work in any factory of the state before it attains the age of sixteen years. If upon a subsequent physical examination of the child by a medical inspector of the department of labor it appears that the physical infirmities have been removed, such medical inspector shall certify to that effect to the commissioner of labor, and the commissioner

of labor may thereupon make an order revoking the cancellation of the employment certificate and may return the certificate to such child. The order of revocation shall be served in the manner provided in subdivision two hereof. [*Added by L.* 1913, *ch.* 200.]

§ 77. **Hours of labor of children, minors and women.**—1. No child under the age of sixteen years shall be employed or permitted to work in or in connection with any factory in this state before eight o'clock in the morning, or after five o'clock in the evening of any day, or for more than eight hours in any one day, or more than six days in any one week.

2. No male minor under the age of eighteen years shall be employed or permitted to work in any factory in this state more than six days or fifty-four hours in any one week, or for more than nine hours in any one day, except as hereinafter provided; nor between the hours of twelve midnight and four o'clock in the morning.

3. No female minor under the age of twenty-one years and no woman shall be employed or permitted to work in any factory in this state more than six days or fifty-four hours in any one week; nor for more than nine hours in any one day except as hereinafter provided. No female minor under the age of twenty-one years shall be employed or permitted to work in any factory in this state before six o'clock in the morning or after nine o'clock in the evening of any day. [*As am'd by L.* 1913, *ch.* 465.]

The limitation of the working hours of women to fifty-four per week is constitutional: People ex rel. Hoelderlin v. Kane, 79 Misc. 140.

4. A printed notice, in a form which shall be furnished by the commissioner of labor, stating the number of hours per day for each day of the week required of such persons, and the time when such work shall begin and end, shall be kept posted in a conspicuous place in each room where they are employed. But such persons may begin their work after the time for beginning and stop before the time for ending such work, mentioned in such notice, but they shall not otherwise be employed, permitted or suffered to work in such factory except as stated therein. The terms of such notice shall not be changed after the beginning of labor on the first day of the week without the consent of the commissioner of labor. The presence of such persons in the factory at any other hours than those stated in the printed notice, or if no such notice be posted, before seven o'clock in the morning or after six o'clock in the evening, shall constitute prima facie evidence of a violation of this section.

5. In a factory wherein, owing to the nature of the work, it is practically impossible to fix the hours of labor weekly in advance the commissioner of labor, upon a proper application stating facts showing the necessity therefor, shall grant a permit dispensing with the notice hereinbefore required, upon condition that the daily hours of labor be posted for the information of employees and that a time book in a form to be approved by him, giving the names and addresses of all female employees and the hours worked by each of them in each day, shall be properly and correctly kept, and shall be exhibited to him or any of his subordinates promptly upon demand. Such permit shall be kept posted in such place in such factory as such commissioner may prescribe, and may be revoked by such commissioner at any time for failure to post it or the daily hours of labor or to keep or exhibit such time book as herein provided.

6. Where a female or male minor is employed in two or more factories or mercantile establishments in the same day or week the total time of employment must not exceed that allowed per day or week in a single factory or mercantile establishment; and any person who shall require or permit a female to work in a factory between the hours of six o'clock in the evening and seven o'clock in the morning in violation of the provisions of this subdivision of this section, with or without knowledge of the previous or other employment, shall be liable for a violation thereof. [*As am'd by L.* 1912, *ch.* 539.]

The prohibition of the employment of women over 21 years of age between 9 P. M. and 6 A. M. is unconstitutional: People v. Williams, 189 N. Y. 131 (1907). Compare §§ 93-b, 161 and 161-a, *post.*

§ 78. **Exceptions.**—1. A female sixteen years of age or upwards and a male between the ages of sixteen and eighteen may be employed in a factory more than nine hours a day: (a) regularly in not to exceed five days a week, in order to make a short day or holiday on one of the six working days of the week; (b) irregularly in not to exceed three days a week; provided that no such person shall be required or permitted to work more than ten hours in any one day or more than fifty-four hours in any one week, and that the provisions of the preceding section as to notice or time book be fully complied with.

2. The provisions of subdivision two of section seventy-seven relating to maximum hours shall not apply to the employment of male minors sixteen years of age and upwards in canning or preserving perishable products in fruit and canning establishments between the fifteenth day of June and the fifteenth day of October each year. [*Added by L.* 1912, *ch.* 539; *am'd by L.* 1913, *ch.* 465.]

3. A female eighteen years of age or upwards may, notwithstanding the provisions of subdivision three of section seventy-seven of this chapter, be employed in canning or preserving perishable products in fruit and canning establishments between the fifteenth day of June and the fifteenth day of October in each year not more than six days or sixty hours in any one week nor more than ten hours in any one day; and the industrial board shall have power to adopt rules and regulations permitting the employment of women eighteen years of age and upwards on such work in such establishments between the twenty-fifth day of June and the fifth day of August in each year not more than six days nor more than sixty-six hours in any one week nor more than twelve hours in any one day, if said board shall find that such employment is required by the needs of such industry and can be permitted without serious injury to the health of women so employed. The provisions of this subdivision shall have no application unless the daily hours of labor shall be posted for the information of employees and a time book in a form approved by the commissioner of labor, giving the names and addresses of all female employees and the hours of work by each of them in each day shall be properly and correctly kept and shall be exhibited to him or any of his subordinates promptly upon demand. No person shall knowingly make or permit or suffer to be made a false entry in any such time book. [*Added by L.* 1913, *ch.* 465.]

By Regulation No. 1 of the industrial board, adopted June 27, 1913, canneries were granted the special permission provided for in this subdivision for 1913, under certain restrictions specified in the regulation.

4. In a prosecution for a violation of any provision of this or of the preceding section the burden of proving a permit or exception shall be upon the party claiming it. [*Originally* 2; *renumbered* 3 *by L.* 1912, *ch.* 539; *renumbered* 4 *by L.* 1913, *ch.* 465.]

§ 79. **Elevators and hoistways.**— 1. Inclosure of shafts. Every hoistway, hatchway or well-hole used for carrying passengers or employees, or for freight elevators, hoisting or other purpose, shall be protected on all sides at each floor including the basement, by substantial vertical inclosures. All openings in such inclosures shall be provided with self-closing gates not less than six feet high or with properly constructed sliding doors. In the case of elevators used for carrying passengers or employees, such inclosures shall be flush with the hatchway and shall extend from floor to ceiling on every open side of the car, and on every other side shall be at least six feet high, and such inclosures shall be free from fixed obstructions on every open side of the car. In the case of freight elevators the inclosures shall be flush with the hoistway on every open side of the car. In place of the inclosures herein required for freight elevators, every hatchway used for freight elevator purposes may be provided with trap doors so constructed as to form a substantial floor surface when closed and so arranged as to open and close by the action of the car in its passage both ascending and descending; provided that in addition to such trap doors, the hatchway shall be adequately protected on all sides at all floors, including the basement, by a substantial railing or other vertical inclosure at least three feet in height.

2. Guarding of elevators and hoistways. All counter-weights of every elevator shall be adequately protected by proper inclosures at the top and bottom of the run. The car of all elevators used for carrying passengers or employees shall be substantially enclosed on all sides, including the top, and such car shall at all times be properly lighted, artificial illuminants to be provided and used when necessary. The top of every freight elevator car or platform shall be provided with a substantial grating or covering for the protection of the operator thereof, in accordance with such rules and regulations as may be adopted with reference thereto by the industrial board.

3. Elevators and hoistways in factory buildings hereafter erected. The provisions of subdivisions one and two of this section shall apply only to factory buildings heretofore erected. In all factory buildings hereafter erected, every elevator and every part thereof and all machinery connected therewith and every hoistway, hatchway and well-hole shall be so constructed, guarded, equipped, maintained and operated as to be safe for all persons using the same.

4. Maintenance of elevators and hoistways in all factory buildings. In every factory building heretofore erected or hereafter erected, all inclosures, doors and gates of hoistways, hatchways or well-holes, and all elevators therein used for the carrying of passengers or employees or freight, and the gates and doors thereof shall at all times be kept in good repair and in a safe condition. All openings leading to elevators shall be kept well lighted at all times during working hours, with artificial illumination when necessary. The cable, gearing and other apparatus of elevators used for carrying passengers or employees or freight shall be kept in a safe condition.

5. Powers of industrial board. The industrial board shall have power

to make rules and regulations not inconsistent with the provisions of this chapter regulating the construction, guarding, equipment, maintenance and operation of elevators and all parts thereof, and all machinery connected therewith and hoistways, hatchways and well-holes, in order to carry out the purpose and intention of this section. [*As am'd by L.* 1909, *ch.* 299 *and L.* 1913, *ch.* 202.]

Violation is not only a misdemeanor (Penal Law, § 1275, *post*), but renders master liable in case of injury to employees (§ 202, *post*). The owner of a tenant factory cannot by any lease escape responsibility for observance of this section (§ 94, *post; Cf.* also note to § 86, *post*).

§ 79-a. **Construction of factory buildings hereafter erected.**—No factory shall be conducted in any building hereafter erected more than one story in height unless such building shall conform to the following requirements:

1. All buildings more than four stories in height shall be of fireproof construction. The roofs of all buildings shall be covered with incombustible material or shall be of tar and slag or plastic cement supported by or applied to arches of fireproof material, and the cornices shall be constructed of incombustible material. All exterior walls within twenty-five feet of any non-fireproof building shall be not less than eight inches thick and shall extend three feet above the roof.

2. Floor area and required exits. The term floor area as used in this section signifies the entire space between fire walls, or between a fire wall and an exterior wall of a building, or between the exterior walls of the building where there is no intervening fire wall. From every floor area there shall be not less than two means of exit remote from each other one of which on every floor above the ground floor shall be an interior enclosed fireproof stairway or an exterior enclosed fireproof stairway, and the other shall be such a stairway or a horizontal exit. No point in any floor area shall be more than one hundred feet distant from the entrance to one such means of exit. Whenever any floor area exceeds five thousand square feet there shall be provided at least one additional means of exit as hereinbefore described for each five thousand square feet or part thereof in excess of five thousand square feet. In every building over one hundred feet in height there shall be at least one exterior enclosed fireproof stairway which shall be accessible from any point in the building.

3. Stairways. All stairways shall be constructed of incombustible material and shall have an unobstructed width of at least forty-four inches throughout their length, except that hand rails may project not more than three and one-half inches into such width. There shall be not more than twelve feet six inches in height between successive landings. The treads shall be not less than ten inches wide exclusive of nosing, and the rise shall be not more than seven and three-fourths inches. No stairway with "winders" shall be allowed except as a connection from one floor to another. The treads shall be constructed and maintained in such manner as to prevent persons from slipping thereon. Every stairway shall be enclosed on all sides by fireproof partitions extending continuously from the lowest story to which such stairway extends to three feet above the roof and the roof of the enclosure shall be constructed of fireproof material at least four inches thick with a skylight at least three-fourths the area of the shaft. All stairways serving as required means of exit shall extend to the roof

and shall lead continuously to the street or to a fireproof passageway independent of other means of exit from the building, opening on a road or street, or to an open area affording unobstructed passage to a road or street. All stairways that extend to the top story shall be continued to the roof. Provision shall be made for the adequate lighting of all stairways by artificial light.

4. Doors and doorways. All doors shall open outwardly. The width of the hallways and exit doors leading to the street, at the street-level, shall be not less than the aggregate width of all stairways leading to them. Every door leading to or opening on a stairway shall have an unobstructed width of at least forty-four inches.

5. Partitions. All partitions in the interior of buildings of fireproof construction shall be of incombustible material.

6. Openings to be enclosed. All elevator and dumb-waiter shafts, vent and light shafts, pipe and duct shafts, hoistways and all other vertical openings leading from one floor to another shall be enclosed throughout their height on all sides by enclosures of fireproof material. Every such enclosure shall have a roof of fireproof material and if the enclosure extends to the top story it shall be continued to three feet above the roof of the building and shall have at the top a skylight in a metal frame at least three-fourths of the area of the shaft or exterior window with metal frame and sash. The bottom of the enclosure shall be of fireproof material unless the opening extends to the cellar bottom. All openings in such enclosures shall be provided with fireproof doors, except that openings in the enclosures of vent and light shafts shall be provided either with fireproof doors or with windows having metal frames and sash and wired glass where glass is used. [*Added by L.* 1913, *ch.* 461.]

By § 351 of the Insurance Law it is made the duty of the state fire marshal to enforce all laws relating to exits from factories outside of New York City. Similar duties in New York City are by § 774 of the charter laid upon the fire commissioner.

§ 79-b. **Requirements for existing buildings.**—No factory shall be conducted in any building heretofore erected unless such building shall conform to the following requirements:

1. Required exits. Every building over two stories in height shall be provided on each floor with at least two means of exit or escape from fire, remote from each other, one of which on every floor above the ground floor shall lead to or open on an interior stairway which in buildings over four stories in height shall be enclosed as hereinafter provided, or to an exterior enclosed fireproof stairway. The other shall lead to such a stairway; or to a horizontal exit; or to an exterior screened stairway; or when, in the opinion of the industrial board the safety of the occupants of the building would not be endangered thereby, to fire-escapes on the outside of the building. No point on any floor of such factory shall be more than one hundred feet distant from the entrance to one such means of exit. Whenever egress may be had from the roof to an adjoining or near-by structure, every stairway serving as a required means of exit shall be extended to the roof. All such stairways shall extend to the first story and lead to the street, or to an unobstructed passageway leading to a street or road or to an open area affording safe passage to a street or road.

2. Stairway enclosures. All interior stairways serving as required means of exit in buildings more than four stories in height and the landings, platforms and passageways connected therewith shall be enclosed on all sides by partitions of fire resisting material extending continuously from the basement. Where the stairway extends to the top floor of the building such partitions shall extend to three feet above the roof. All openings in such partitions shall be provided with self closing doors constructed of fire resisting material except where such openings are in the exterior wall of the building. All such partitions and the doors provided for the openings therein shall be constructed in such manner as the industrial board may prescribe by its rules and regulations. Whenever, in the case of any existing buildings not over six stories in height, the industrial board shall find that the requirements of this and the last preceding subdivision relating to stairway enclosures can be dispensed with or modified without endangering the safety of persons employed in such buildings, the industrial board shall have power to adopt such rules and regulations as may, in its opinion, meet the conditions existing in such buildings, which rules and regulations may make said requirements inapplicable or modify the same in such manner as it may find to be adapted to securing the safety of persons employed therein. The industrial board shall have power to adopt rules and regulations permitting, under conditions therein prescribed, as a substitute for the stairway enclosures herein required the use of partitions heretofore constructed in such manner and of such fire resisting material as have heretofore been approved by the local authorities exercising supervision over the construction and alteration of buildings. In such cases, however, every opening in the enclosing partitions shall be provided with fire doors.

By Regulation No. 2 of the industrial board, adopted August 28, the requirement of fireproofing inclosure of interior stairways was extended to factories less than five stories in height, except such as have exterior enclosed fireproof stairways or horizontal exits as specified in § 79-f, or such as are equipped with automatic sprinklers if not more than 80 persons are employed above the ground floor. Regulation No. 2 of same date prohibits storage of combustible materials in any stairway enclosure or stairway or landings or passages connected therewith, or under any stairway unless the latter be fireproof.

3. Doors. Where five or more persons are employed on any floor of a factory building every door on such floor leading to or opening on any means of exit shall open outwardly or be double swinging doors. All exit doors in the first story, including the doors of the vestibule, shall open outwardly.

4. Fire-escapes. All outside fire-escapes shall be constructed of wrought iron or steel and shall be so designed, constructed and erected as to safely sustain on all platforms, balconies and stairways a live load of not less than ninety pounds per square foot with a factor of safety of four. Wherever practicable, a continuous run or straight run stairway shall be used. On every floor above the first there shall be balconies or landings embracing one or more easily accessible and unobstructed openings at each floor level, connected with each other and with the ground by means of a stairway constructed as hereinafter provided and well fastened and secured. All openings leading to outside fire-escapes shall have an unobstructed width of at least two feet and an unobstructed height of at least six feet and shall extend to the floor level or within six inches thereof, and shall be not more than

seven inches above the floor of the fire-escape balcony. Such openings shall have metal frames and be provided with doors constructed of fireproof material with wired glass where glass is used. All windows opening upon the course of the fire-escape shall be fireproof windows. The balconies shall have an unobstructed width of at least four feet throughout their length and shall have a landing not less than twenty-four inches square at the head of every stairway. There shall be a passageway between the stairway opening and the side of the building at least eighteen inches wide throughout except where the stairways reach and leave the balconies at the ends or where double run stairways are used. The stairway opening of the balconies shall be of a size sufficient to provide clear headway and shall be guarded on the long side by an iron railing not less than three feet in height. Each balcony shall be surrounded by an iron railing not less than three feet in height thoroughly and properly braced. The balconies shall be connected by stairways not less than twenty-two inches wide placed at an incline of not more than forty-five degrees, with steps of not less than eight-inch tread and not over eight-inch rise and provided with a hand-rail not less than three feet in height. The treads of such stairways shall be so constructed as to sustain a live load of four hundred pounds per step with a factor of safety of four. There shall be a similar stairway from the top floor balcony to the roof, except where the fire-escape is erected on the front of the building. A similar stairway shall also be provided from the lowest balcony to a safe landing place beneath, which stairway shall remain down permanently or be arranged to swing up and down automatically by counterbalancing weights. When not erected on the front of the building, safe and unobstructed egress shall be provided from the foot of the fire-escape by means of an open court or courts or a fireproof passageway having an unobstructed width of at least three feet throughout leading to the street, or by means of an open area having communication with the street; such fireproof passageway shall be adequately lighted at all times and the lights shall be so arranged as to ensure their reliable operation when through accident or other cause the regular factory lighting is extinguished.

5. The provisions of subdivision four shall not apply where at the time this act takes effect there are outside fire-escapes with balconies on each floor of the building connected with stairways placed at an angle of not more than sixty degrees, provided that such existing outside fire-escapes have or shall be provided with the following:

A stairway leading from the top floor balcony to the roof, except where the fire-escapes are erected on the front of the building; a stairway not less than twenty-two inches wide from the lowest balcony to a safe landing place beneath, which stairway remains down permanently or is arranged to swing up and down by counter-balancing weights; a safe and unobstructed exit to the street from the foot of such fire-escapes as provided in subdivision four hereof; steps connecting the sill of every opening leading to the fire-escapes with the floor whenever such sill is more than three feet above the floor level; and all openings leading to the fire-escapes provided with windows having metal frames and sash and with wired glass where glass is used, or with doors constructed in accordance with the requirements of subdivision four;

and all windows opening upon the course of the fire-escape provided with fireproof windows. [*Added by L.* 1913, *ch.* 461.]

Penalty for non-compliance: see Penal Law, § 1275. Liability: see § 202, *post*. In a tenant-factory the owner alone is responsible for observance of this section (§ 94, *post*).

By § 351 of the Insurance Law it is made the duty of the state fire marshal to enforce all laws relating to fire escapes outside of New York City. Prior to 1911 jurisdiction over the subject of fire escapes in New York City was vested exclusively in the local superintendent of buildings: City of New York v. Trustees of Sailors' Snug Harbor, 85 App. Div. 355; aff'd, 180 N. Y. 527. See also opinion of the Attorney-General, January 16, 1904. An amendment of the New York City charter of 1911 (adding §§ 774 to 778-c) makes it the duty of the fire commissioner to enforce laws concerning the means of exit from factories.

§ 79-c. **Additional requirements common to buildings heretofore and hereafter erected.**—No factory shall be conducted in any building unless such building shall be so constructed, equipped and maintained in all respects as to afford adequate protection against fire to all persons employed therein, nor unless, in addition to the requirements of section seventy-nine-a in the case of a building hereafter erected or of section seventy-nine-b in the case of a building heretofore erected, such building shall conform to the following requirements:

1. Stairways. Stairways shall be provided with proper and substantial hand-rails. Where the stairway is enclosed by fireproof partitions the bottom of the enclosure shall be of fireproof material at least four inches thick unless the fireproof partitions extend to the cellar bottom. All stairways that extend to the top story shall be continued to the roof.

2. Doors and windows. No door, window or other opening on any floor of a factory building shall be obstructed by stationary metal bars, grating or wire mesh. Metal bars, grating or wire mesh provided for any such door, window or other opening shall be so constructed as to be readily movable or removable from both sides in such manner as to afford the free and unobstructed use of such door, window or other opening as a means of egress in case of need and they shall be left unlocked during working hours. Every door opening on a stairway or other means of exit shall so open as not to obstruct the passageway. A clearly painted sign marked "exit" in letters not less than eight inches in height shall be placed over all exits leading to stairways and other means of egress, and in addition a red light shall be placed over all such exits for use in time of darkness.

3. Access to exits. There shall at all times be maintained continuous, safe, unobstructed passageways on each floor of the building, with an unobstructed width of at least three feet throughout their length leading directly to every means of egress, including outside fire-escapes and passenger elevators. All means of egress shall be maintained in an unobstructed condition. No door leading into or out of any factory or any floor thereof shall be locked, bolted or fastened during working hours.

4. Regulation by industrial board. The industrial board shall have power to adopt rules and regulations and establish requirements and standards for construction, equipment and maintenance of factory buildings or of particular classes of factory buildings and the means and adequacy of exit therefrom in order to carry out the purposes of this chapter in addition to the requirements of this section and of sections seventy-nine-a and seventy-nine-b, and not inconsistent therewith. [*Added by L.* 1913, *ch.* 461.]

§ 79-d. **Effect of foregoing provisions; inspection of buildings and approval of plans.**— 1. Effect of foregoing provisions. The requirements of sections seventy-nine-a, seventy-nine-b and seventy-nine-c are not in substitution for the requirements of any general or special law or local ordinance relating to the construction, equipment or maintenance of buildings, but the provisions of such general and special laws and local ordinances shall be observed as well as the provisions of said sections. The provisions of sections seventy-nine-a, seventy-nine-b and seventy-nine-c shall supersede all provisions inconsistent therewith in any special law or local ordinance, and any provision of law or ordinance which gives power to any officer to establish requirements inconsistent with the provisions of such sections or the rules and regulations adopted by the industrial board under the provisions of this article.

2. Inspection of buildings. The officer of any city, village or town having power to inspect buildings therein for the purpose of determining their conformity to the requirements of law or ordinance governing the construction thereof, shall, whenever requested by the commissioner of labor, inspect any factory building therein and certify to the commissioner of labor in detail whether or not such building conforms to the requirements of this chapter and the rules and regulations of the industrial board, and such certificate shall be filed in the office of the commissioner of labor and shall be presumptive evidence of the truth of the matters therein stated.

3. Approval of plans. Before construction or alteration of a building in which it is intended to conduct one or more factories, the plans and specifications for such construction or alteration may be submitted to the commissioner of labor and filed in his office in such form and with such information as may be required by him or by the rules and regulations of the industrial board, and if such plans and specifications comply with the requirements of this chapter and the rules and regulations of the industrial board, he shall issue his certificate approving the same, which certificate shall bear the date when issued. Whenever any certificate shall be issued by the commissioner of labor under this section the particulars of such certificate shall be recorded and indexed in the records of his office. Before issuing any such certificate the commissioner of labor may request the officer of the city, village or town in which such building is located having power to examine and pass upon plans for construction of buildings with reference to their conformity to the requirements of law or ordinance governing the construction thereof, to examine such plans and specifications and to certify to the commissioner of labor whether or not such plans and specifications conform to the requirements of this chapter and the rules and regulations of the industrial board, and such officer shall thereupon make such examination and so certify in detail to the commissioner of labor and such certificate shall be filed in the office of the commissioner of labor and shall be presumptive evidence of the truth of the matters therein stated.

4. Certificate of compliance. After such construction or alteration shall be completed, the commissioner of labor shall, when requested by the owner or person filing such plans, ascertain by inspection or in the manner provided in subdivision two of this section, whether such building conforms to the requirements of this chapter and the rules and regulations of the industrial board; and if he finds that it does conform thereto, shall issue his certificate

to that effect, which shall bear the date when issued. [*Added by L.* 1913, *ch.* 461.]

§ 79-e. **Limitation of number of occupants.**— The number of persons who may occupy any factory building or portion thereof above the ground floor shall be limited to such a number as can safely escape from such building by the means of exit provided in the building.

1. In buildings hereafter erected no more than fourteen persons shall be employed or permitted or suffered to work on any one floor for every full twenty-two inches in width of stairway conforming to the requirements for a required means of exit except as to extension to the roof, provided for such floor. No allowance shall be made for any excess in width of less than twenty-two inches.

2. In buildings heretofore erected no more than fourteen persons shall be employed or permitted or suffered to work on any one floor for every eighteen inches in width of stairway provided for such floor and conforming to the requirements for a required means of exit except as to extension to the roof, and for any excess in width of less than eighteen inches a proportionate increase in the number of occupants shall be allowed. Where the industrial board shall find that the safety of the occupants of any such building will not be endangered thereby, it may allow an increase in the number of occupants of any floor in such building to a number not greater than at the rate of twenty persons for every eighteen inches in width of such stairway provided for such floor, with a proportionate increase in the number of occupants for any excess in width of less than eighteen inches.

3. In any building for every additional sixteen inches over ten feet in height between two floors, one additional person may be employed on the upper of such floors for every eighteen inches in width of stairway leading therefrom to the lower of such floors in buildings heretofore erected, and one for every twenty-two inches in width of such stairway in buildings hereafter erected, provided that such stairways conform to the requirements for required means of exit except as to extension to the roof.

4. In any building, if any stairway has steps of the type known as "winders," a deduction of ten per centum shall be made in counting the capacity of such stairway.

5. In any building where the stairways and stairhalls are enclosed in fireproof partitions or where, at the time this act takes effect, the stairways and stairhalls are enclosed in partitions of brick, concrete, terra-cotta blocks or reinforced concrete constructed in a manner heretofore approved by the superintendent of buildings of the city of New York having jurisdiction if in such city, or elsewhere in the state, in a manner conforming to the rules and regulations to be adopted by the industrial board under the provisions of subdivision two of section seventy-nine-b, all openings in which enclosing partitions are or shall hereafter be provided with fireproof doors, in either of such cases so many additional persons may be employed on any floor as can occupy the enclosed stairhall or halls on that floor, allowing five square feet of unobstructed floor space per person.

6. In any building where a horizontal exit is provided on any floor such number of persons may be employed on such floor as can occupy the smaller of the two spaces on such floor on either side of the fireproof partitions or

fire walls, or as can occupy the floor of an adjoining or near-by building which is connected with such floor by openings in the wall or walls between the buildings or by exterior balconies or bridges, in addition to the occupants of such connected floor in such adjoining or near-by building, allowing five square feet of unobstructed floor space per person, provided that the partitions or walls or balconies through which the horizontal exit is provided to such other portion of the same building or to such adjoining or near-by building shall have doorways of sufficient width to allow eighteen inches in width of opening for each fifty persons or fraction thereof so permitted to be employed on such floor in the case of horizontal exits heretofore constructed and twenty-two inches in the case of horizontal exits hereafter constructed.

7. In any building heretofore erected of fireproof construction, where any floor is subdivided by partitions of brick, terra cotta or concrete not less than four inches thick extending continuously from the fireproofing of the floor to the underside of the fireproofing of the floor above, with all openings protected by fireproof doors not less than forty-four inches nor more than sixty-six inches in width, and in which all the windows on such floor and on the two floors directly underneath are fireproof windows, such number of persons may be employed on such floor as can occupy the smaller of the two spaces on either side of such partitions, allowing five square feet of unobstructed floor space per person, provided there shall be on each side of said partitions at least one stairway conforming to the requirements for a required means of exit; and provided further that such partitions have doorways of sufficient width to allow eighteen inches in width of openings for each fifty persons or fraction thereof so permitted to occupy such floor, and that such doorways shall be kept unlocked and unobstructed during working hours. The provisions of this subdivision shall apply to any fireproof building heretofore erected which may hereafter be made to conform to the requirements of this section.

8. In any building the number of persons permitted to be employed on any one floor under the provisions of subdivisions one, two and three of this section may be increased fifty per centum where there is constructed, installed and maintained throughout the building an automatic sprinkler system conforming to the requirements of section eighty-three-b of this chapter and to the rules and regulations of the industrial board.

9. In any building, the number of persons who may be employed on any one floor shall in no event exceed such number as can occupy such floor, allowing thirty-six square feet of floor space per person if the building is not of fireproof construction, and thirty-two square feet of floor space per person if the building is of fireproof construction.

10. Where one floor is occupied by more than one tenant, the industrial board shall have power to make rules and regulations prescribing how many of the persons allowed to occupy such floor under the provisions of this section may occupy the space of each tenant.

11. Posting. In every factory, two stories or over in height, the commissioner of labor shall cause to be posted notices specifying the number of persons that may occupy each floor thereof in accordance with the provisions of this section. Every such notice shall be posted in a conspicuous place in every stairhall and workroom. If any one floor is occupied by more than one tenant, such notices shall be posted in the space occupied by each tenant, and

shall state the number of persons that may occupy such space. Every such notice shall bear the date when posted. [*Added by L.* 1913, *ch.* 461.]

§ 79-f. **Meaning of terms.**— The following terms when used in this article shall have the following meaning:

1. Fireproof construction. A building shall be deemed to be of fireproof construction if it conforms to the following requirements: All walls constructed of brick, stone, concrete or terra-cotta; all floors and roofs of brick, terra-cotta, or reinforced concrete placed between steel or reinforced concrete beams and girders; all the steel entering into the structural parts encased in at least two inches of fireproof material, excepting the wall columns, which must be encased in at least eight inches of masonry on the outside and four inches on the inside; all stairwells, elevator wells, public hallways and corridors enclosed by fireproof partitions; all doors, fireproof; all stairways, landings, hallways and other floor surfaces of incombustible material; no woodwork or other combustible material used in any partition, furring, ceiling or floor; and all window frames, doors and sash, trim and other interior finish of incombustible material; all windows shall be fireproof windows except that in buildings under seventy feet in height fireproof windows are required only when within thirty feet of another building or opening on a court or space less than thirty feet wide; except that in buildings under one hundred feet in height there may be wooden sleepers and floor finish and wooden trim, and except that in buildings under one hundred and fifty feet in height heretofore constructed there may be wooden sleepers, floor finish and trim and the windows need not be fireproof windows, excepting when such windows are within thirty feet of another building.

2. Fireproof material is material which is incombustible and is capable of resisting the effect of fire in such manner and to such extent as to insure the safety of the occupants of the building. The industrial board shall determine and in its rules and regulations shall specify what materials are fireproof materials within the meaning hereof. The industrial board shall also determine and in its rules and regulations shall specify what materials, not being fireproof materials within the meaning hereof, are fire resisting materials. Fire resisting material, when required by any of the provisions of this chapter, shall conform to requirements of such rules and regulations.

3. Incombustible material is material which will not burn or support combustion.

4. A fire wall is a wall constructed of brick, concrete, terra-cotta blocks or reinforced stone concrete, and having at each floor level one or more openings each protected by fire doors so constructed as to prevent the spread of fire or smoke through the openings. In buildings of nonfireproof construction fire walls shall be at least twelve inches in thickness and shall extend continuously from the cellar floor through the entire building and at least three feet over the roof and be coped; except that walls heretofore erected not less than eight inches in thickness, but otherwise conforming to the requirements of this subdivision shall be considered fire walls within the meaning of this subdivision. No opening in such wall shall exceed sixty-six inches in width or sixty square feet in area, except that where openings not exceeding eight feet in width exist in fire walls heretofore erected, such walls may be considered fire walls within the meaning of this subdivision,

and in the case of fire walls hereafter constructed no two openings in the same wall and at the same floor level shall be nearer than forty feet from the center of one opening to the center of another. Every opening in a fire wall shall be protected by a fire door closing automatically on each side of the wall. At every opening in the fire wall there shall be an incombustible floor finish extending over the floor for the full thickness of the wall so as to completely separate the woodwork of the floors on each side of the fire wall. In fireproof buildings the fire walls shall comply with the foregoing requirements in all respects excepting that they may be of the thickness required by the provisions of this section with respect to fireproof partitions; such fire walls and fireproof partitions shall be continuous, from the cellar floor to the under side of the fireproof roof.

5. Fireproof partitions shall be built of brick, concrete, reinforced concrete or terra cotta blocks. When built of brick or concrete they shall be not less than eight inches in thickness for the uppermost forty feet, and shall increase four inches in thickness for each additional lower forty feet or part thereof; or, when wholly supported by suitable steel framing at vertical intervals of not over forty feet, they may be eight inches in thickness throughout their entire height. When wholly supported at vertical intervals of not over twenty-five feet, and built of terra cotta blocks, they shall be not less than six inches in thickness and when so supported and built of reinforced stone concrete, they shall be not less than four inches in thickness. The supporting steel framework shall be properly encased on all sides by not less than two inches of fireproof material, securely fastened to the steel work. All openings in such partitions shall be provided with fire doors.

6. Fire doors. Fire doors shall be metal-covered doors, or doors of such other material as shall be specified in the rules and regulations of the industrial board. They shall be provided with self-closing devices and have incombustible sills. The industrial board shall determine, and in its rules and regulations shall specify, the material and mode and manner of construction and erection of such doors.

7. Fireproof windows shall be windows constructed of metal frames and sash and provided with wired glass and of the automatic, self-closing type.

8. Exterior enclosed fireproof stairways shall be stairways completely enclosed from top to bottom by walls of fireproof material not less than eight inches thick extending from the sidewalk, court or yard level to the roof, and with walls extending above the roof so as to form a bulkhead. The stairway shall in all other respects conform to the requirements of this article in regard to enclosed stairways. There shall be no opening in any wall separating the exterior enclosed fireproof stairway from the building. Access shall be provided to the stairway from every floor of the building by means of an outside balcony or vestibule of steel, iron or masonry. Every such balcony or vestibule shall have an unobstructed width of at least forty-four inches and shall be provided with a fireproof floor and a railing of incombustible material not less than three feet high. Access to such balconies from the building and to the stairway from the balconies, shall be by means of fire doors. The level of the balcony floor shall be not more than seven inches below the level of the door sill of the building. The doors shall be not less than forty-four inches wide and shall swing outward onto the bal-

cony and inward from the balcony to the stairway, and shall be provided with locks or latches with visible fastenings requiring no key to open them in leaving the building. The landings in such stairway shall be of such width that the doors in opening into the stairway shall not reduce the free passageway of the landings to a width less than the width of the stairs. Every such stairway shall be provided with a proper lighting system which shall furnish adequate light and shall be so arranged as to ensure its reliable operation when, through accident or other cause, the regular factory lighting is extinguished. The balconies giving access to such stairways shall be open on at least one side upon an open space not less than one hundred square feet in area.

9. Horizontal exit. A horizontal exit shall be the connection by means of one or more openings not less than forty-four inches wide, protected by fire doors, through a fire wall in any building, or through a wall or walls between two buildings, which doors shall continuously be unlocked and the opening unobstructed whenever any person is employed on either side of the opening. Exterior balconies and bridges not less than forty-four inches in width connecting two buildings and not having a gradient of more than one foot fall in six, may also be counted as horizontal exits when the doors opening out upon said balconies or bridges are fireproof doors and are level with the floors of the building, and when all doors of both buildings opening on such balconies or bridges are continuously kept unlocked and unobstructed whenever any person is employed on either side of the exit, and when such balconies or bridges are built of incombustible material and are capable of sustaining a live load of not less than ninety pounds per square foot with a factor of safety of four; and when such balconies or bridges are enclosed on all sides to a height of not less than six feet and on top and bottom by fireproof material, unless all windows or openings within thirty feet of such balconies in the connected buildings shall be encased in metal frames and sash and shall have wired glass where glass is used. In any case there shall be on each side of the wall or partition containing the horizontal exit and independent of said horizontal exit, at least one stairway conforming to the requirements for a required means of exit.

10. Exterior screened stairways used as one of the required means of exit in buildings heretofore erected shall be built of incombustible material. The risers of the stairs shall be not more than seven and three-quarters inches in height and the treads not less than ten inches wide. On each floor there shall be a balcony connecting with the stairs. Access to the balconies shall be by means of fire doors that shall open outwardly, so as not to obstruct the passageway, or slide freely, and shall extend to the floor level. All windows or other openings opening upon the course of such stairs shall be fireproof. The level of the balcony floor shall not be more than seven inches below the level of the door sill. The stairs shall continue from the roof to the ground level, and there shall be independent means of exit from the bottom of such stairs to the street or to an open court or to a fireproof enclosed passageway leading to the street or to an open area having communication with the street or road. The balconies and stairs shall be enclosed in a screen of incombustible material.

11. The provisions of subdivisions four to nine inclusive of this section shall apply to all buildings hereafter erected and to all construction hereafter made in buildings heretofore erected. The industrial board shall adopt rules and regulations regulating construction heretofore made in buildings heretofore erected requiring compliance with such of the requirements of the said subdivisions or with such other or different requirements as said board may find to be reasonable and adequate to protect persons employed in such buildings against fire. [*Added by L.* 1913, *ch.* 461.]

§ 81. **Protection of employees operating machinery; dust-creating machinery; lighting of factories and workrooms.**— 1. The owner or person in charge of a factory where machinery is used, shall provide, as may be required by the rules and regulations of the industrial board, belt shifters or other mechanical contrivances for the purpose of throwing on or off belts on pulleys. Whenever practicable, all machinery shall be provided with loose pulleys. Every vat and pan wherever set so that the opening or top thereof is at a lower level than the elbow of the operator or operators at work about the same shall be protected by a cover which shall be maintained over the same while in use in such manner as effectually to prevent such operators or other persons falling therein or coming in contact with the contents thereof, except that where it is necessary to remove such cover while any such vat or pan is in use, such vat or pan shall be protected by an adequate railing around the same. Every hydro-extractor shall be covered or otherwise properly guarded while in motion. Every saw shall be provided with a proper and effective guard. Every planer shall be protected by a substantial hood or covering. Every hand-planer or jointer shall be provided with a proper and effective guard. All cogs and gearing shall be boxed or cased either with metal or wood. All belting within seven feet of the floors shall be properly guarded. All revolving shafting within seven feet of the floors shall be protected on its exposed surface by being encased in such a manner as to effectively prevent any part of the body, hair or clothing of the operators or other persons from coming in contact with such shafting. All set-screws, keys, bolts and all parts projecting beyond the surface of revolving shafting shall be countersunk or provided with suitable covering, and machinery of every description shall be properly guarded and provided with proper safety appliances or devices. All machines, machinery, apparatus, furniture and fixtures shall be so placed and guarded in relation to one another as to be safe for all persons. Whenever any danger exists which requires any special care as to the character and condition of the clothing of the persons employed thereabouts, or which requires the use of special clothing or guards, the industrial board may make rules and regulations prescribing what shall be used or worn for the purpose of guarding against such danger and regulating the provision, maintenance and use thereof. No person shall remove or make ineffective any safeguard or safety appliance or device around or attached to machinery, vats or pans, unless for the purpose of immediately making repairs thereto or adjustment thereof, and any person who removes or makes ineffective and such safeguard, safety appliance or device for a permitted purpose shall immediately replace the same when such purpose is accomplished. It shall be the duty of the employer and of every person exercising direction or control over the person who removes such safeguard, safety

appliance or device, or over any person for whose protection it is designed to see that a safeguard or safety appliance or device that has been removed is promptly and properly replaced. All fencing, safeguards, safety appliances and devices must be constantly maintained in proper condition. When in the opinion of the commissioner of labor a machine or any part thereof is in a dangerous condition or is not properly guarded or is dangerously placed, the use thereof shall be prohibited by the commissioner of labor and a notice to that effect shall be attached thereto. Such notice shall not be removed except by an authorized representative of the department of labor, nor until the machinery is made safe and the required safeguards or safety appliances or devices are provided, and in the meantime such unsafe or dangerous machinery shall not be used. The industrial board may make rules and regulations regulating the installation, position, operation, guarding and use of machines and machinery in operation in factories, the furnishing and use of safety devices and safety appliances for machines and machinery and of guards to be worn upon the person, and other cognate matters, whenever it finds such regulations necessary in order to provide for the prevention of accidents in factories.

2. All grinding, polishing or buffing wheels used in the course of the manufacture of articles of the baser metals shall be equipped with proper hoods and pipes and such pipes shall be connected to an exhaust fan of sufficient capacity and power to remove all matter thrown off such wheels in the course of their use. Such fan shall be kept running constantly while such grinding, polishing or buffing wheels are in operation; except that in case of wet-grinding it is unnecessary to comply with this provision unless required by the rules and regulations of the industrial board. All machinery creating dust or impurities shall be equipped with proper hoods and pipes and such pipes shall be connected to an exhaust fan of sufficient capacity and power to remove such dust or impurities; such fan shall be kept running constantly while such machinery is in use; except where, in case of wood-working machinery, the industrial board shall decide that it is unnecessary for the health and welfare of the operatives.

3. All passageways and other portions of a factory, and all moving parts of machinery which are not so guarded as to prevent accidents, where, on or about which persons work or pass or may have to work or pass in emergencies, shall be kept properly and *and sufficiently lighted during working hours. The halls and stairs leading to the workrooms shall be properly and adequately lighted, and a proper and adequate light shall be kept burning by the owner or lessee in the public hallways near the stairs, upon the entrance floor and upon the other floors on every workday in the year, from the time when the building is open for use in the morning until the time it is closed in the evening, except at times when the influx of natural light shall make artificial light unnecessary. Such lights shall be so arranged as to insure their reliable operation when through accident or other cause the regular factory lighting is extinguished.

Cf. § 168, *post.*

4. All workrooms shall be properly and adequately lighted during working hours. Artificial illuminants in every workroom shall be installed, arranged and used so that the light furnished will at all times be sufficient and adequate for the work carried on therein, and so as to prevent unnec-

* So in original.

essary strain on the vision or glare in the eyes of the workers. The industrial board may make rules and regulations to provide for adequate and sufficient natural and artificial lighting facilities in all factories. [*As am'd by L.* 1909, *ch.* 299, *L.* 1910, *ch.* 106 *and L.* 1913, *ch.* 286.]

Non-compliance with the section renders the master liable in case of injury to employees (§ 202, *post*).

In a tenant-factory the owner alone is responsible for lighting of halls and stairs (§ 94, *post*).

Where it is practicable to guard a machine and danger from its remaining unguarded should be reasonably anticipated the provisions of the section are mandatory and the burden of proving that it is impracticable to guard a machine is upon the employer: Scott v. International Paper Co., 204 N. Y. 49 (1912). The burden of proof as to assumption of risk in case of failure to comply with the statute is upon the employer: Fitzwater v. Warren, 206 N. Y. 355.

§ 83-a. **Fire alarm signal systems and fire drills.**— 1. Every factory building over two stories in height in which more than twenty-five persons are employed above the ground floor shall be equipped with a fire alarm signal system with a sufficient number of signals clearly audible to all occupants thereof. The industrial board may make rules and regulations prescribing the number and location of such signals. Such system shall be installed by the owner or lessee of the building and shall permit the sounding of all the alarms within the building whenever the alarm is sounded in any portion thereof. Such system shall be maintained in good working order. No person shall tamper with, or render ineffective any portion of said system except to repair the same. It shall be the duty of whoever discovers a fire to cause an alarm to be sounded immediately.

2. In every factory building over two stories in height in which more than twenty-five persons are employed above the ground floor, a fire drill which will conduct all the occupants of such building to a place of safety and in which all the occupants of such building shall participate simultaneously shall be conducted at least once a month.

In the city of New York the fire commissioner of such city, and in all other parts of the state, the state fire marshal shall cause to be organized and shall supervise and regulate such fire drills, and shall make rules, regulations and special orders necessary or suitable to each situation and in the case of buildings containing more than one tenant, necessary or suitable to the adequate co-operation of all the tenants of such building in a fire drill of all the occupants thereof. Such rules, regulations and orders may prescribe upon whom shall rest the duty of carrying out the same. Such special orders may require posting of the same or an abstract thereof. A demonstration of such fire drill shall be given upon the request of an authorized representative of the fire department of the city, village or town in which the factory is located, and, except in the city of New York, upon the request of the state fire marshal or any of his deputies or assistants.

3. In the city of New York the fire commissioner of such city, and elsewhere, the state fire marshal is charged with the duty of enforcing this section. [*Added by L.* 1912, *ch.* 330 *and am'd by L.* 1913, *ch.* 203.]

§ 83-b. **Automatic sprinklers.**— In every factory building over seven stories or over ninety feet in height in which wooden flooring or wooden trim is used and more than two hundred people are regularly employed above the seventh floor or more than ninety feet above the ground level of such build-

ing, the owner of the building shall install an automatic sprinkler system approved as to form and manner in the city of New York by the fire commissioner of such city, and elsewhere, by the state fire marshal. Such installation shall be made within one year after this section takes effect, but the fire commissioner of the city of New York in such city and the state fire marshal elsewhere may, for good cause shown, extend such time for an additional year. A failure to comply with this section shall be a misdemeanor as provided by section twelve hundred and seventy-five of the penal law and the provisions hereof shall also be enforced in the city of New York by the fire commissioner of such city in the manner provided by title three of chapter fifteen of the Greater New York charter, and elsewhere by the state fire marshal in the manner provided by article ten-a of the insurance law. [*Added by L.* 1912, *ch.* 332.]

§ 83-c. **Fireproof receptacles; gas jets; smoking.**— 1. Every factory shall be provided with properly covered fireproof receptacles, the number, style and location of which shall be approved in the city of New York by the fire commissioner, and elsewhere, by the commissioner of labor. There shall be deposited in such receptacles all inflammable waste materials, cuttings and rubbish. No waste materials, cuttings or rubbish shall be permitted to accumulate on the floors of any factory but shall be removed therefrom not less than twice each day. All such waste materials, cuttings and rubbish shall be entirely removed from a factory building at least once in each day, except that baled waste material may be stored in fireproof enclosures provided that all such baled waste material shall be removed from such building at least once in each month.

2. All gas jets or lights in factories shall be properly enclosed by globes, wire cages or otherwise properly protected in a manner approved in the city of New York by fire commissioner of such city, and elsewhere, by the commissioner of labor.

3. No person shall smoke in any factory. A notice of such prohibition stating the penalty for violation thereof shall be posted in every entrance hall and every elevator car, and in every stairhall and room on every floor of such factory in English and also in such other language or languages as the fire commissioner of the city of New York in such city, and elsewhere, the state fire marshal, shall direct. The fire commissioner of the city of New York in such city, and elsewhere, the state fire marshal shall enforce the provisions of this subdivision. [*Added by L.* 1912, *ch.* 329 *and am'd by L.* 1913, *ch.* 194.]

§ 84. **Cleanliness of rooms.**— Every room in a factory and the floors, walls, ceilings, windows and every other part thereof and all fixtures therein shall at all times be kept in a clean and sanitary condition. The walls and ceilings of each room in a factory shall be lime washed or painted, except when properly tiled or covered with slate or marble with a finished surface. Such lime wash or paint shall be renewed whenever necessary as may be required by the commissioner of labor. Floors shall, at all times, be maintained in a safe condition. No person shall spit or expectorate upon the walls, floors or stairs of any building used in whole or in part for factory purposes. Sanitary cuspidors shall be provided, in every workroom in a factory in sufficient numbers. Such cuspidors shall be thoroughly cleaned daily. Suit-

able receptables shall be provided and used for the storage of waste and refuse; such receptacles shall be maintained in a sanitary condition. [*As am'd by L.* 1910, *ch.* 114 *and L.* 1913, *ch.* 82.]

In tenant-factories responsibility for cleanliness of halls, etc. is placed upon the owner by section 94, *post.*

Cf. special requirements for bakeries in §§ 112–114, *post;* and for laundries in § 92.

§ 84-a. **Cleanliness of factory buildings.**— Every part of a factory building and of the premises thereof and the yards, courts, passages, areas or alleys connected with or belonging to the same, shall be kept clean, and shall be kept free from any accumulation of dirt, filth, rubbish or garbage in or on the same. The roof, passages, stairs, halls, basements, cellars, privies, water-closets, cesspools, drains and all other parts of such building and the premise thereof shall at all times be kept in a clean, sanitary and safe condition. The entire building and premises shall be well drained and the plumbing thereof at all times kept in proper repair and in a clean and sanitary condition. [*Added by L.* 1913, *ch.* 198.]

§ 85. **Size of rooms.**— No more employees shall be required or permitted to work in a room in a factory between the hours of six o'clock in the morning and six o'clock in the evening than will allow to each of such employees, not less than two hundred and fifty cubic feet of air space; and, unless by a written permit of the commissioner of labor, not less than four hundred cubic feet for each employee, so employed between the hours of six o'clock in the evening and six o'clock in the morning, provided such room is lighted by electricity at all times during such hours, while persons are employed therein.

Cf. requirement as to height of ceilings in bakeries in §§ 112, 114 and 116, *post.*

§ 86. **Ventilation.**— 1. The owner, agent or lessee of every factory shall provide, in each workroom thereof, proper and sufficient means of ventilation by natural or mechanical means or both, as may be necessary, and shall maintain proper and sufficient ventilation and proper degrees of temperature and humidity in every workroom thereof at all times during working hours.

2. If dust, gases, fumes, vapors, fibers or other impurities are generated or released in the course of the business carried on in any workroom of a factory, in quantities tending to injure the health of the operatives, the person operating the factory, whether as owner or lessee of the whole or of a part of the building in which the same is situated, or otherwise, shall provide suction devices that shall remove said impurities from the workroom, at their point of origin where practicable, by means of proper hoods connected to conduits and exhaust fans of sufficient capacity to remove such impurities, and such fans shall be kept running constantly while such impurities are being generated or released. If, owing to the nature of the manufacturing process carried on in a factory workroom, excessive heat be created therein the person or persons operating the factory as aforesaid shall provide, maintain, use and operate such special means or appliances as may be required to reduce such excessive heat.

3. The industrial board shall have power to make rules and regulations for and fix standards of ventilation, temperature and humidity in factories and may prescribe the special means, if any, required for removing impurities or for reducing excessive heat, and the machinery, apparatus or

appliances to be used for any of said purposes, and the construction, equipment, maintenance and operation thereof, in order to effectuate the purposes of this section.

4. If any requirement of this section or any rule or regulation of the industrial board made under the provisions thereof shall not be complied with, the commissioner of labor shall issue or cause to be issued an order directing compliance therewith by the person whose duty it is to comply therewith within thirty days after the service of such order. Such person shall, in case of failure to comply with the requirements of such order, forfeit to the people of the state fifteen dollars for each day during which such failure shall continue after the expiration of such thirty days, to be recovered by the commissioner of labor. The liability to such penalty shall be in addition to the liability of such person to prosecution for a misdemeanor as provided by section twelve hundred and seventy-five of the penal law.

5. When the commissioner of labor shall issue, or cause to be issued, an order specified in subdivision four hereof, he may in such order require plans and specifications to be filed for any machinery or apparatus to be provided or altered, pursuant to the requirements of such order. In such case, before providing, or making any change or alteration in any machinery or apparatus for any of the purposes specified in this section, the person upon whom such order is served shall file with the commissioner of labor plans and specifications therefor, and shall obtain the approval of such plans and specifications by the commissioner of labor before providing or making any change or alteration in any such machinery or apparatus. [*As am'd by L.* 1913, *ch.* 196.]

Section 94, *post,* makes the owner as well as occupant in a tenant-factory responsible for observance of this section and the owner of a factory building is liable for a violation of this section even though by the terms of a lease a tenant agrees to comply with the law: People ex rel. Williams v. Eno, 134 App. Div. 527.

Cf. special requirements for bakeries in §§ 112, 113, 114, 116 and 117, *post.*

§ 87. Accidents to be reported.— The person in charge of any factory shall keep a correct record of all deaths, accidents or injuries sustained by any person therein or on the premises, in such form as may be required by the commissioner of labor. Such record shall be open to the inspection of the commissioner of labor and a copy thereof shall be furnished to the said commissioner on demand. Within forty-eight hours after the time of the accident, death or injury, a report thereof shall be made in writing to the commissioner of labor, stating as fully as possible the cause of the death or the extent and cause of the injury, and the place where the injured person has been sent, with such other or further information relative thereto as may be required by the said commissioner, who may investigate the causes thereof and require such precautions to be taken as will prevent the recurrence of similar happenings. No statement contained in any such report shall be admissable in evidence in any action arising out of the death or accident therein reported. [*As am'd by L.* 1910, *ch.* 155.]

Compare § 20-a, *ante,* (building accidents) and § 126, *post* (accidents in mines and quarries); also §§ 47, 66 and 94 of the Public Service Commissions Law (Ch. 48 of Consolidated Laws).

§ 88. **Drinking water, washrooms and dressing rooms.**— 1. In every factory there shall be provided at all times for the use of employees, a sufficient supply of clean and pure drinking water. Such water shall be supplied

through proper pipe connections with water mains through which is conveyed the water used for domestic purposes, or, from a spring or well or body of pure water; if such drinking water be placed in receptacles in the factory, such receptacles shall be properly covered to prevent contamination and shall be thoroughly cleaned at frequent intervals.

2. In every factory there shall be provided and maintained for the use of employees suitable and convenient washrooms, separate for each sex, adequately equipped with washing facilities consisting of sinks or stationary basins provided with running water or with tanks holding an adequate supply of clean water. Every washroom shall be provided with means for artificial illumination and with adequate means of ventilation. All washrooms and washing facilities shall be constructed, lighted, heated, ventilated, arranged and maintained according to rules and regulations adopted with reference thereto by the industrial board. In all factories where lead, arsenic or other poisonous substances or injurious or noxious fumes, dust or gases are present as an incident or result of the business or processes conducted by such factory there shall be provided washing facilities which shall include hot water and soap and individual towels.

3. Where females are employed, dressing or emergency rooms shall be provided for their use; each such room shall have at least one window opening to the outer air and shall be enclosed by means of solid partitions or walls. In every factory in which more than ten women are employed, there shall be provided one or more separate dressing rooms in such numbers as required by the rules and regulations of the industrial board and located in such place or places as required by such rules and regulations, having an adequate floor space in proportion to the number of employees, to be fixed by the rules and regulations of the industrial board, but the floor space of every such dressing room shall in no event be less than sixty square feet; each dressing room shall be separated from any water closet compartment by adequate partitions and shall be provided with adequate means for artificial illumination; each dressing room shall be provided with suitable means for hanging clothes and with a suitable number of seats. All dressing rooms shall be enclosed by means of solid partitions or walls, and shall be constructed, heated, ventilated, lighted and maintained in accordance with such rules and regulations as may be adopted by the industrial board with reference thereto. [*As am'd by L.* 1910, *ch.* 229, *L.* 1912, *ch.* 336, *and L.* 1913, *ch.* 340.]

In a tenant-factory the owner must provide water-closets, and the necessary plumbing and water to enable occupants to comply with all the provisions of this section (§ 94, *post*).

***Cf.* special requirements for bakeries in §§ 112 and 113, *post*.**

***Cf.* § 168, *post*.**

§ 88-a. Water closets.— 1. In every factory there shall be provided suitable and convenient water closets separate for each sex, in such number and located in such place or places as required by the rules and regulations of the industrial board. All water closets shall be maintained inside the factory except where, in the opinion of the commissioner of labor it is impracticable to do so.

2. There shall be separate water closet compartments for females, to be used by them exclusively, and notice to that effect shall be painted on the

outside of such compartments. The entrance to every water closet used by females shall be effectively screened by a partition or vestibule. Where water closets for males and females are in adjoining compartments, there shall be solid plastered or metal covered partitions between the compartments extending from the floor to the ceiling. Whenever any water closet compartments open directly into the workroom exposing the interior, they shall be screened from view by a partition or a vestibule. The use of curtains for screening purposes is prohibited.

3. The use of any form of trough water closet, latrine or school sink within any factory is prohibited. All such trough water closets, latrines or school sinks shall, before the first of October, nineteen hundred and fourteen, be completely removed and the place where they were located properly disinfected under the direction of the department of labor. Such appliances shall be replaced by proper individual water closets, placed in water closet compartments, all of which shall be constructed and installed in accordance with rules and regulations to be adopted by the industrial board.

4. Every existing water closet and urinal inside any factory shall have a basin of enameled iron or earthenware, and shall be flushed from a separate water-supplied cistern or through a flushometer valve connected in such manner as to keep the water supply of the factory free from contamination. All woodwork enclosing water closet fixtures shall be removed from the front of the closet and the space underneath the seat shall be left open. The floor or other surface beneath and around the closet shall be maintained in good order and repair and all the woodwork shall be kept well painted with a light-color paint. All existing water closet compartments shall have windows leading to the outer air and shall be otherwise ventilated in accordance with rules and regulations adopted for that purpose by the industrial board. Such compartments shall be provided with means for artificial illumination and the enclosure of each compartment shall be kept free from all obscene writing or marking.

5. All water closets, urinals and water closet compartments hereafter installed in a factory, including those provided to replace existing fixtures, shall be properly constructed, installed, ventilated, lighted and maintained in accordance with such rules and regulations as may be adopted by the industrial board.

6. All water closet compartments, and the floors, walls, ceilings and surface thereof, and all fixtures therein, and all water closets and urinals shall at all times be kept and maintained in a clean and sanitary condition. Where the water supply to water closets or urinals is liable to freeze, the water closet compartment shall be properly heated so as to prevent freezing, or the supply and flush pipes, cisterns and traps and valves shall be effectively covered with wool felt or hair felt, or other adequate covering.

7. All water closets shall be constructed, lighted, ventilated, arranged and maintained according to rules and regulations adopted with reference thereto by the industrial board. [*Added by L.* 1913, *ch.* 340.]

Cf. requirements for foundries, § 97; for bakeries, §§ 112–113; for mercantile establishments, § 168.

§ 89. Time allowed for meals.— In each factory at least sixty minutes shall be allowed for the noon-day meal, unless the commissioner of labor shall

permit a shorter time. Such permit must be in writing and conspicuously posted in the main entrance of the factory, and may be revoked at any time. Where employees are required or permitted to work overtime for more than one hour after six o'clock in the evening, they shall be allowed at least twenty minutes to obtain a lunch, before beginning to work overtime.

§ 89-a. **Prohibition against eating meals in certain workrooms.**—No employee shall take or be permitted to take any food into a room or apartment in a factory, mercantile establishment, mill or workshop, commercial institution or other establishment or working place where lead, arsenic or other poisonous substances or injurious or noxious fumes, dust or gases exist in harmful conditions or are present in harmful quantities as an incident or result of the business conducted by such factory, commercial establishment, mill or workshop, commercial institution or other establishment or working place; and notice to the foregoing effect shall be posted in each such room, or apartment. No employee, unless his presence is necessary for the proper conduct of the business, shall remain in any such room, apartment or enclosure during the time allowed for meals, and suitable provision shall be made and maintained by the employer for enabling employees to take their meals elsewhere in such establishment. [*Added by L.* 1912, *ch.* 336.]

See § 109, *post.*

§ 90. **Inspection of factory buildings.**—The commissioner of labor, or other competent person designated by him, upon request, shall examine any factory outside of the cities of New York and Brooklyn, to determine whether it is in a safe condition. If it appears to him to be unsafe, he shall immediately notify the owner, agent or lessee thereof, specifying the defects, and require such repairs and improvements to be made as he may deem necessary. If the owner, agent or lessee shall fail to comply with such requirement, he shall forfeit to the people of the state the sum of fifty dollars, to be recovered by the commissioner of labor in his name of office.

In a tenant-factory the owner alone is responsible for observance of this section (§ 94, *post*).

§ 92. **Laundries.**—A shop, room or building where one or more persons are employed in doing public laundry work by way of trade or for purposes of gain is a factory within the meaning of this chapter, and shall be subject to the visitation and inspection of the commissioner of labor and the provisions of this chapter in the same manner as any other factory. No such public laundry work shall be done in a room used for a sleeping or living room. All such laundries shall be kept in a clean condition and free from vermin and all impurities of an infectious or contagious nature. This section shall not apply to any female engaged in doing custom laundry work at her home for a regular family trade.

An hotel laundry is not a public laundry. Opinion of the Attorney-General, March 5 and September 28, 1906.

§ 93. **Prohibited employment of women and children.**—1. No child under the age of sixteen years shall be employed or permitted to work in operating or assisting in operating any of the following machines: Circular or band saws, woodshapers, woodjointers, planers, sandpaper or wood polishing machinery; picker machines or machines used in picking wool, cotton, hair or any upholstery material; paper lace machines; burnishing machines in any

tannery or leather manufactory; job or cylinder printing presses having motive power other than foot; wood-turning or boring machinery; drill presses; metal or paper cutting machines; corner staying machines in paper box factories; stamping machines used in sheet metal and tinware manufacturing or in washer and nut factories; machines used in making corrugating rolls; steam boilers; dough brakes or cracker machinery of any description; wire or iron straightening machinery; rolling mill machinery; power punches or shears; washing, grinding or mixing machinery; calendar rolls in rubber manufacturing; or laundering machinery; or in operating or assisting in operating any other machines or machinery which may be found by the industrial board to be dangerous and specified as such from time to time in rules and regulations adopted by such board.

2. No child under the age of sixteen years shall be employed or permitted to work at adjusting or assisting in adjusting any belt to any machinery, oiling or assisting in oiling, wiping or cleaning machinery; or in any capacity in preparing any composition in which dangerous or poisonous acids are used; or in the manufacture or packing of paints, dry colors, or red or white lead; or dipping or dyeing matches; or in the manufacture, packing or storing of powder, dynamite, nitroglycerine, compounds, fuses, or other explosives; or in or about any distillery, brewery, or any other establishment where malt or alcoholic liquors are manufactured, packed, wrapped, or bottled; and no female under the age of sixteen shall be employed or permitted to work in any capacity where such employment compels her to remain standing constantly. No child under the age of sixteen years shall be employed or permitted to have the care, custody or management of or to operate an elevator either for freight or passengers. No person under the age of eighteen years shall be employed or permitted to have the care, custody or management of or to operate an elevator either for freight or passengers running at a speed of over two hundred feet a minute. No male persons under eighteen years or woman under twenty-one years of age shall be permitted or directed to clean machinery while in motion. No male child under the age of eighteen years, nor any female, shall be employed in any factory in this state in operating or using any emery, tripoli, rouge, corundum, stone, carborundum or any abrasive, or emery polishing or buffing wheel, where articles of the baser metals or of iridium are manufactured.

3. In addition to the cases provided for in the foregoing subdivisions, the industrial board, when as a result of its investigations it finds that any particular trade, process of manufacture, or occupation, or particular method of carrying on any trade, process of manufacture, or occupation, is dangerous or injurious to the health of minors under eighteen years of age employed therein, shall have power to adopt rules and regulations prohibiting or regulating the employment of such minors therein.

4. No female shall be employed or permitted to work in any brass, iron or steel foundry, at or in connection with the making of cores where the oven in which the cores are baked is located and is in operation in the same room or space in which the cores are made. The erection of a partition separating the oven from the space where the cores are made shall not be sufficient unless the said partition extends from the floor to the ceiling, and the partition is so constructed and arranged, and any openings therein so protected that the gases and fumes from the core oven will not enter the room or space

in which the women are employed. The industrial board shall have power to adopt rules and regulations regulating the construction, equipment, maintenance and operation of core rooms and the size and weight of cores that may be handled by women, so as to protect the health and safety of women employed in core rooms. [*As am'd by L.* 1909, *ch.* 299, *L.* 1910, *ch.* 107, and *L.* 1913, *ch.* 464.]

See § 131, *post,* relative to employment of children or women in mines or quarries.

Children may not assume the obvious risks of operating dangerous machinery contrary to this section, violation of which is *prima facie* evidence of negligence. Gallenkamp v. Garvin Machine Co., 179 N. Y. 588, reversing 91 App. Div. 141, on dissenting opinion below; and Rahn v. Standard Optical Co., 110 App. Div. 501. See also § 202, *post.*

§ 93-a. **Employment of females after childbirth prohibited.**— It shall be unlawful for the owner, proprietor, manager, foreman or other person in authority of any factory, mercantile establishment, mill or workshop to knowingly employ a female or permit a female to be employed therein within four weeks after she has given birth to a child. [*Added by L.* 1912, *ch.* 331.]

§ 93-b. **Period of rest at night for women.**— In order to protect the health and morals of females employed in factories by providing an adequate period of rest at night no woman shall be employed or permitted to work in any factory in this state before six o'clock in the morning or after ten o'clock in the evening of any day. [*Added by L.* 1913, *ch.* 83.]

§ 94. **Tenant-factories.**— A tenant-factory within the meaning of the term as used in this chapter is a building, separate parts of which are occupied and used by different persons, companies or corporations, and one or more of which parts is so used as to constitute in law a factory. The owner, whether or not he is also one of the occupants, instead of the respective lessees or tenants, shall be responsible for the observance and punishable for the nonobservance of the following provisions of this article, anything in any lease to the contrary notwithstanding,— namely, the provisions of sections seventy-nine, eighty, eighty-two, eighty-three, eighty-six, ninety and ninety-one, and the provisions of section eighty-one with respect to the lighting of halls and stairways; except that the lessees or tenants also shall be responsible for the observance and punishable for the nonobservance of the provisions of sections seventy-nine, eighty, eighty-six and ninety-one within their respective holdings. The owner of every tenant-factory shall provide each separate factory therein with water-closets in accordance with the provisions of section eighty-eight, and with proper and sufficient water and plumbing pipes and a proper and sufficient supply of water to enable the tenant or lessee thereof to comply with all the provisions of said section. But as an alternative to providing water-closets within each factory as aforesaid, the owner may provide in the public hallways or other parts of the premises used in common, where they will be at all times readily and conveniently accessible to all persons employed on the premises not provided for in accordance with section eighty-eight, separate water-closets for each sex, of sufficient numbers to accommodate all such persons. Such owner shall keep all water-closets located as last specified at all times provided with proper fastenings, and properly screened, lighted, ventilated, clean, sanitary and free from all obscene writing or marking. Outdoor water-closets shall only be permitted where the commissioner of labor shall decide that they are necessary or preferable, and they shall then be provided in

all respects in accordance with his directions. The owner of every tenant-factory shall keep the entire building well drained and the plumbing thereof in a clean and sanitary condition; and shall keep the cellar, basement, yards, areaways, vacant rooms and spaces, and all parts and places used in common in a clean, sanitary and safe condition, and shall keep such parts thereof as may reasonably be required by the commissioner of labor properly lighted at all hours or times when said building is in use for factory purposes. The term "owner" as used in this article shall be construed to mean the owner or owners of the freehold of the premises, or the lessee or joint lessees of the whole thereof, or his, her or their agent in charge of the property. The lessee or tenant of any part of a tenant-factory shall permit the owner, his agents and servants, to enter and remain upon the demised premises whenever and so long as may be necessary to comply with the provisions of law, the responsibility for which is by this section placed upon the owner; and his failure or refusal so to do shall be a cause for dispossessing said tenant by summary proceedings to recover possession of real property, as provided in the code of civil procedure. And whenever by the terms of a lease any lessee or tenant shall have agreed to comply with or carry out any of such provisions, his failure or refusal so to do shall be a cause for dispossessing said tenant by summary proceedings as aforesaid. Except as in this article otherwise provided the person or persons, company or corporation conducting or operating a factory whether as owner or lessee of the whole or of a part of the building in which the same is situated or otherwise, shall be responsible for the observance and punishable for the nonobservance of the provisions of this article, anything in any lease or agreement to the contrary notwithstanding.

See notes on §§ 79 and 86, *ante*.

§ 95. **Unclean factories.**— If the commissioner of labor finds evidence of contagious disease in any factory he shall affix to any articles therein exposed to such contagion a label containing the word "unclean" and shall notify the local board of health, who may disinfect such articles and thereupon remove such label. If the commissioner of labor finds that any workroom or factory is foul, unclean, or unsanitary, he may, after first making and filing in the public records of his office a written order stating the reasons therefor, affix to any articles therein found a label containing the word "unclean." No one but the commissioner of labor shall remove any label so affixed; and he may refuse to remove it until such articles shall have been removed from such factory and cleaned, or until such room or rooms shall have been cleaned or made sanitary. [*As am'd by L.* 1912, *ch.* 334.]

§ 96. **Definition of "custodian."**— The word "custodian" as used in this article shall include any person, organization or society having the custody of a child.

§ 97. **Brass, iron and steel foundries.**— 1. Foundries shall be subject to all the provisions of this chapter relating to factories.

2. All entrances to foundries shall be so constructed and maintained as to minimize drafts, and all windows therein shall be maintained in proper condition and repair.

3. All gangways in foundries shall be constructed and maintained of sufficient width to make the use thereof by employees reasonably safe; during the progress of casting such gangways shall not be obstructed in any manner.

4. Smoke, steam and gases generated in foundries shall be effectively removed therefrom, in accordance with such rules and regulations as may be adopted with reference thereto by the industrial board, and whenever required by the regulations of such board, exhaust fans of sufficient capacity and power, properly equipped with ducts and hoods, shall be provided and operated to remove such smoke, steam and gases. The milling and cleaning of castings, and milling of cupola cinders, shall be done under such conditions to be prescribed by the rules and regulations of the industrial board as will adequately protect the persons employed in foundries from the dust arising during the process.

5. All foundries shall be properly and thoroughly lighted during working hours and in cold weather proper and sufficient heat shall be provided and maintained therein. The use of heaters discharging smoke or gas into workrooms is prohibited. In all foundries suitable provisions shall be made and maintained for drying the working clothes of persons employed therein.

6. In every foundry in which ten or more persons are employed or engaged at labor, there shall be provided and maintained for the use of employees therein suitable and convenient washrooms of sufficient capacity adequately equipped with hot and cold water service; such washrooms shall be kept clean and sanitary and shall be properly heated during cold weather. In every such foundry lockers shall be provided for the safe-keeping of employees' clothing. In every foundry in which more than ten persons are employed or engaged at labor where water closets or privy accommodations are permitted by the commissioner of labor to remain outside of the factory under the provisions of section eighty-eight of this chapter, the passageway leading from the foundry to the said water closets or privy accommodations shall be so protected and constructed that the employees in passing thereto or therefrom shall not be exposed to outdoor atmosphere and such water closets or privy accommodations shall be properly heated during cold weather.

7. The flasks, molding machines, ladles, cranes and apparatus for transporting molten metal in foundries shall be maintained in proper condition and repair, and any such tools or implements that are defective shall not be used until properly repaired. There shall be in every foundry, available for immediate use, an ample supply of lime water, olive oil, vaseline, bandages and absorbent cotton, to meet the needs of workmen in case of burns or other accidents; but any other equally efficacious remedy for burns may be substituted for those herein prescribed. [*Added by L.* 1913, *ch.* 201.]

§ 98. **Labor camps.**— Every employer operating a factory, and furnishing to the employees thereof any living quarters at any place outside the factory, either directly or through any third person by contract or otherwise, shall maintain such living quarters and every part thereof in a thoroughly sanitary condition. The industrial board shall have power to make rules and regulations to provide for the sanitation of such living quarters. The commissioner of labor may enter and inspect any such living quarters. [*Added by L.* 1913, *ch.* 195.]

§ 99. **Dangerous trades.**— Whenever the industrial board shall find as a result of its investigations that any industry, trade or occupation by reason of the nature of the materials used therein or the products thereof or by reason of the methods or processes or machinery or apparatus employed therein or

by reason of any other matter or thing connected with such industry, trade or occupation, contains such elements of danger to the lives, health or safety of persons employed therein as to require special regulation for the protection of such persons, said board shall have power to make such special rules and regulations as it may deem necessary to guard against such elements of danger by establishing requirements as to temperature, humidity, the removal of dusts, gases or fumes and requiring licenses to be applied for and issued by the commissioner of labor as a condition of carrying on any such industry, trade or occupation and requiring medical inspection and supervision of persons employed and applying for employment and by other appropriate means. [*Added by L.* 1913, *ch.* 199.]

§ 99-a. **Laws to be posted.**— Copies or digests of the provisions of this chapter and of the rules and regulations of the industrial board, applicable thereto, in English and in such other languages as the commissioner of labor may require, to be prepared and furnished by the commissioner of labor, shall be kept posted by the employer in such conspicuous place or places as the commissioner of labor may direct on each floor of every factory where persons are employed who are affected by the provisions thereof. [*Originally* § 68 *of article* 5; *renumbered, transferred and am'd by L.* 1913, *ch.* 145.]

ARTICLE 7.

Tenement-made Articles.

[*An earlier statute* (*L.* 1884, *ch.* 272), *which attempted to prohibit the manufacture of cigars in tenements, was declared unconstitutional* (*Matter of Jacobs*, 98 *N. Y.* 98). *Violation is a misdemeanor* (*Penal Law*, § 1275, *post*). *"Tenement house" is defined in* § 2, *ante*].

§ 100. **Manufacturing, altering, repairing or finishing articles in tenements.**—1. No tenement house nor any part thereof shall be used for the purpose of manufacturing, altering, repairing or finishing therein, any articles whatsoever except for the sole and exclusive use of the person so using any part of such tenement house or the members of his household, without a license therefor as provided in this article. But nothing herein contained shall apply to collars, cuffs, shirts or shirt waists made of cotton or linen fabrics that are subjected to the laundrying process before being offered for sale.

2. Application for such a license shall be made to the commissioner of labor by the owner of such tenement house, or by his duly authorized agent. Such application shall describe the house by street number or otherwise, as the case may be, in such manner as will enable the commissioner of labor easily to find the same; it shall also state the number of apartments in such house; it shall contain the full name and address of the owner of the said

house, and shall be in such form as the commissioner of labor may determine. Blank applications shall be prepared and furnished by the commissioner of labor.

3. Upon receipt of such application the commissioner of labor shall consult the records of the local health department or board, or other appropriate local authority charged with the duty of sanitary inspection of such houses; if such records show the presence of any infectious, contagious or communicable disease, or the existence of any uncomplied-with order or violations which indicate the presence of unsanitary conditions in such house, the commissioner of labor may, without making an inspection of the building, deny such application for a license, and may continue to deny such application until such time as the records of said department, board or other local authority show that the said tenement house is free from the presence of infectious, contagious or communicable disease, and from all unsanitary conditions. Before, however, any such license is granted, an inspection of the building sought to be licensed must be made by the commissioner of labor, and a statement must be filed by him as a matter of public record, to the effect that the records of the local health department or board or other appropriate authority charged with the duty of sanitary inspection of such houses show the existence of no infectious, contagious or communicable disease nor of any unsanitary conditions in the said house; such statement must be dated and signed in ink with the full name of the employee responsible therefor. A similar statement similarly signed, showing the results of the inspection of the said building, must also be filed in the office of the commissioner of labor before any license is granted. If the commissioner of labor ascertain that such building is free from infectious, contagious or communicable disease, that there are no defects of plumbing that will permit the entrance of sewer air, that such building is in a clean and proper sanitary condition and that articles may be manufactured therein under clean and healthful conditions, he shall grant a license permitting the use of such building, for the purpose of manufacturing.

4. Such license may be revoked by the commissioner of labor if the health of the community or of the employees requires it, or if the owner of the said tenement house, or his duly authorized agent, fails to comply with the orders of the commissioner of labor within ten days after the receipt of such orders, or if it appears that the building to which such license relates is not in a healthy and proper sanitary condition, or if children are employed therein in violation of section seventy of this chapter. In every case where a license is revoked or denied by the commissioner of labor the reasons therefor shall be stated in writing, and the records of such revocation or denial shall be deemed public records. Where a license is revoked, before such tenement house can again be used for the purposes specified in this section, a new license must be obtained, as if no license had previously existed.

5. Every tenement house and all the parts thereof in which any articles are manufactured, altered, repaired or finished shall be kept in a clean and sanitary condition and shall be subject to inspection and examination by the commissioner of labor, for the purpose of ascertaining whether said garments or articles, or part or parts thereof, are clean and free from vermin and every matter of an infectious or contagious nature. An inspection shall be made by the commissioner of labor of each licensed tenement house not less than once

in every six months, to determine its sanitary condition, and shall include all parts of such house and the plumbing thereof. Before making such inspection the commissioner of labor may consult the records of the local department or board charged with the duty of sanitary inspection of tenement houses, to determine the frequency of orders issued by such department or board in relation to the said tenement house, since the last inspection of such building was made by the commissioner of labor. Whenever the commissioner of labor finds any unsanitary condition in a tenement house for which a license has been issued as provided in this section, he shall at once issue an order to the owner thereof directing him to remedy such condition forthwith. Whenever the commissioner of labor finds any articles manufactured, altered, repaired or finished, or in process thereof, in a room or apartment of a tenement house, and such room or apartment is in a filthy condition, he shall notify the tenants thereof to immediately clean the same, and to maintain it in a cleanly condition at all times; where the commissioner of labor finds such room or apartment to be habitually kept in a filthy condition, he may in his discretion cause to be affixed to the entrance door of such apartment a placard calling attention to such facts and prohibiting the manufacture, alteration, repair or finishing of any articles therein. No person, except the commissioner of labor, shall remove or deface any such placard so affixed.

See provision for "tagging" of infected or unclean goods specified in this section, in tenant-factories in § 95, *ante*.

6. No articles shall be manufactured, altered, repaired or finished in any room or apartment of a tenement house where there is or has been a case of infectious, contagious or communicable disease in such room or apartment, until such time as the local department or board of health shall certify to the commissioner of labor that such disease has terminated, and that said room or apartment has been properly disinfected, if disinfection after such disease is required by the local ordinances, or by the rules or regulations of such department or board. No articles shall be manufactured, altered, repaired or finished in a part of a cellar or basement of a tenement house, which is more than one-half of its height below the level of the curb or ground outside of or adjoining the same; but this prohibition shall not apply to the use for a bakery of a cellar for which a certificate of exemption is issued under section one hundred and sixteen of this chapter. No person shall hire, employ or contract with any person to manufacture, alter, repair or finish any articles in any room or apartment in any tenement house not having a license therefor issued as aforesaid. No articles shall be manufactured, altered, repaired or finished in any room or apartment of a tenement house unless said room or apartment shall be well lighted and ventilated and shall contain at least five hundred cubic feet of air space for every person working therein, or by any person other than the members of the family living therein; except that in licensed tenement houses persons not members of the family may be employed in apartments on the ground floor or second floor, used only for shops of dressmakers who deal solely in the custom trade direct to the consumer, provided that such apartments shall be in the opinion of the commissioner of labor in the highest degree sanitary, well lighted, well ventilated and plumbed, and provided further that the whole number of persons therein shall not exceed one to each one thousand cubic feet of air space, and that there shall be no children under fourteen years of age living or working

therein; before any such room or apartment can be so used a special permit therefor shall be issued by the commissioner of labor, a copy of which shall be entered in his public records with a statement of the reasons therefor. Nothing in this section contained shall prevent the employment of a tailor or seamstress by any person or family for the purpose of making, altering, repairing or finishing any article of wearing apparel for the use of such person or family. Nor shall this article apply to a house if the only manufacturing therein be carried on in a shop on the main or ground floor thereof with a separate entrance to the street, unconnected with living rooms and entirely separate from the rest of the building by closed partitions without any openings whatsoever and not used for sleeping or cooking. [*As am'd by L.* 1913, *ch.* 260.]

§ 101. **Register of persons to whom work is given; identification label.**— Every employer in any factory contracting for the manufacturing, altering, repairing or finishing of any articles in a tenement house or giving out material from which they or any part of them are to be manufactured, altered, repaired or finished, in a tenement house, shall keep a register of the names and addresses plainly written in English of the persons to whom such articles or materials are given to be so manufactured, altered, repaired or finished or with whom they have contracted to do the same, and shall issue with all such articles or materials a label bearing the name and place of business of such factory written or printed legibly in English. It shall be incumbent upon every employer and upon all persons contracting for the manufacturing, altering, repairing or finishing of any articles or giving out material from which they or any part of them are to be manufactured, altered, repaired or finished, before giving out any such articles or materials to ascertain from the office of the commissioner of labor whether the tenement house in which such articles or materials are to be manufactured, altered, repaired or finished, is licensed as provided in this article, and also to ascertain from the local department or board of health the names and addresses of all persons then sick of any infectious, contagious or communicable disease, and residing in tenement houses; and none of the said articles nor any material from which they or any part of them are to be manufactured, altered, repaired or finished shall be given out or sent to any person residing in a tenement house that is not licensed as provided in this article, or to any person residing in a room or apartment in which there exists any infectious, contagious or communicable disease. The register mentioned in this section shall be subject to inspection by the commissioner of labor, and a copy thereof shall be furnished on his demand as well as such other information as he may require. The label mentioned in this section shall be exhibited on the demand of the commissioner of labor at any time while said articles or materials remain in the tenement house. [*As am'd by L.* 1913, *ch.* 260.]

§ 102. **Goods unlawfully manufactured to be labeled.**— Articles manufactured, altered, repaired or finished in a tenement house contrary to the provisions of this chapter shall not be sold or exposed for sale by any person. The commissioner of labor may conspicuously affix to any such article found to be unlawfully manufactured, altered, repaired or finished, a label containing the words "tenement made" printed in small pica capital letters on a tag not less than four inches in length, or may seize and hold such article until the same shall be disinfected or cleaned at the owner's expense,

or until all provisions of this chapter are complied with. The commissioner of labor shall notify the person stated by the person in possession of said article to be the owner thereof, that he has so labeled or seized it. No person except the commissioner of labor, or a local board of health in a case provided for in section one hundred and three, shall remove or deface any tag or label so affixed. Unless the owner or person entitled to the possession of an article so seized shall provide for the disinfection or cleaning thereof within one month thereafter it may be destroyed. [*As am'd by L.* 1913, *ch.* 260.]

§ 103. Powers and duties of boards of health relative to tenement-made articles.— If the commissioner of labor finds evidence of disease present in a room or apartment in a tenement house in which any articles are manufactured, altered, repaired or finished or in process thereof, he shall affix to such article the label prescribed in the preceding section, and immediately report to the local board of health, who shall disinfect such articles, if necessary, and thereupon remove such label. If the commissioner of labor finds that infectious, contagious or communicable diseases exist in a room or apartment of a tenement house in which any articles are being manufactured, altered, repaired or finished, or that articles manufactured or in process of manufacture therein are infected or that goods used therein are unfit for use, he shall report to the local board of health. The local health department or board in every city, town and village whenever there is any infectious, contagious or communicable disease in a tenement house shall cause an inspection of such tenement house to be made within forty-eight hours. If any articles are found to be manufactured, altered, repaired or finished, or in process thereof in an apartment in which such disease exists, such board shall issue such order as the public health may require, and shall at once report such facts to the commissioner of labor, furnishing such further information as he may require. Such board may condemn and destroy all such infected article or articles manufactured or in the process of manufacture under unclean or unhealthful conditions. The local health department or board or other appropriate authority charged with the duty of sanitary inspection of such houses in every city, town and village shall, when so requested by the commissioner of labor, furnish copies of its records as to the presence of infectious, contagious or communicable disease, or of unsanitary conditions in said houses; and shall furnish such other information as may be necessary to enable the commissioner of labor to carry out the provisions of this article. [*As am'd by L.* 1913, *ch.* 260.]

With this section is to be compared section 33 of the Public Health Law (ch. 49, Consolidated Laws), which reads as follows:

Section 33. ***Manufactures in tenement houses and dwellings.*****— No room or apartment in a tenement or dwelling house, used for eating or sleeping purposes, shall be used for the manufacture, wholly or partly, of coats, vests, trousers, kneepants, overalls, cloaks, shirts, purses, feathers, artificial flowers or cigars, except by the members of the family living therein, which shall include a husband and wife and their children, or the children of either. A family occupying or controlling such a workshop shall, within fourteen days from the time of beginning work therein, notify the board of health of the city, village or town, where such workshop is located, or a special inspector appointed by such board, of the location of such workshop, the nature of the work carried on, and the number of persons employed therein; and thereupon such board shall, if it deems advisable, cause a permit to be issued to such family to carry on the manufacture specified in the notice.**

Such board may appoint as many persons as it deems advisable to act as special inspectors. Such special inspectors shall receive no compensation, but may be paid by the board their reasonable and necessary expenses. If a board of health or such inspector shall find evidence of infectious or contagious diseases present in any workshop, or in goods manufactured or in process of manufacture therein, the board shall issue such orders as the public health may require, and shall condemn and destroy such infectious and contagious articles, and may, if necessary to protect the public health, revoke any permit granted by it for manufacturing goods in such workshop. If a board of health or any such inspector shall discover that any such goods are being brought into the state, having been manufactured, in whole or in part, under unhealthy conditions, such board or inspector shall examine such goods, and if they are found to contain vermin, or to have been made in improper places or under unhealthy conditions, the board may make such orders as the public health may require, and may condemn and destroy such goods.

§ 104. **Manufacturing of certain articles in tenements prohibited.**— No article of food, no dolls or dolls' clothing and no article of children's or infants' wearing apparel shall be manufactured, altered, repaired or finished, in whole or in part, for a factory, either directly or through the instrumentality of one or more contractors or other third person, in a tenement house, in any portion of an apartment, any part of which is used for living purposes. [*Added by L.* 1913, *ch.* 260.]

§ 105. **Owners of tenement houses not to permit the unlawful use thereof.**— The owner or agent of a tenement house shall not permit the use thereof for the manufacture, repair, alteration or finishing of any article contrary to the provisions of this chapter. If a room or apartment in such tenement house be so unlawfully used, the commissioner of labor shall serve a notice thereof upon such owner or agent. Unless such owner or agent shall cause such unlawful manufacture to be discontinued within ten days after the service of such notice, or within fifteen days thereafter institutes and faithfully prosecutes proceedings for dispossession of the occupant of a tenement house, who unlawfully manufactures, repairs, alters or finishes any articles therein, he shall be deemed guilty of a violation of this chapter as if he, himself, was engaged in such unlawful manufacture, repair, alteration or finishing. The unlawful manufacture, repair, alteration or finishing of any articles by the occupant of a room or apartment of a tenement house shall be a cause for dispossessing such occupant by summary proceedings to recover possession of real property, as provided in the code of civil procedure. [*As am'd by L.* 1913, *ch.* 260.]

§ 106. **Factory permits.**— The owner of every factory for which any articles are manufactured in any tenement house shall secure a permit therefor from the commissioner of labor who shall issue such permit to any such owner applying therefor. Such permit may be revoked or suspended by the commissioner of labor whenever any provision of this article or of section seventy of this chapter is violated in connection with any work for such factory. Such permit may be reissued or reinstated in the discretion of the commissioner when such violation has ceased. No articles shall be manufactured in any tenement house for any factory for which no permit has been issued or for any factory whose permit is suspended or revoked. A complete list of all factories holding such permits, together with the name of the owner of each such factory, the address of the business and the name under which it is carried on, and of all tenement houses holding licenses, and a list of all permits and licenses revoked or suspended shall be published from time to time by the department of labor. [*Added by L.* 1913, *ch.* 260.]

ARTICLE 8.

Bakeries and Confectioneries.†

[*Non-compliance with the provisions of this article is a misdemeanor (Penal Law, § 1275, post). The provisions of article 6 as to factories generally, apply to bakeries and confectioneries:* § 111.]

§ 110. **Enforcement of article.**— In every city of the first class the health department of such city shall have exclusive jurisdiction to enforce the provisions of this article. In the application of any provision of this article to any city of the first class, the words "commissioner of labor" or "department of labor" shall be understood to mean the health department of such city. [*Added by L.* 1913, *ch.* 463.]

§ 111. **Definitions.**— All buildings, rooms or places used or occupied for the purpose of making, preparing or baking bread, biscuits, pastry, cakes, doughnuts, crullers, noodles, macaroni or spaghetti to be sold or consumed on or off the premises, except kitchens in hotels, restaurants, boarding houses or private residences wherein such products are prepared to be used and are used exclusively on the premises, shall for the purpose of this article be deemed bakeries. The commissioner of labor shall have the same powers with respect to the machinery, safety devices and sanitary conditions in hotel bakeries that he has with respect thereto in bakeries as defined by this chapter. In cities of the first class the health department's jurisdiction over hotel bakeries shall not extend to the machinery safety devices and hours of labor of employees therein. The term cellar when used in this article shall mean a room or a part of a building which is more than one-half its height below the level of the curb or ground adjoining the building (excluding areaways). The term owner as used in this article shall be construed to mean the owner or owners of the freehold of the premises, or the lessee or joint lessees of the whole thereof, or his, her or their agent in charge of the property. The term occupier shall be construed to mean the person, firm or corporation in actual possession of the premises, who either himself makes, prepares or bakes any of the articles mentioned in this section, or hires or employs others to do it for him. Bakeries are factories within the meaning of this chapter, and subject to all the provisions of article six hereof. [*As am'd by L.* 1911, *ch.* 637, *and L.* 1913, *ch.* 463.]

§ 112. **General requirements.**— All bakeries shall be provided with proper and sufficient drainage and with suitable sinks, supplied with clean running water for the purpose of washing and keeping clean the utensils and apparatus used therein. All bakeries shall be provided with proper and adequate windows, and if required by the rules and regulations of the industrial board,

† As to bakeries in tenement houses, see the Tenement House Law (ch. 61, Consolidated Laws), § 40.

with ventilating hoods and pipes over ovens and ashpits, or with other mechanical means, to so ventilate same as to render harmless to the persons working therein any steam, gases, vapors, dust, excessive heat or any impurities that may be generated or released by or in the process of making, preparing or baking in said bakeries. Every bakery shall be at least eight feet in height measured from the surface of the finished floor to the under side of the ceiling, and shall have a flooring of even, smooth cement, or of tiles laid in cement, or a wooden floor, so laid and constructed as to be free from cracks, holes and interstices, except that any cellar or basement less than eight feet in height which was used for a bakery on the second day of May, eighteen hundred and ninety-five, need not be altered to conform to this provision with respect to height; the side walls and ceilings shall be either plastered, ceiled or wainscoted. Every bakery shall be provided with a sufficient number of water-closets, and such water-closets shall be separate and apart from and unconnected with the bakeroom or rooms where food products are stored or sold. [*As am'd by L.* 1911, *ch.* 637, *and L.* 1913, *ch.* 463.]

§ 113. **Maintenance.**— All floors, walls, stairs, shelves, furniture, utensils, yards, areaways, plumbing, drains and sewers, in or in connection with bakeries, or in bakery water-closets and washrooms, or rooms where raw materials are stored, or in rooms where the manufactured product is stored, shall at all times be kept in good repair, and maintained in a clean and sanitary condition, free from all kinds of vermin. All interior woodwork, walls and ceilings shall be painted or limewashed once every three months, where so required by the commissioner of labor. Proper sanitary receptacles shall be provided and used for storing coal, ashes, refuse and garbage. Receptacles for refuse and garbage shall have their contents removed from bakeries daily and shall be maintained in a clean and sanitary condition at all times; the use of tobacco in any form in a bakery or room where raw material or manufactured product of such bakery is stored is prohibited. No person shall sleep, or be permitted, allowed or suffered to sleep in a bakery, or in any room where raw material or the manufactured product of such bakery is stored or sold, and no domestic animals or birds, except cats shall be allowed to remain in any such rooms. Mechanical means of ventilation, when provided, shall be effectively used and operated. Windows, doors and other openings shall be provided with proper screens. All employees, while engaged in the manufacture and handling of bread shall wear slippers or shoes and suits of washable material which shall be used for that purpose only and such garments shall be kept clean at all times. Lockers shall be provided for the street clothes of the employees. The furniture, troughs and utensils shall be so arranged and constructed as not to prevent their cleaning or the cleaning of every part of the bakery. [*As am'd by L.* 1911, *ch.* 637, *and L.* 1913, *ch.* 463.]

§ 113-a. **Prohibited employment of diseased bakers.**— No person who has any communicable disease shall work or be permitted to work in a bakery. Whenever required by a medical inspector of the department of labor, any person employed in a bakery shall submit to a physical examination by such inspector. No person who refuses to submit to such examination shall work or be permitted to work in any bakery. [*Added by L.* 1913, *ch.* 463.]

§ 114. **Inspection of bakeries.**— It shall be the duty of the owner of a building wherein a bakery is located to comply with all the provisions of section one hundred and twelve of this article, and of the occupier to comply with all the provisions of section one hundred and thirteen of this article, unless by the terms of a valid lease the responsibility for compliance therewith has been undertaken by the other party to the lease, and a duplicate original lease, containing such obligation, shall have been previously filed in the office of the commissioner of labor, in which event the party assuming the responsibility shall be responsible for such compliance. The commissioner of labor may, in his discretion, apply any or all of the provisions of this article to a factory located in a cellar wherein any food product is manufactured, provided that basements or cellars used as confectionery or ice-cream manufacturing shops shall not be required to conform to the requirement as to height of rooms. Such establishments shall be not less than seven feet in height, except that any cellar or basement so used before October first, nineteen hundred and six, which is more than six feet in height need not be altered to conform to this provision. If on inspection the commissioner of labor find a bakery or any part thereof to be so unclean, ill-drained or ill-ventilated as to be unsanitary, he may, after not less than forty-eight hours' notice in writing, to be served by affixing the notice on the inside of the main entrance door of said bakery, order the person found in charge thereof immediately to cease operating it until it shall be properly cleaned, drained or ventilated. If such bakery be thereupon continued in operation or be thereafter operated before it be properly cleaned, drained or ventilated, the commissioner of labor may, after first making and filing in the public records of his office a written order stating the reasons therefor, at once and without further notice fasten up and seal the oven or other cooking apparatus of said bakery, and affix to all materials, receptacles, tools and instruments found therein, labels or conspicuous signs bearing the word "unclean." No one but the commissioner of labor shall remove any such seal, label or sign, and he may refuse to remove it until such bakery be properly cleaned, drained or ventilated. [*As am'd by L.* 1911, *ch.* 637, *and L.* 1913, *ch.* 463.]

§ 115. **Sanitary certificates.**— 1. No person, firm or corporation shall establish, maintain or operate a bakery without obtaining a sanitary certificate from the department of labor. Application for such certificate shall be made to the commissioner of labor by the occupier of the bakery or by the person, firm or corporation desiring to establish or conduct such bakery. The application for a sanitary certificate shall be made in such form and shall contain such information as the commissioner of labor may require. Blank applications for such certificate shall be prepared and furnished by the commissioner of labor.

2. Upon the receipt of such application for a sanitary certificate, the commissioner of labor shall cause an inspection to be made of the building, room or place described in the application. If the bakery conforms to the provisions of articles six and eight of this chapter and the rules and regulations of the industrial board, or in any city of the first class if the bakery conforms to the provisions of article eight of this chapter, and to the sanitary code and the rules and regulations of the department of health of any such city, the commissioner of labor shall issue a sanitary certificate for such bakery. Such certificate shall be for a period of one year and shall

be renewed annually by the commissioner of labor if upon a reinspection of the bakery it is found to comply with the aforesaid provisions and regulations. Every certificate granted under the provisions of this chapter shall be posted in a conspicuous place in the bakery for which such certificate is issued.

3. Such certificate may be revoked at any time by the commissioner of labor if the health of the community or of the employees of the bakery require such action, or if an order of the department issued under the provisions of this chapter be not complied with within fifteen days after the service thereof upon the person, firm or corporation charged with the duty of complying with such order. The time for such compliance may be extended by the commissioner of labor for good cause shown, but a statement of the reasons for such extension shall be filed in the office of the department of labor as part of the public records thereof. Nothing contained in this subdivision shall be construed to limit in any way the power of the commissioner of labor to seal up an unsanitary bakery as provided in section one hundred and fourteen of this chapter.

4. If an application for a sanitary certificate be denied or if such certificate be revoked by the commissioner of labor, he shall file in the office of the department of labor as part of the public records thereof, a statement in writing setting forth in detail the reasons for such denial or revocation.

5. Applications for sanitary certificates for existing bakeries shall be made within four months after this act takes effect, and no such bakery shall be conducted or operated without a sanitary certificate from the department of labor after the first day of January, nineteen hundred and fourteen. In the case of bakeries hereafter established, the application for a sanitary certificate shall be made within ten days after such bakery shall commence business, and no such bakery shall be conducted or operated without a sanitary certificate for more than thirty days after commencing business.

6. If a bakery has no sanitary certificate as herein required or if such certificate has been revoked, the commissioner of labor shall, after first making and filing in the public records of his office a written order stating the reasons therefor, at once and without further notice fasten up and seal the oven or other cooking apparatus of said bakery. No one but the commissioner of labor or his duly authorized representative shall remove any such seal, and he shall not remove same until a sanitary certificate has been issued to such bakery. [*Added by L.* 1913, *ch.* 463.]

§ 116. **Prohibition of future cellar bakeries.**—No bakery shall hereafter be located in a cellar, and a sanitary certificate shall not be issued for any bakery so located unless such bakery shall be at least ten feet in height measured from the surface of the finished floor to the under side of the ceiling, and if the bakery is located or intended to be located entirely in the front part of the building, the ceiling of the bakery shall be in every part at least four feet six inches above the curb level of the street in front of the building, or if such bakery is located or intended to be located entirely in the rear part of the building or to extend from the front to the rear, the ceiling or the bakery shall not be less than one foot above the curb level of the street in front of the building and the bakery shall open upon a yard or courts which shall extend at least six inches below the floor level of the bakery, nor unless proper and adequate provision shall be made

for the lighting and ventilation of such bakery and for the proper construction of the floor, walls and ceiling thereof, and plans and specifications for the construction and establishment of such bakery, in such form and covering such matters as the commissioner of labor may require, shall have been first submitted to and approved by the commissioner of labor. This prohibition shall not apply to a cellar used and operated as a bakery at any time within one year prior to the date of the passage of this act, provided that satisfactory proof of its use as a bakery as herein specified be furnished to the commissioner of labor in such form as he may require within six months after this act shall take effect, nor shall it apply to the cellar of a building in the course of construction on the ninth day of May, nineteen hundred and thirteen, nor to the cellar of a building the construction of which was commenced after the first day of January, nineteen hundred and thirteen, and completed on or *bebore the ninth day of May, nineteen hundred and thirteen, provided that such cellar be used and operated as a bakery at any time prior to the first day of January, nineteen hundred and fourteen, and that satisfactory proof of the time of the construction of such building and of the use of the cellar as a bakery as herein specified be furnished to the commissioner of labor, in such form as he may require, on or before the twenty-eighth day of February, nineteen hundred and fourteen. Upon receipt of such proof the commissioner of labor shall issue to the owner of the building in which such cellar is located a certificate of exemption. This section shall not prevent the local health authorities in any city of the first class from exercising any power of regulation now vested in them. [*Added by L.* 1913, *ch.* 463 *and am'd by L.* 1913, *ch.* 797.]

§ 117. **Sanitary code for bakeries and confectioneries.**—All factories wherein any food product is manufactured shall be kept in a thoroughly sanitary condition and shall be properly lighted and ventilated, and all necessary methods shall be employed to protect the food product prepared therein from contamination. The industrial board may adopt rules and regulations for carrying into effect the provisions of this article. Such rules and regulations shall be known as the sanitary code for bakeries and confectioneries and shall not apply to cities of the first class. [*Added by L.* 1913, *ch.* 463.]

ARTICLE 9.

Mines, Tunnels and Quarries and Their Inspection.

[*Non-compliance with the provisions of this article is a misdemeanor (Penal Law,* § 1270, *subd.* 2). *Violation of any of the safety provisions of the article renders the master liable in case of injury to employees* (§ 202, *post*).]

* So in original.

§ 119. **Protection of employees in mines, tunnels and quarries.**—Every necessary precaution shall be taken to insure the safety and health of employees employed in the mines and quarries and in the construction of tunnels in the state. The industrial board shall have power to adopt rules and regulations to carry into effect the provisions of this article and may amend or repeal rules and regulations heretofore prescribed by the commissioner of labor under the provisions of this article. The rules and regulations heretofore prescribed by the commissioner of labor* under this article shall continue in force until amended or repealed by the industrial board. [*Added by L.* 1913, *ch.* 145.]

§ 120. **Duties of commissioner of labor relating to mines, tunnels and quarries; record and report.**— 1. The commissioner of labor shall enforce the provisions of this article, the rules and regulations adopted by the industrial board pursuant thereto, and the rules and regulations of the commissioner of labor continued in force by this article.

2. The commissioner of labor shall keep a record of the names and location of all mines, tunnels and quarries, and the names of the persons or corporations owning and operating such mines, and quarries and constructing tunnels thereof; examine carefully into the method of timbering shafts, drifts, inclines, slopes, and tunnels, through which employees and other persons pass, in the performance of their daily labor, and see that the persons or corporations owning and operating such mines, and quarries and constructing tunnels comply with the provisions of this chapter; and such information shall be furnished by the person operating such mine, tunnel or quarry, upon the demand of the commissioner of labor. The commissioner of labor shall keep a record of all mine, tunnel and quarry examinations, showing the date thereof, and the condition in which the mines, tunnels and quarries are found, and the manner of working the same. He shall make an annual report to the legislature during the month of January, containing a statement of the number of mines, tunnels and quarries visited, the number in operation, the number of men employed, and the number and cause of accidents, fatal and nonfatal, that may have occurred in and about the same. [*As am'd by L.* 1913, *ch.* 145.]

§ 121. **Outlets of mines.**— If, in the opinion of the commissioner of labor, it is necessary for safety of employees, the owner, operator or superintendent of a mine operating through either a vertical or inclined shaft, or a horizon-

* See rules and regulations prescribed by commissioner of labor, following § 136, *post.*

tal tunnel, shall not employ any person therein unless there are in connection with the subterranean workings thereof not less than two openings or outlets, at least one hundred and fifty feet apart, and connected with each other. Such openings or outlets shall be so constructed as to provide safe and distinct means of ingress and egress from and to the surface, at all times, for the use of the employees of such mine.

§ 122. **Ventilation and timbering of mines and tunnels.**— In each mine or tunnel a ventilating current shall be conducted and circulated along the face of all working places and through the roadways, in sufficient quantities to insure the safety of employees and remove smoke and noxious gases.

Each owner, agent, manager or lessee of a mine or tunnel shall cause it to be properly timbered, and the roof and sides of each working place therein properly secured. No person shall be required or permitted to work in an unsafe place or under dangerous material, except to make it secure.

§ 123. **Riding on loaded cars; storage of inflammable supplies.**— No person shall ride or be permitted to ride on any loaded car, cage or bucket into or out of a mine or tunnel in process of construction. No powder or oils of any description shall be stored in a mine, tunnel or quarry, or in or around shafts, engine or boiler-houses, and all supplies of an inflammable and destructive nature shall be stored at a safe distance from the mine or tunnel openings.

§ 124. **Inspection of steam boilers and apparatus; steam, air and water gauges.**—All boilers used in generating steam for mining or tunneling purposes shall be kept in good order, and the owner, agent, manager or lessee of such mine or tunnel shall have such boilers inspected by a competent person, approved by the commissioner of labor, once in six months, and shall file a certificate showing the result thereof in the mine or tunnel office and a duplicate thereof in the office of the commissioner of labor. All engines, brakes, cages, buckets, ropes and chains shall be kept in good order and inspected daily by the superintendent of the mine or tunnel or a person designated by him. All lifts, hoists, ropes and other mechanical devices shall be properly designed and maintained to sustain the weight intended to be placed thereon or suspended therefrom, such factors of safety being used as are generally accepted as sufficient by competent engineers, and all cars and lifts shall be supplied with safety brakes. All hoisting ropes shall at all times be of a breaking strength of not less than five times the gross load suspended from them, including weight of rope itself. Each boiler or battery of boilers used in mining or tunneling for generating steam, shall be provided with a proper safety valve and with steam and water gauges, to show, respectively, the pressure of steam and the height of water in the boilers. Every boiler-house in which a boiler or nest of boilers is placed, shall be provided with a steam gauge properly connected with the boilers, and another steam gauge shall be attached to the steam pipe in the engine-house, and so placed that the engineer or fireman can readily ascertain the pressure carried. Every tunnel in which men are working under artificial air pressure shall be furnished with properly equipped and placed gauges capable at all times of showing the weight or pressure of air in said tunnel, and said gauge shall at all times during working hours be accessible to all persons working on said tunnel.

§ 125. **Use of explosives; blasting.**— When high explosives other than gunpowder are used in a mine, tunnel or quarry, the manner of storing, keeping,

moving, charging and firing, or in any manner using such explosives, shall be in accordance with rules * prescribed by the commissioner of labor.

In charging holes for blasting, in slate, rock or ore in any mine, tunnel or quarry, no iron or steel pointed needle or tamping bar shall be used, unless the end thereof is tipped with at least six inches of copper or other soft material. No person shall be employed to blast, unless the mine or tunnel superintendent, or person having charge of such mine or tunnel is satisfied that he is qualified, by experience, to perform the work with ordinary safety. When a blast is about to be fired in a mine or tunnel, timely notice thereof shall be given by the person in charge of the work, to all persons who may be in danger therefrom.

§ 126. **Report of accidents.**— Whenever loss of life or an accident causing an injury incapacitating any person for work shall occur in the operation of a mine or quarry, or in the construction or repair of a tunnel, the owner, agent, manager, lessee, contractor, subcontractor, or person in charge thereof, shall keep a correct record of all deaths, accidents or injuries sustained by any person therein or on the premises or works, in such form as may be required by the commissioner of labor. Such record shall be open to the inspection of the commissioner of labor and a copy thereof shall be furnished to the said commissioner on demand. Within forty-eight hours after the accident, death or injury a report thereof shall be made in writing to the commissioner of labor, stating as fully as possible the cause of the death or the extent and cause of the injury, and the place where the injured person has been sent, with such other or further information relative thereto as may be required by the said commissioner, who may investigate the causes thereof and require such precautions to be taken as will prevent the recurrence of similar happenings. No statement contained in any such report shall be admissible in evidence in any action arising out of the death or accident therein reported. [*As am'd by L.* 1910, *ch.* 155.]

Compare § 20-a, *ante* (building accidents) and § 87 (factory accidents).

§ 127. **Notice of dangerous condition.**— If the commissioner of labor, after examination or otherwise, is of the opinion that a mine or tunnel or any thing used in the operation thereof is unsafe, he shall immediately serve a written notice, specifying the defects, upon the owner, agent, manager or lessee, who shall forthwith remedy the same.

§ 128. **Traveling ways.**— In all mines there shall be cut out of or around the sides of every hoisting shaft or driven through the solid strata at the bottom thereof, a traveling way not less than five feet high and three feet wide to enable persons to pass the shaft in going from one side to the other without passing over or under or in the way of the cage or other hoisting apparatus.

§ 129. **Notice of opening new mine, shaft or quarry.**— Whenever a mine or quarry operator has engaged or is about to engage in the development of new industries by the sinking of new shafts, inclines, tunnels or quarries, he shall report to the commissioner of labor, giving the name of the owner or owners, and the location of the property, before the work of excavation shall have reached the depth of twenty-five feet.

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* See rules and regulations prescribed by commissioner of labor, following § 136, *post*.

§ 130. Notice of abandonment.— It shall be the duty of every mine or quarry operator to notify the commissioner of labor of the discontinuance or abandonment of any mine or quarry, when and in the event that such mine or quarry shall be closed permanently or abandoned.

§ 131. Employment of women and children.— No child under sixteen years of age shall be employed, permitted or suffered to work in or in connection with any mine or quarry in this state. No female shall be employed, permitted or suffered to work in any mine or quarry in this state.

§ 132. Underground workings to be equipped with head house and doors.— Every underground working where the depth exceeds forty feet shall be equipped with a proper head house and trapdoors.

§ 133. Mines and tunnels to be equipped with wash-rooms.— Every mine, tunnel or quarry employing over twenty-five men shall maintain a suitably equipped and heated wash-room, which shall be at all times accessible to the men employed.

§ 134. Method of exploding blasts.— No blast shall be exploded by an electric current of more than two hundred and fifty volts.

§ 134-a. Hours of labor.— All work in the prosecution of which tunnels, caissons or other apparatus or means in which compressed air is employed or used shall be conducted subject to the following restrictions and regulations: When the air pressure in any compartment, caisson, tunnel or place in which men are employed is greater than normal and shall not exceed twenty-one pounds to the square inch, no employee shall be permitted to work or remain therein more than eight hours in any twenty-four hours and shall only be permitted to work under such air pressure provided he shall during such period return to the open air for an interval of at least thirty consecutive minutes, which interval his employer shall provide for. When the air pressure in any compartment, caisson, tunnel or place in which men are employed is greater than normal and shall equal twenty-two pounds to the square inch and does not exceed thirty pounds to the square inch, no employee shall be permitted to work or remain therein more than six hours in any twenty-four hours, such six hours to be divided into two periods of three hours each with an interval of at least one hour between each such period. When the air pressure in any such compartment, caisson, tunnel or place shall exceed thirty pounds to the square inch, and shall not equal thirty-five pounds to the square inch, no employee shall be permitted to work or remain therein more than four hours, such four hours to be divided into two periods of two hours each, with an interval of at least two hours between each such period. When the air pressure in any such compartment, caisson, tunnel or place shall equal thirty-five pounds to the square inch and shall not exceed forty pounds to the square inch, no such employee shall be permitted to work or remain therein more than three hours in any twenty-four hours, such three hours to be divided into periods of not more than one and one-half hours each, with an interval of at least three hours between each such period; when the air pressure in any such compartment, caisson, tunnel or place shall equal forty pounds to the square inch and shall not equal forty-five pounds to the square inch, no employee shall be permitted to work or remain therein more than

two hours in any twenty-four hours, such two hours to be divided into periods of not more than one hour each, with an interval of at least four hours between each such period; when the air pressure in any such compartment, caisson, tunnel or place shall equal forty-five pounds to the square inch and shall not exceed fifty pounds to the square inch, no employee shall be permitted to work or remain therein more than ninety minutes in any twenty-four hours, and such ninety minutes to be divided into periods of forty-five minutes each, with an interval of not less than five hours between each such period; no employee shall be permitted to work in any compartment, caisson, tunnel or place where the pressure shall exceed fifty pounds to the square inch, except in case of emergency. No person employed in work in compressed air shall be permitted by his employer or by the person in charge of said work to pass from the place in which the work is being done to atmosphere of normal pressure, without passing through an intermediate lock or stage of decompression, which said decompression shall be, where the work is being done in tunnels, at the rate of three pounds every two minutes unless the pressure shall be over thirty-six pounds, in which event the decompression shall be at the rate of one pound per minute; and which said decompression shall be, where the work is being done in caissons, at the following rates:

Where pressure is not over ten pounds per square inch the time of decompression shall be one minute; when pressure is over ten pounds per square inch, but does not exceed fifteen pounds per square inch, the time of decompression shall be two minutes; when pressure is over fifteen pounds per square inch, but does not exceed twenty pounds per square inch, the time of the decompression shall be five minutes; when pressure is over twenty pounds per square inch, but does not exceed twenty-five pounds per square inch, the time of decompression shall be ten minutes; when pressure is over twenty-five pounds per square inch but does not exceed thirty pounds per square inch, the time of decompression shall be twelve minutes; when pressure is over thirty pounds per square inch, but does not exceed thirty-six pounds per square inch, the time of decompression shall be fifteen minutes; when pressure is over thirty-six pounds per square inch, but does not exceed forty pounds per square inch, the time of decompression shall be twenty minutes; when pressure is over forty pounds per square inch, but does not exceed fifty pounds per square inch, the time of decompression shall be twenty-five minutes.

All necessary instruments shall be attached to all caissons and air locks showing the actual air pressure to which men employed therein are subjected and which instruments shall be accessible to and in charge of a competent person who shall not be employed more than eight hours in any twenty-four hours. [*Added by L.* 1909, *ch.* 291.; *am'd by L.* 1912, *ch.* 219 *and L.* 1913, *ch.* 528.]

§ 134-b. **Medical attendance and regulations.**— Any person or corporation carrying on any tunnel, caisson or other work in the prosecution of which men are employed or permitted to work in compressed air, shall, while such men are so employed, also employ and keep in employment, one or more duly qualified persons to act as medical officer or officers who shall be in attendance at all necessary times while such work is in progress and whose duty it shall be to administer and strictly enforce the following:

(a) No person shall be permitted to work in compressed air until after he shall have been examined by such medical officer and reported by such officer to the person in charge thereof as found to be qualified, physically, to engage in such work.

(b) In the event of absence from work, by an employee for ten or more successive days for any cause, he shall not resume work until he shall have been re-examined by the medical officer and his physical condition reported as hitherto provided to be such as to permit him to work in compressed air.

(c) No person known to be addicted to the excessive use of intoxicants shall be permitted to work in compressed air.

(d) No person not having previously worked in compressed air shall be permitted during the first twenty-four hours of his employment to work for longer than one-half of a day period as provided in section one hundred and thirty-four-a and after so working shall be re-examined and not permitted to work in a place where the pressure is in excess of fifteen pounds unless his physical condition be reported by the medical officer as heretofore provided to be such as to qualify him for such work.

(e) After a person has been employed continuously in compressed air for a period of three months he shall be re-examined by the medical officer and he shall not be allowed, permitted or compelled to work until such examination has been made and he has been reported as heretofore provided as physically qualified to engage in compressed air work.

(f) The said medical officer shall at all times keep a complete and full record of examinations made by him, which record shall contain dates on which examinations were made and a clear and full description of the person examined, his age and physical condition at the time examined, also the statement as to the time such person has been engaged in like employment.

(g) Properly heated, lighted and ventilated dressing rooms shall be provided for all employees in compressed air which shall contain lockers and benches and shall be open and accessible to the men during the intermission between shifts. Such rooms shall be provided with baths, with hot and cold water service and a proper and sanitary toilet.

(h) A medical lock shall be established and maintained in connection with all work in compressed air when the maximum pressure exceeds seventeen pounds as herein provided. Such lock shall be kept properly heated, lighted and ventilated and shall contain proper medical and surgical equipment. Such lock shall be in charge of a certified trained nurse selected by the medical officer, who shall be qualified to render temporary relief.

The "certified trained nurse" required by subdivision h means a "registered" nurse as described in § 250 of the Public Health Law (opinion of Attorney-General, October 29, 1912).

(i) Whenever in the prosecution of caisson work in which compressed air is employed the working chamber is less than ten feet in length and when such caissons are at any time suspended or hung while work is in progress so that the bottom of the excavation is more than nine feet below the deck of the working chamber, a shield shall be erected in the working chamber for the protection of the workmen.

(j) Whenever in the prosecution of work in which compressed air is employed a shaft is used, all such shafts shall be provided with a safe, proper and suitable ladder for its entire length.

(k) Wherever in the prosecution of work in tunnels, caissons or other apparatus or means, in which compressed air is employed or used, lights other than electric lights are used, the said lights shall at all times be guarded.

(l) All passage ways in work, wherein compressed air is employed or used, shall be kept clear and properly lighted. [*Added by L.* 1909, *ch.* 291; *am'd by L.* 1912, *ch.* 219 *and L.* 1913, *ch.* 528.]

§ 134-c. **Penalties.**— Every person who, or corporation which, shall violate or fail to comply with any of the foregoing provisions shall be guilty of a misdemeanor which shall be punishable by a fine of not less than two hundred and fifty dollars or imprisonment for one year or both. [*Added by L.* 1909, *ch.* 291.]

§ 134-d. All work in the prosecution of which tunnels, caissons or other apparatus or means within which compressed air is employed* shall have at least two air pipes or lines connected at all times and in perfect working condition. [*Added by L.* 1912, *ch.* 219.]

§ 134-e. Wherever electricity is used as lighting apparatus the light supplied for the shaft leading to the caisson or tunnel or other apparatus wherein the men are actually at work shall be supplied from a different wire from the lights which are located at the point wherein the men are actually working under air. [*Added by L.* 1912, *ch.* 219.]

§ 135. **Enforcement of article.**— The commissioner of labor may serve a written notice upon the owner, agent, manager or lessee of a mine or tunnel requiring him to comply with a specified provision of this article. The commissioner of labor shall begin an action in the supreme court to enforce compliance with such provision; and upon such notice as the court directs an order may be granted, restraining the working of such mine or tunnel during such time as may be therein specified.

§ 136. **Admission of inspectors to mines and tunnels.**— The owner, agent, manager or lessee of a mine or tunnel, at any time, either day or night, shall admit to such mine or tunnel, or any building used in the operation thereof, the commissioner of labor or any qualified person duly authorized by him, for the purpose of making the examinations and inspections necessary for the enforcement of this article, and shall render any necessary assistance for such inspections.

RULES AND REGULATIONS PRESCRIBED BY THE COMMISSIONER OF LABOR.

[*By authority of sections* 120 *and* 125 *above.*]

FOR MINES AND QUARRIES.

[*These rules are now* (*October,* 1913) *under revision by the industrial board.*]

Superintendent.— 1. The superintendent of a mine or quarry shall pay particular attention to discipline. All inspections shall be reported to him. He shall see that all the provisions of the law and of these rules are enforced in such mine or quarry. He shall watch all work done by contractors to see that they comply with the law and these rules.

Daily inspection.— 2. The superintendent shall designate a competent person, who shall each day make an inspection of all mining appliances, or quarrying ap-

* The words "are used" are not in original but should evidently be supplied.

pliances, boilers, engines, magazines, shafts, shafthouses, underground workings, roofs, pillars, timbers, explosives, bell-ropes, telephones, operating tubes, tracks, ladders, etc., and report any defects to the superintendent, in writing, at once.

Boilers.— 3. Superintendents shall require a strict compliance with § 124 of the Labor Law regarding boiler inspection. Boilers shall be examined daily, and any imperfections reported to the master mechanic or superintendent at once.

Timbering.— 4. Timber shall be of ample size and strength and shall be used freely and wherever there is any chance of danger. Only new or properly seasoned timber shall be used, and shall be inspected carefully for rot or other defects before using and periodically thereafter.

Air.— 5. The use of air instead of steam for drilling in all underground workings is advised.

Signals.— 6. Special attention shall be given to the matter of signals and to keeping the appliances therefor in order. The bell line shall be of ample strength and kept free and clear of all rock and timbers. Shafts of 400 feet or over shall have speaking tubes or telephones from the foot of the shaft to the engine-room. A code of signals shall be posted at different parts of the workings and particularly at the shafthead, together with a notice of a penalty for wrong signals. Wrong signals should be severely punished.

Ladderways.— 7. Ladders shall be strong and intact. In vertical shafts and in deep, pitching inclines there should be landings not more than twenty feet apart, and closely covered except a hole large enough for a man to pass to the next ladder. In inclines, there shall be a hand-rail attached to the ladder, and wherever possible steps should be used with hand-rail attached.

The shaft.— 8. The shafthead shall be covered and guarded so as to prevent accidents from persons falling into it, or from foreign objects dropping down. Automatic doors should, in most cases, be used. The manway shall be around and not across the shafthead. The timbering of the shaft shall be sounded and examined often, as it decays rapidly under certain conditions. Inside shafts, winzes, and chutes shall be carefully guarded. When sinking or continuing a shaft below levels where the work of mining is being carried on, the collars at the lower level shall be covered to prevent objects from falling down the shaft, and such covering should be composed of timber not less than four inches in thickness; and where a cage is used a bonnet shall be placed over it.

Hoisting engineers.— 9. Superintendents shall use extraordinary care to see that their engineers are mentally and physically qualified for their positions. Where persons are lowered into or hoisted out of a mine or quarry, engineers shall be not less than 21, otherwise not less than 18 years of age. They shall never delegate the control of the machinery to any other person, and no one shall interfere with them in their duties.

10. The hoisting engineer shall be in constant attendance at his engine or boilers whenever there are workmen underground.

11. The engineer shall not permit any one to enter or loiter in the engine-room except those required by their positions or duties to do so, and he shall hold no conversation with any one while the engine is in motion or while his attention should be occupied with signals. A notice to that effect shall be posted on the door of the engine house.

12. The engineer must thoroughly understand the code of signals, which must be delivered in the engine room in a clear and unmistakable manner; and when he receives a signal that men are in the cage or carriage he must work his engine with extra care and only at a moderate rate of speed.

13. The engineer or some other specifically designated and properly qualified employee must keep a careful watch over the engine, boilers, pumps, ropes and winding apparatus, and see that boilers are supplied with water, cleaned and inspected at frequent intervals and that the steam pressure does not exceed the prescribed limit; and he shall frequently try the safety valves and shall not increase the weights thereon. He shall see that the steam and water gauges are always in good order, and if any of the pumps, valves or gauges become deranged, he shall promptly report the facts to his superiors.

Hoisting machinery.— 14. Machinery used for lowering or raising employees into or out of mines, and stairs and ladders for ingress and egress shall be kept in a safe condition and inspected each twenty-four hours by a competent person especially designated for that purpose.

15. The operator, or superintendent shall provide and maintain from the top to the bottom of every shaft where persons are raised or lowered, a telephone or a metal tube suitably adapted to the free passage of sound, through which conversation may be held between persons at the top and bottom of said shaft, and also other means of signaling from the top to the bottom thereof, and shall provide every cage or gear carriage used for hoisting or lowering persons with a proper safety catch and with a sufficient overhead covering to protect them while using it. And he shall see that the flanges, with a clearance of not less than four inches where the whole of the rope is wound on the drum, are attached to the side of the drum of every machine that is used for lowering and hoisting persons; that adequate brakes are attached to the drum, and that safety gates are so placed at all shafts as to prevent persons from falling in.

16. The main governing chain attached to the socket of the wire rope shall be made of the best quality of iron and shall be properly tested; and the bridle chain shall be attached to the hoisting rope above the socket from the top crosspiece of the carriage or cage so that no single chain shall be used for lowering or hoisting persons.

17. No greater number of persons shall be lowered or hoisted at any one time than may be allowed by the commissioner of labor; and notice of the maximum number allowed to be lowered or hoisted at any one time shall be kept posted in a conspicuous place at the top of the shaft.

Dangerous machinery.— 18. All machinery about mines or quarries, in connection with which accidents are liable to occur, shall be suitably guarded or railed off.

Fire.— 19. All oil, waste, candles, etc., shall be stored at a safe distance from the boiler-house, engine-room and shafthouse, and a quantity of water shall be stored at such place to guard against fire. All shafthouses shall have ample fire protection, and the appliances shall be kept in condition for instant use. All mining plants using steam should have a hose attached to the injector or feed pipe for use in case of fire.

Storing explosives.— 20. All explosives shall be stored in a magazine provided for that purpose, and located far enough from the working-shaft, slope, tunnel or quarry, boiler-house or engine-room, so that in case the whole quantity should be exploded, there would be no danger, and all explosives in excess of what are needed for one shift shall be kept in the magazine. Such magazine should be fireproof, and so constructed that a modern rifle or pistol bullet cannot penetrate it. The thawing should be done by the hot water or steam bath method; the use of dry heat is absolutely prohibited. A receptacle for carrying explosives shall be provided. Exploders and powder shall not be kept in the same room. A suitable place separated from mine or quarry, boilers or engine-room shall be provided for preparing charges. One man shall have full charge of the magazine. (See further the special rules for handling dynamite.)

Blasting.— 21. All blasting shall be done by one man and his helper, designated by the superintendent for that purpose. After blasting no one else shall be allowed in that part of the mine or quarry until the blaster has made a personal examination and pronounced "all over." If a blast misses fire, no one except the blaster and his helper shall be allowed in that part of the mine or quarry less than three hours thereafter unless and until the blaster has made a personal examination and pronounced "all safe." No person shall use or handle any explosives who is addicted to the use of intoxicants. All tamping of high explosives shall be done with a wooden bar. Timely and sufficient warning shall be given when a blast is about to be fired.

Posting of law, etc.— A copy of Article IX of the Labor Law and of all rules relating to health and safety of employees in mines and quarries, prescribed by the commissioner of labor, shall be kept posted in the works in such manner as to be available to all employees.

FOR STORING, KEEPING, MOVING, THAWING, CHARGING AND FIRING DYNAMITE.

[*These rules are now (October, 1913) under revision by the industrial board.*]

Storing and keeping.— 1. Dynamite must be stored in a building separate and isolated from other buildings and from traffic. Caps and electric exploders and fuses must never be stored in the *same* building with the powder, but must always be kept apart until needed for preparing the charge.

Moving.— 2. When dynamite is hauled in wagons, railway trains, mine cars or similar vehicles, the *greatest* care must be exercised, and neither percussion caps, exploders, fulminators, friction matches nor any other article of like nature shall be loaded or carried in the same wagon, car or vehicle.

Thawing powder.— 3. All nitro-glycerine compounds freeze and become hard at about 42 degrees Fahrenheit, in which condition they will not readily explode. When large quantities are to be used, a separate building for thawing should be fitted with a small steam radiator. Use only exhaust steam for heating it, if possible keeping the temperature of the room at about 80 degrees Fahrenheit. In the part of the room farthest from the radiator, place the powder on racks to thaw. When but small quantities need to be thawed, a thawing kettle may be used, being two water-tight kettles (one smaller and placed inside the other), the cartridges placed in the smaller kettle, the space between the two kettles filled with hot water of from 120 to 130 degrees Fahrenheit, and the kettle fitted with a cover to retain the heat. Never place the kettle over the fire to heat. When more hot water is required, empty and fill again with hot water. Never attempt to thaw the powder by placing it in hot water or exposing it to the direct action of steam.

Precautions.— 4. Powder must *never* be placed on, in or near hot steam pipes, steam boilers, a hot stove, nor any hot metal, nor exposed to radiated heat from a fire or hot stove. Never roast, toast or bake it in any way, nor take it near a blacksmith forge. Never allow *smoking* or fire of any description, nor leave any loose caps or fuse near it.

Preparing the charge.— 5. Cut a piece of safety fuse to the right length and carefully insert the fresh cut end in a blasting cap. See that the cap is free from any particle of sawdust before inserting the fuse. Press the fuse gently into the cap as far as it will go. Crimp the open end of the cap tightly around the fuse with a pair of cap-nippers, but under no condition disturb the fulminate or filling in the cap. Then open one end of the cartridge carefully, and with a sharpened lead pencil or pointed wooden stick, make a hole in the powder, insert the capped end of the fuse, being careful to see that at least one-fourth of an inch of the cap remains out of the powder. Then draw the paper closely about the fuse and tie in with a strong cord.

Charging the drill-hole.— 6. Having properly prepared the cartridges (being sure that none are frozen) push them gently to the bottom of the drilled hole with a wooden stick, putting the capped cartridge on top.

Tamping.— 7. Having placed the required quantity of powder in the hole, cover with six or eight inches of loose tamping, press it down firmly with a *wooden* stick, after which the hole may be tamped to the top, ramming the tamping down hard. Never use an iron or metal bar. Wood is always sufficient.

Misfire.— 8. In case of misfires, never attempt to remove the tamping or draw the charge; always drill a new hole.

FOR THE DAILY GUIDANCE OF EMPLOYEES.

1. No employee shall ride on any loaded skip, car, cage or bucket nor walk up or down any slope, or shaft, while any skip, car, cage or bucket is above.

2. The pit boss shall carefully examine the hanging wall of all slopes, levels and working chambers daily.

3. Machine runners shall carefully examine and sound hanging wall at face working, and remove all loose rock or ore before proceeding to drill.

4. No employee shall handle any explosives nor do any blasting except the person or persons designated for that special purpose by the superintendent.

5. After blasting no one except the blaster or blasters shall be allowed in the part of the mine where such blast has been fired, until the blaster has made a personal examination, and pronounced all safe.

6. No iron or steel bar, unless tipped with six inches of copper or other soft metal, shall be used for tamping any explosive. When tamping dynamite, or other high explosives, wood only shall be used.

7. The mine superintendent or person designated by him shall examine daily all mining appliances and see that they are in safe condition.

8. Whenever a shot misses fire no one shall be allowed to return to that part of the mine or quarry in less than three hours, unless and until the blaster after a personal examination shall pronounce all safe.

9. No person addicted to the use of intoxicating drink shall have charge of any explosives, boiler, engine or hoist, nor shall any person be allowed in any part of the mine or quarry while under the influence of liquor.

FOR THE CONSTRUCTION OF TUNNELS.

1. Whenever work in the construction of a tunnel or section thereof is in progress, there shall always be present some one competent person, representing the person, firm or corporation carrying on the work or the contractor for the particular section or subdivision thereof, who shall be in all respects responsible for full compliance therein with all provisions of law, and who for that purpose shall have authority to require all persons employed on the work to comply with such provisions.

2. In every tunnel or section thereof while under construction there shall be a competent person designated to make a regular inspection at least once every working day and to examine all engines, boilers, steam pipes, drills, air pipes, air gauges, air locks, dynamos, electric wiring, signaling apparatus, brakes, cages, buckets, hoists, cables, ropes, chains, ladders, ways, tracks, sides, roofs, timbers, supports and all apparatus and appliances; and he shall immediately upon discovery report any defect, in writing, to the person present in charge.

3. The person present in charge of the work in any tunnel or section thereof shall always be authorized and instructed in case of accidents to take all proper measures for the relief of all workmen injured therein. And he shall immediately report every such accident to the commissioner of labor in accordance with § 126 of the Labor Law.

4. Wherever possible all explosives shall be stored in a fire-proof magazine at a safe distance from the tunnel, its engines, power plant and machinery and from other buildings and traffic, and a place separate from the place of storage and with proper apparatus shall be provided for thawing dynamite or other high explosives if thawing be necessary. Where compliance with any of these provisions be impossible, only the safest and most approved manner and methods of handling and storing such explosives practicable under the circumstances, may be used instead; and then only under the regular direction and supervision of some competent engineer or superintendent of experience who shall be held responsible therefor. And the quantity of such high explosives shall always be limited according to law and local ordinances and the strictest demands of safety. In no tunnel shall more explosives be stored than are required for a single blast or one round of holes in the working face; unless the chief engineer shall certify in writing that for special and peculiar reasons it is safer or absolutely necessary to do otherwise, which certificate shall prescribe the limits to the amount of explosives to be allowed in the tunnel at any one time and shall be kept posted in a conspicuous place with the other rules hereinafter mentioned.

5. Only such persons as are selected and regularly designated by a competent engineer or superintendent of experience shall handle or transport the dynamite or other high explosives used in the construction of any tunnel; and extraordinary care shall be exercised in selecting therefor only such persons as are competent, careful and of good habits as to the use of liquor, and to see that they store, prepare, handle and transport all such explosives in the safest and most careful manner.

6. Only such persons as have been selected and regularly designated therefor by a competent engineer or superintendent of experience shall be allowed to prepare or set off blasts in any tunnel under construction, and extraordinary care

shall be exercised in selecting therefor only such persons as are competent, experienced and of good habits as to the use of liquor. The person present in charge of the work in any tunnel or section thereof shall see to it that whenever blasting is in progress there is always *one* "blaster" in full charge in each section or in each separated heading therein, that his fellow workmen properly obey his orders and directions, that he personally supervises the fixing of all charges, the discharge of all blasts, etc., and that he does so carefully, in the safest manner and in accordance with the provisions of § 125 of the Labor Law.

7. Any code of signals in use in a tunnel under construction shall be explained in writing, and copies thereof, in such languages as may be necessary to be understood by all persons affected thereby, shall be kept posted in a conspicuous place near each entrance to such tunnel and in such other places as may be necessary to bring them to the attention of all such persons.

8. Copies of §§ 123, 125, 134-a and 134-b of the Labor Law, of the substance of the foregoing rules and of the working rules of the particular tunnel, in such languages as may be necessary to be understood by all persons working therein, shall be kept posted in a conspicuous place near each entrance to every tunnel.

FOR WORK OF EXCAVATION AND CONSTRUCTION OF TUNNELS CARRIED ON IN COMPRESSED AIR.— SUPPLEMENTING §§ 134-a and 134-b.

LOCKS.

Where practicable each bulkhead in the tunnel shall have at least two locks in perfect working condition.

The man lock shall be large enough so that those using it are not compelled to be in a cramped position.

The emergency lock shall be large enough to hold an entire heading shift.

Every lock must be lighted by electricity and shall contain a pressure gauge and a timepiece, and shall have a glass "bull's-eye" in each door or in each end.

Valves must be so arranged that the locks can be operated both from within and from without.

Each man lock shall be in charge of a competent lock tender.

LIGHT, SANITATION AND VENTILATION IN AIR CHAMBER.

All lighting in compressed air chambers shall be by electricity only, except in cases of emergency.

Absolutely no nuisance shall be tolerated in the air chamber, and smoking shall be strictly prohibited.

No animals for hauling shall be permitted in the air chambers.

An air-supply pipe shall be carried as near to the face as may be practicable and necessary. The air shall be analyzed at least once in every forty-eight hours, and the percentage of CO_2 shall not be greater than 1/10 of one per cent above that of the air being compressed.

The exhaust valves shall be operated at certain intervals, especially after a blast, and men shall not be required to resume work after a blast until the gas and smoke have cleared sufficiently.

Persons in the air chamber must be able to communicate with the power-house on the surface by means of suitable devices at all times.

GAUGES.

In addition to the gauges in the locks, an accurate gauge shall be maintained on the outer side of each bulkhead. These gauges shall be accessible at all times and shall be kept in accurate working order.

SAFETY SCREENS.

Where practicable, safety screens shall be installed after the heading has proceeded beyond the bulkhead line.

GENERAL.

A record of all men working in the air chambers shall be kept by a special man who shall remain outside the lock near the entrance. This record shall show the period of stay in the air chamber of each person and the time taken for decompression.

A liberal supply of hot coffee and sugar shall be supplied to men working in compressed air. Coffee must be heated by means other than direct steam.

ARTICLE 10.

Bureau of Mediation and Arbitration.

§ 140. **Chief mediator.**— There shall continue to be a bureau of mediation and arbitration. The second deputy commissioner of labor shall be the chief mediator of the state and in immediate charge of this bureau, but subject to the supervision and direction of the commissioner of labor.

Cf. § 42, *ante.*

§ 141. **Mediation and investigation.**— Whenever a strike or lockout occurs or is seriously threatened an officer or agent of the bureau of mediation and arbitration shall, if practicable, proceed promptly to the locality thereof and endeavor by mediation to effect an amicable settlement of the controversy. If the commissioner of labor deems it advisable the board of mediation and arbitration may proceed to the locality and inquire into the cause thereof, and for that purpose shall have all the powers conferred upon it in the case of a controversy submitted to it for arbitration.

§ 142. **Board of mediation and arbitration.**— There shall continue to be a state board of mediation and arbitration, which shall consist of the chief mediator and two other officers of the department of labor to be from time to time designated by the commissioner of labor. The chief mediator when present shall be the chairman of the board. Two members of such board shall constitute a quorum for the transaction of business, and may hold meetings at any time or place within the state. Examinations or investigations ordered by the board may be held and taken by and before any of their number, if so directed, but a decision rendered in such a case shall not be deemed conclusive until approved by the board.

§ 143. **Arbitration by the board.**—A grievance or dispute between an employer and his employees may be submitted to the board of arbitration and mediation for their determination and settlement. Such submission shall be in writing, and contain a statement in detail of the grievance or dispute and the cause thereof, and also an agreement to abide the determination of the board, and during the investigation to continue in business or at work, without a lockout or strike. Upon such submission, the board shall examine the matter in controversy. For the purpose of such inquiry they may subpœna witnesses, compel their attendance, take and hear testimony, and call for and examine books, papers and documents of any parties to the controversy. Subpœnas shall be issued by the chairman under the seal of the

department of labor. Witnesses shall be allowed the same fees as in courts of record. The decision of the board must be rendered within ten days after the completion of the investigation.

§ 144. **Decisions of board.**— Within ten days after the completion of every arbitration, the board or a majority thereof shall render a decision, stating such details as will clearly show the nature of the controversy and the points disposed of by them, and make a written report of their findings of fact and of their recommendations to each party of the controversy. Every decision and report shall be filed in the office of the board and a copy thereof served upon each party to the controversy.

§ 145. **Annual report.**— The commissioner of labor shall make an annual report to the legislature of the operations of this bureau.

§ 146. **Submission of controversies to local arbitrators.**— A grievance or dispute between an employer and his employees may be submitted to a board of arbitrators, consisting of three persons, for hearing and settlement. When the employees concerned are members in good standing of a labor organization, one arbitrator may be appointed by such organization and one by the employer. The two so designated shall appoint a third, who shall be chairman of the board. If such employees are not members of a labor organization, a majority thereof at a meeting duly called for that purpose, may designate one arbitrator for such board.

§ 147. **Consent; oath; powers of arbitrators.**— Before entering upon his duties, each arbitrator so selected shall sign a consent to act and take and subscribe an oath to faithfully and impartially discharge his duties as such arbitrator, which consent and oath shall be filed in the clerk's office of the county or counties where the controversy arose. When such board is ready for the transaction of business, it shall select one of its members to act as secretary, and notice of the time and place of hearing shall be given to the parties to the controversy. The board may, through its chairman, subpœna witnesses, compel their attendance and take and hear testimony. The board may make and enforce rules for its government and the transaction of the business before it, and fix its sessions and adjournments.

§ 148. **Decision of arbitrators.**— The board shall, within ten days after the close of the hearing, render a written decision signed by them giving such details as clearly show the nature of the controversy and the questions decided by them. One copy of the decision shall be filed in the office of the clerk of the county or counties where the controversy arose and one copy shall be transmitted to the bureau of mediation and arbitration.

ARTICLE 11.

[*Added by L.* 1910, *ch.* 514, *formerly art.* 10-a; *renumbered by L.* 1913, *ch.* 145.]

Bureau of Industries and Immigration.

§ 151. **Bureau of industries and immigration.**— There shall be a bureau of industries and immigration, which shall be under the immediate charge

of a chief investigator, but subject to the supervision and direction of the commissioner of labor.

Cf. § 42, *ante.*

§ 152. **Special investigators.**— The commissioner of labor may appoint from time to time such number of special investigators and such other assistants as may be necessary to carry into effect the powers of the said bureau herein defined, who may be removed by him at any time. The special investigators may be divided into two grades. Each special investigator of the first grade shall receive an annual salary of fifteen hundred dollars, and each of the second grade an annual salary of twelve hundred dollars. [*As am'd by L.* 1912, *ch.* 543.]

§ 153. **General powers and duties.**— 1. The commissioner of labor shall have the power to make full inquiry, examination and investigation into the condition, welfare and industrial opportunities of all aliens arriving and being within the state. He shall also have power to collect information with respect to the need and demand for labor by the several agricultural, industrial and other productive activities, including public works throughout the state; to gather information with respect to the supply of labor afforded by such aliens as shall from time to time arrive or be within the state; to ascertain the occupations for which such aliens shall be best adapted, and to bring about intercommunication between them and the several activities requiring labor which will best promote their respective needs; to investigate and determine the genuineness of any application for labor that may be received and the treatment accorded to those for whom employment shall be secured; to co-operate with the employment and immigration bureaus conducted under authority of the federal government, or by the government of any other state, and with public and philanthropic agencies designed to aid in the distribution and employment of labor; and to devise and carry out such other suitable methods as will tend to prevent or relieve congestion and obviate unemployment.

2. The commissioner of labor shall procure with the consent of the federal authorities complete lists giving the names, ages, and destination within the state of all alien children of school age, and such other facts as will tend to identify them and shall forthwith deliver copies of such lists to the commissioner of education or the several boards of education and school boards in the respective localities within the state to which said children shall be destined, to aid in the enforcement of the provisions of the education law relative to the compulsory attendance at school of children of school age.

3. The commissioner of labor shall further co-operate with the commissioner of education and with the several boards of education and school commissioners in the state to ascertain the necessity for and the extent to which instruction should be imparted to aliens within the state; to devise methods for the proper instruction of adult and minor aliens in the English language and other subjects, and in respect to the duties and rights of citizenship and the fundamental principles of the American system of government; and may establish and supervise classes and otherwise further their education.

4. The commissioner of labor may enter and inspect all labor camps within the state, and any camp which he may have reasonable cause to believe is a labor camp; and shall inspect all employment and contract labor agencies dealing with aliens, or whenever he may have reasonable cause to believe that such employment or contract labor agencies deal with aliens; or who secure or negotiate contracts for their employment within the state; shall inspect all immigrant lodging places or all places where he has reasonable cause to believe that aliens are received, lodged, boarded or harbored; shall co-operate with other public authorities, to enforce all laws applicable to private bankers dealing with aliens and laborers; secure information with respect to such aliens who shall be in prisons, almshouses and insane asylums of the state, and who shall be deportable under the laws of the United States, and co-operate with the federal authorities and with such officials of the state having jurisdiction over such criminals, paupers and insane aliens who shall be confined as aforesaid, so as to facilitate the deportation of such persons as shall come within the provisions of the aforesaid laws of the United States, relating to deportation; shall investigate and inspect institutions established for the temporary shelter and care of aliens, and such philanthropic societies as shall be organized for the purpose of securing employment for or aiding in the distribution of aliens, and the methods by which they are conducted.

5. The commissioner of labor shall investigate conditions prevailing at the various places where aliens are landed within this state, and at the several docks, ferries, railway stations and on trains and boats therein, and in co-operation with the proper authorities, afford them protection against frauds, crimes and exploitation; shall investigate any and all complaints with respect to frauds, extortion, incompetency and improper practices by notaries public, interpreters and other public officials, or by any other person or by any corporation, whether public or private, and present to the proper authorities the results of such investigation for action thereon; shall investigate and study the general social conditions of aliens within this state, for the purpose of inducing remedial action by the various agencies of the state possessing the requisite jurisdiction; and shall generally, in conjunction with existing public and private agencies, consider and devise means to promote the welfare of the state. [*As am'd by L.* 1912, *ch.* 543.]

§ 154. Proceedings before the commissioner of labor.— Any investigation, inquiry or hearing which the commissioner of labor has power to undertake or to hold may by special authorization from the commissioner of labor, be undertaken or held by or before the chief investigator, or any official whom he may designate, and any decision rendered on such investigation, inquiry or hearing, when approved, and confirmed by the commissioner and ordered filed in his office, shall be and be deemed to be the order of the commissioner. All hearings before the commissioner or chief investigator or official duly designated therefor shall be governed by rules to be adopted and prescribed by the commissioner. The commissioner or chief investigator or official duly designated therefor shall not be bound by technical rules of evidence, and shall have the power to subpoena any witness or any person, and to examine all books, contracts, records and documents of any person or corporation and by subpoena duces tecum to compel production thereof,

and to effect as far as practicable an amicable settlement or adjustment of any such complaint. Such subpoena shall be issued by the commissioner or chief investigator under the seal of the department of labor. No person shall be excused from testifying or from producing any books or papers on any investigation or inquiry by or upon any hearing before the commissioner or chief investigator, or official duly designated thereof,* when ordered to do so, upon the ground that the testimony or evidence, books or documents required of him may tend to incriminate him or subject him to a penalty or forfeiture, but no person shall be prosecuted, punished or subjected to any penalty or forfeiture, for or on account of any act, transaction, matter or thing, concerning which he shall under oath have testified or produced documentary evidence; provided, however, that no person so testifying shall be exempt from prosecution or punishment for any perjury committed by him in his testimony. [*As am'd by L.* 1912, *ch.* 543.]

§ 155. Registration and reports of employment agencies.— The term "employment agency" as used in this act shall include any person, firm, corporation or association regularly engaging in the business of negotiating labor contracts or of receiving applications for help or labor, or for places or positions, excepting such as shall conduct agencies exclusively for procuring employment for teachers, for incumbents of technical, clerical or executive positions, for vaudeville or theatrical performers, musicians or nurses, and also excepting bureaus conducted by registered agricultural or medical institutions and, excepting also departments maintained by persons, firms, corporations or associations for the purpose of securing help for themselves where no fee is charged the applicant for employment. All employment agencies other than those herein excepted shall on or before the first day of October, nineteen hundred and ten, and annually thereafter, file with the commissioner of labor a statement containing the name of the person, firm, corporation or association conducting such agency, the street and number of the place where the same shall be conducted and showing whether said agency is licensed or unlicensed, and if licensed, specifying the date and duration of the license, by whom granted and the number thereof. Such statements shall be registered by the commissioner. Every such employment agency shall keep in the office thereof a full record of the country of the birth of those for whom places or positions are secured, their length of residence in this country, and the name and address of the person, firm or corporation to whom the persons for whom such places or positions are secured shall be sent, the occupation for which employment shall be secured, and the compensation to be paid to the person employed. The books and records of every such agency shall at all reasonable hours be subject to examination by the commissioner of labor. Any person who shall fail to register with the commissioner of labor or to keep books or records shall be guilty of a misdemeanor and shall be punishable for the first offense by a fine of not less than ten dollars, nor more than twenty-five dollars, and for every subsequent offense by a fine of not less than twenty-five dollars, nor more than one hundred dollars, or by imprisonment for not more than thirty days, or by both such fine and imprisonment.

* So in original.

§ 156. **The licensing and regulation of immigrant lodging places.**

1. No person shall hereafter, directly or indirectly, own, conduct or keep an immigrant lodging place without having first obtained from the commissioner of labor a license therefor. Before receiving such license the applicant therefor shall file with the commissioner of labor, in such form as he may prescribe, a statement certified by such applicant, or if said applicant is a corporation, by one of its officers, designating the location of the immigrant lodging place for which a license shall be requested, and specifying the number of boarders or lodgers received by said applicant at any one time during the year preceding such application at the place for which a license is sought, or if no business shall have previously been conducted at said place the maximum number of boarders or lodgers which it will accommodate. With such application there shall be presented to the commissioner of labor proof of the good moral character of the applicant, and in case such applicant is a corporation, of its officers, and in addition thereto *[, in the discretion of the commissioner of labor,] a bond to the people of the state of New York, with two or more sureties or of a surety company approved by the commissioner of labor, conditioned that the obligor shall obey all laws, rules and regulations applicable to such immigrant lodging place prescribed by any lawful authority, and that such obligor shall discharge all obligations and pay all damages, loss and injuries which shall accrue to any person or persons dealing with such licensee, by reason of any contract or other obligation of such licensee, or resulting from any fraud or deceit, conversion of property, oppression, excessive charges, or other wrongful act of said licensee or of his servants or agents in connection with the business so licensed. Where the number of boarders or lodgers specified in said application shall not exceed ten persons the penalty of said bond shall be one hundred dollars, where it shall be more than ten and less than fifty persons it shall be two hundred and fifty dollars, and where the number shall be more than fifty it shall be five hundred dollars. Any person aggrieved may bring an action for the enforcement of such bond in any court of competent jurisdiction. On the approval of the application for said license and of the bond filed therewith the commissioner of labor shall issue a license authorizing the applicant to own, conduct and manage an immigrant lodging place at the place designated in the application and to be specified in the license certificate. For such license the applicant shall pay to the commissioner of labor a fee of five dollars where the number of boarders or lodgers stated in the application does not exceed ten, a fee of ten dollars where such number exceeds ten and does not exceed fifty, and a fee of twenty-five dollars where such number exceeds fifty. Such license shall not be transferable without the consent of the commissioner of labor, nor authorize the conduct of an immigrant lodging place on any other premises than those described in the application. Such license shall be renewable annually on the payment of a fee based on the maximum number of boarders and lodgers received by the licensee at the place licensed during the preceding year, as shown in a sworn statement filed by such applicant

* This phrase was inserted by L. 1912, ch. 337, approved April 15, but was not included in the amendment made by L. 1912, ch. 543, approved April 19. According to the general rule of construction that the latest amendatory act supersedes prior ones, the courts would probably hold that the above phrase is not a part of the law.

in such form as the commissioner of labor shall prescribe. The commissioner of labor shall keep a book or books in which the licenses granted and the bonds filed shall be entered in alphabetical order, together with a statement of the date of the issuance of the license, the name or names of the principals, the place where the business licensed is to be transacted, the names of the sureties upon the bond filed and the amount of the license fee paid by the licensee.

2. Every licensee shall keep conspicuously posted in the public rooms and in each bedroom of the place licensed a statement printed in the English language and in the language understood by the majority of the patrons of said place, specifying the rate of charges by the day and week for lodging, for meals supplied, for the transportation of passengers and baggage, the services of guides, and other service rendered to such patrons. No sum shall be charged or received by or for the licensee in excess of such posted rates for any service rendered, and payment shall not be enforceable for any charge in excess of such rates. A copy of the rates so posted shall be filed by the licensee with the commissioner of labor, and no increased rate shall be charged or received until a revised schedule showing such increase shall have been filed with the commissioner of labor. Every such licensee shall likewise file with the commissioner of labor a list specifying the names and addresses of every person employed by such licensee as a runner, guide or other employee, and showing whether such person is employed at a salary or on commission.

3. A license granted hereunder shall be revocable by the commissioner of labor on notice to the licensee and for cause shown.

4. The term immigrant lodging place as used in this section includes any place, boarding house, lodging house, inn or hotel where immigrants or emigrants while in transit, or aliens are received, lodged, boarded or harbored, which shall not include any place maintained or conducted by a charitable, philanthropic or religious society, association or corporation. Nothing contained herein shall be held to apply to temporary sleeping quarters in labor or construction camps.

5. Any person or any officer of a corporation owning, conducting or managing an immigrant lodging place without having obtained from the commissioner of labor a license therefor, or who shall carry on such business after the revocation of a license to carry on such business, or who shall violate any of the provisions of this section, shall be guilty of a misdemeanor.

6. The license fees collected hereunder shall be paid to the comptroller and shall constitute a fund to be used in the joint discretion of the comptroller and commissioner of labor for the expenses necessary for carrying out the provisions of this section. [*Added by L.* 1911, *ch.* 845; *am'd and renumbered by L.* 1912, *ch.* 543.]

Further legislative action is necessary for the disposition of this fund in conformity with the requirement of the state constitution that every appropriation shall distinctly specify the amount appropriated (opinion of Attorney-General, January 3, 1912).

§ 156-a. **Reports.**— The commissioner of labor shall make an annual report to the legislature of the operation of this bureau. [*Originally* § 156; *renumbered by L.* 1912, *ch.* 543.]

ARTICLE 12.

[*Formerly article* 11; *renumbered by L.* 1913, *ch.* 145.]

Employment of Women and Children in Mercantile Establishments.

[*Until October* 1, 1908, *the enforcement of this article everywhere was in the hands of local boards of health. Enforcement in cities of the first class was transferred to the department of labor on October* 1, 1908, *and in cities of the second class on March* 28, 1913; *elsewhere enforcement remains as before* (§ 172). *Non-compliance with provisions is a misdemeanor* (*Penal Law*, § 1275, *post*).]

§ 160. **Application of article.**— The provisions of this article shall apply to all villages and cities which at the last preceding state enumeration had a population of three thousand or more.

§ 161. **Hours of labor of minors.**— No child under the age of sixteen years shall be employed, permitted or suffered to work in or in connection with any mercantile establishment, business office, or telegraph office, restaurant, hotel, apartment-house, theater or other place of amusement, bowling alley, barber shop, shoe-polishing establishment, or in the distribution or transmission of merchandise, articles or messages, or in the distribution or sale of articles more than six days or fifty-four hours in any one week, or more than nine hours in any one day, or before eight o'clock in the morning or after seven o'clock in the evening of any day. The foregoing provision shall not apply to any employment prohibited or regulated by section four hundred and eighty-five of the penal law. No female employee shall be required, permitted or suffered to work in or in connection with any mercantile establishment in any second-class city more than fifty-four hours in any one week, and elsewhere more than sixty hours in any one week; or more than nine hours in any one day in any second-class city; or elsewhere more than ten hours in any one day, unless for the purpose of making a shorter work day of some one day of the week; or before seven o'clock in the morning or after six o'clock in the evening of any day in any second-class city, or elsewhere after ten o'clock in the evening of any day. This section does not apply to the employment of persons sixteen years of age or upward on Saturday, provided the total number of hours of labor in a week of any such person does not exceed fifty-four hours in any second-class city or elsewhere sixty hours, nor to the employment of persons during the five days preceding the twenty-fifth day of December in any second-class city, or elsewhere between the eighteenth day of December and the following twenty-fourth day of December, both

inclusive. Not less than forty-five minutes shall be allowed for the noonday meal of the employees of any such establishment. Whenever any employee is employed or permitted to work after seven o'clock in the evening, such employee shall be allowed at least twenty minutes to obtain lunch or supper between five and seven o'clock in the evening. [*As am'd by L.* 1910, *ch.* 387, *L.* 1911, *ch.* 866, *and L.* 1913, *ch.* 493.]

Compare § 77, *ante*, as to factories.

The provision for lengthening the working hours of one or more days for the purpose of shortening some one work day is applicable to second-class cities as well as to other localities (opinion of Attorney-General, May 24, 1913).

The section does not permit the shortening of more than one day in order to lengthen some one day (opinion of Attorney-General, February 6, 1913).

§ 161-a. **Hours of labor of messengers.**—In cities of the first or second class no person under the age of twenty-one years shall be employed or permitted to work as a messenger for a telegraph or messenger company in the distribution, transmission or delivery of goods or messages before five o'clock in the morning or after ten o'clock in the evening of any day. [*Added by L.* 1910, *ch.* 342.]

Compare Article 15, *post*, as to employment of children in street trades. See also Penal Law, § 488, under CHILD LABOR, *post*.

§ 162. **Employment of children.**—No child under the age of fourteen years shall be employed or permitted to work in or in connection with any mercantile or other business or establishment specified in the preceding section. No child under the age of sixteen years shall be so employed or permitted to work unless an employment certificate, issued as provided in this article, shall have been theretofore filed in the office of the employer at the place of employment of such child. [*As am'd by L.* 1909, *ch.* 293, *and by L.* 1911, *ch.* 866.]

Compare § 70, *ante*, and Education Law, §§ 626, 628, under CHILD LABOR, *post*.

Section 488 of the Penal Law makes it a misdemeanor to send a messenger boy into disorderly houses, unlicensed saloons, etc.

§ 163. **Employment certificate; how issued.**—Such certificate shall be issued by the commissioner of health or the executive officer of the board or department of health of the city, town or village where such child resides or is to be employed, or by such officer thereof as may be designated by such board, department or commissioner for that purpose, upon the application of the parent, guardian or custodian of the child desiring such employment. Such officer shall not issue such certificate until he has received, examined, approved and filed the following papers duly executed, viz.: The school record of such child properly filled out and signed as provided in this article; also, evidence of age showing that the child is fourteen years old or upwards, which shall consist of the evidence thereof provided in one of the following subdivisions of this section and which shall be required in the order herein designated as follows:

(a) Birth certificate.—A duly attested transcript of the birth certificate filed according to law with a registrar of vital statistics or other officer charged with the duty of recording births which certificate shall be conclusive evidence of the age of such child.

(b) Certificate of graduation.—A certificate of graduation duly issued to such child showing that such child is a graduate of a public school of the

state of New York or elsewhere, having a course of not less than eight years, or of a school in the state of New York other than a public school, having a substantially equivalent course of study of not less than eight years' duration, in which a record of the attendance of such child has been kept as required by article twenty of the education law, provided that the record of such school shows such child to be at least fourteen years of age.

(c) Passport or baptismal certificate.— A passport or a duly attested transcript of a certificate of baptism showing the date of birth and place of baptism of such child.

(d) Other documentary evidence.— In case it shall appear to the satisfaction of the officer to whom application is made, as herein provided, for an employment certificate, that a child for whom such certificate is requested and who has presented the school record, is in fact over fourteen years of age, and that satisfactory documentary evidence of age can be produced, which does not fall within any of the provisions of the preceding subdivisions of this section, and that none of the papers mentioned in said subdivisions can be produced, then and not otherwise he shall present to the board of health of which he is an officer or agent, for its action thereon, a statement signed by him showing such facts together with such affidavits or papers as may have been produced before him constituting such evidence of the age of such child, and the board of health, at a regular meeting thereof, may then, by resolution, provide that such evidence of age shall be fully entered on the minutes of such board, and shall be received as sufficient evidence of the age of such child for the purpose of this section.

(e) Physicians' certificates. In cities of the first class only, in case application for the issuance of an employment certificate shall be made to such officer by a child's parent, guardian or custodian who alleges his inability to produce any of the evidence of age specified in the preceding subdivisions of this section, and if the child is apparently at least fourteen years of age, such officer may receive and file an application signed by the parent, guardian or custodian of such child for physicians' certificates. Such application shall contain the alleged age, place and date of birth, and present residence of such child, together with such further facts as may be of assistance in determining the age of such child. Such application shall be filed for not less than ninety days after date of such application for such physicians' certificates, for an examination to be made of the statements contained therein, and in case no facts appear within such period or by such examination tending to discredit or contradict any material statement of such application, then and not otherwise the officer may direct such child to appear thereafter for physical examination before two physicians officially designated by the board of health, and in case such physicians shall certify in writing that they have separately examined such child and that in their opinion such child is at least fourteen years of age such officer shall accept such certificate as sufficient proof of the age of such child for the purposes of this section. In case the opinions of such physicians do not concur, the child shall be examined by a third physician and the concurring opinions shall be conclusive for the purpose of this section as to the age of such child.

Such officer shall require the evidence of age specified in subdivision (a) in preference to that specified in any subsequent subdivision and shall not

accept the evidence of age permitted by any subsequent subdivision unless he shall receive and file in addition thereto an affidavit of the parent showing that no evidence of age specified in any preceding subdivision or subdivisions of this section can be produced. Such affidavit shall contain the age, place and date of birth, and present residence of such child, which affidavit must be taken before the officer issuing the employment certificate, who is hereby authorized and required to administer such oath and who shall not demand or receive a fee therefor. Such employment certificate shall not be issued until such child shall further have personally appeared before and been examined by the officer issuing the certificate, and until such officer shall, after making such examination, sign and file in his office a statement that the child can read and legibly write simple sentences in the English language and that in his opinion the child is fourteen years of age or upwards and has reached the normal development of a child of its age, and is in sound health and is physically able to perform the work which it intends to do. In every case, before an employment certificate is issued, such physical fitness shall be determined by a medical officer of the department or board of health, who shall make a thorough physical examination of the child and record the result thereof on a blank to be furnished for the purpose by the commissioner of labor and shall set forth thereon such facts concerning the physical condition and history of the child as the commissioner of labor may require. Every such employment certificate shall be signed in the presence of the officer issuing the same, by the child in whose name it is issued. [*As am'd by L.* 1913, *ch.* 144.]

Compare § 71, *ante,* and note. False statement in relation to the certificate or application therefor is specifically denounced as a misdemeanor by the Penal Law, § 1275.

§ 164. **Contents of certificate.**— Such certificate shall state the date and place of birth of the child, and describe the color of hair and eyes and the height and weight and any distinguishing facial marks of such child, and that the papers required by the preceding section have been duly examined, approved and filed and that the child named in such certificate has appeared before the officer signing the certificate and been examined.

Identical with § 72, *ante.*

§ 165. **School record what to contain.**— The school record required by this article shall be signed by the principal or chief executive officer of the school which such child has attended and shall be furnished on demand to a child entitled thereto or to the board, department or commissioner of health. It shall contain a statement certifying that the child has regularly attended the public schools or schools equivalent thereto or parochial schools for not less than one hundred and thirty days during the twelve months next preceding his fourteenth birthday, or during the twelve months next preceding his application for such school record, and is able to read and write simple sentences in the English language, has received during such period instruction in reading, spelling, writing, English grammar and geography and is familiar with the fundamental operations of arithmetic up to and including fractions and has completed the work prescribed for the first six years of the public elementary school or school equivalent thereto or parochial school, from which such school record is issued. Such school record shall

also give the date of birth and residence of the child as shown on the records of the school and the name of its parent or guardian or custodian. [*As am'd by L.* 1913, *ch.* 144.]

Identical with § 73, *ante.* Compare § 630 of Education Law, *post.*

§ 166. **Supervision over issuance of certificates.**— The board or department of health or health commissioner of a city, village or town shall transmit between the first and tenth day of each month to the commissioner of labor a list of the names of all children to whom certificates have been issued during the preceding month, together with a duplicate record of all examinations as to physical fitness, including those resulting in rejection. In cities of the first and second class all employment certificates and school records required under the provisions of this chapter shall be in such form as shall be approved by the commissioner of labor. In towns, villages or cities other than cities of the first or second class, the commissioner of labor shall prepare and furnish blank forms for such employment certificates and school records. No school record or employment certificate required by this article other than those approved or furnished by the commissioner of labor as above provided shall be used. The commissioner of labor shall inquire into the administration and enforcement of the provisions of this article by all public officers charged with the duty of issuing employment certificates, and for that purpose the commissioner of labor shall have access to all papers and records required to be kept by all such officers. [*Added by L.* 1913, *ch.* 144.]

§ 167. **Registry of children employed.**— The owner, manager or agent of a mercantile or other establishment specified in section one hundred and sixty-one, employing children, shall keep or cause to be kept in the office of such establishment, a register, in which shall be recorded the name, birthplace, age and place of residence of all children so employed under the age of sixteen years. Such register and the certificate filed in such office shall be produced for inspection, upon the demand of an officer of the board, department or commissioner of health of the town, village or city where such establishment is situated, or if such establishment is situated in a city of the first or second class, upon the demand of the commissioner of labor. On termination of the employment of the child so registered and whose certificate is so filed, such certificate shall be forthwith surrendered by the employer to the child or its parent or guardian or custodian. An officer of the board, department or commissioner of health of the town, village or city where a mercantile or other establishment mentioned in this article is situated, or if such establishment is situated in a city of the first or second class the commissioner of labor may make demand on an employer in whose establishment a child apparently under the age of sixteen years is employed or permitted or suffered to work, and whose employment certificate is not then filed as required by this chapter, that such employer shall either furnish him, within ten days, evidence satisfactory to him that such child is in fact over sixteen years of age, or shall cease to employ or permit or suffer such child to work in such establishment. The officer may require from such employer the same evidence of age of such child as is required on the issuance of an employment certificate and the employer furnishing such evidence shall not be required to furnish any further evidence of the age of the child. A notice embodying such demand may be served on such employer personally or may be sent by

mail addressed to him at said establishment, and if served by post shall be deemed to have been served at the time when the letter containing the same would be delivered in the ordinary course of the post. When the employer is a corporation such notice may be served either personally upon an officer of such corporation, or by sending it by post addressed to the office or the principal place of business of such corporation. The papers constituting such evidence of age furnished by the employer in response to such demand shall, except in cities of the first and second class, be filed with the board, department or commissioner of health, and in cities of the first and second class with the commissioner of labor, and a material false statement made in any such paper or affidavit by any person shall be a misdemeanor. In case such employer shall fail to produce and deliver to the officer of the board, department or commissioner of health, or in cities of the first and second class to the commissioner of labor, within ten days after such demand such evidence of age herein required by him, and shall thereafter continue to employ such child or permit or suffer such child to work in such mercantile or other establishment, proof of the giving of such notice and of such failure to produce and file such evidence shall be prima facie evidence in any prosecution brought for a violation of this article that such child is under sixteen years of age and is unlawfully employed. [*As am'd by L.* 1913, *ch.* 145.]

Cf. § 76, *ante.*

§ 168. **Wash-rooms and water-closets.**— Suitable and proper wash-rooms and water-closets shall be provided in, adjacent to or connected with mercantile establishments. Such rooms and closets shall be so located and arranged as to be easily accessible to the employees of such establishments.

Such water-closets shall be properly screened and ventilated, and, at all times, kept in a clean condition. The water-closets assigned to the female employees of such establishments shall be separate from those assigned to the male employees.

If a mercantile establishment has not provided wash-rooms and water-closets, as required by this section, the board or department of health or health commissioners of the town, village or city where such establishment is situated, unless such establishment is situated in a city of the first or second class, in which case the commissioner of labor shall cause to be served upon the owner, agent or lessee of the building occupied by such establishment a written notice of the omission and directing such owner, agent or lessee to comply with the provisions of this section respecting such wash-rooms and water-closets.

Such owner shall, within fifteen days after the receipt of such notice, cause such wash-rooms and water-closets to be provided. [*As am'd by L.* 1911, *ch.* 866, *and L.* 1913, *ch.* 145.]

Cf. §§ 88 and 88-a, *ante.*

§ 169. **Lunch-rooms.**— If a lunch-room is provided in a mercantile establishment where females are employed, such lunch-room shall not be next to or adjoining the water-closets, unless permission is first obtained from the board or department of health or health commissioners of the town, village or city where such mercantile establishment is situated, unless such establishment is situated in a city of the first or second class in which case such permission must be obtained from the commissioner of labor. Such per-

mission shall be granted unless it appears that proper sanitary conditions do not exist, and it may be revoked at any time by the board or department of health or health commissioners, if it appears that such lunch-room is kept in a manner or in a part of a building injurious to the health of the employees, unless such establishment is situated in a city of the first or second class, in which case said permission may be so revoked by the commissioner of labor. [*As am'd by L.* 1913, *ch.* 145.]

See also § 89-a, *ante.*

§ 170. Seats for women in mercantile establishments.— Chairs, stools or other suitable seats shall be maintained in mercantile establishments for the use of female employees therein, to the number of at least one seat for every three females employed, and the use thereof by such employees shall be allowed at such times and to such extent as may be necessary for the preservation of their health. If the duties of the female employees, for the use of whom the seats are furnished, are to be principally performed in front of a counter, table, desk or fixture, such seats shall be placed in front thereof; if such duties are to be principally performed behind such counter, table, desk or fixture, such seats shall be placed behind the same.

Cf. § 17, *ante.* Violation is a misdemeanor: Penal Law, § 1273, *post.*

§ 171. **Employment of women and children in basements.**— Women or children shall not be employed or permitted to work in the basement of a mercantile establishment, unless permitted by the board or department of health, or health commissioner of the town, village or city where such mercantile establishment is situated, unless such establishment is situated in a city of the first or second class in which case such permission must be obtained from the commissioner of labor. Such permission shall be granted unless it appears that such basement is not sufficiently lighted and ventilated, and is not in good sanitary condition. [*As am'd by L.* 1913, *ch.* 145.]

§ 172. **Enforcement of article.**— Except in cities of the first and second class the board or department of health or health commissioners of a town, village or city affected by this article shall enforce the same and prosecute all violations thereof. Proceedings to prosecute such violations must be begun within sixty days after the alleged offense was committed. All officers and members of such boards or department, all health commissioners, inspectors and other persons appointed or designated by such boards, departments or commissioners may visit and inspect, at reasonable hours and when practicable and necessary, all mercantile or other establishments herein specified within the town, village or city for which they are appointed. No person shall interfere with or prevent any such officer from making such visitations and inspections, nor shall he be obstructed or injured by force or otherwise while in the performance of his duties. All persons connected with any such mercantile or other establishment herein specified shall properly answer all questions asked by such officer or inspector in reference to any of the provisions of this article. In cities of the first and second class the commissioner of labor shall enforce the provisions of this article, and for that purpose he and his subordinates shall possess all powers herein conferred upon town, village, or city boards and departments of health and their commissioners, inspectors, and other officers, except that the board or department of health of said cities of the first and second class shall continue to issue

employment certificates as provided in section one hundred and sixty-three of this chapter. [*As am'd by L.* 1913, *ch.* 145.]

§ 173. **Laws to be posted.**— A copy or abstract of applicable provisions of this chapter and of the rules and regulations of the industrial board to be prepared and furnished by the commissioner of labor shall be kept posted by the employer in a conspicuous place on each floor of every mercantile or other establishment specified in article twelve of this chapter situated in cities of the first or second class, wherein three or more persons are employed who are affected by such provisions. [*As am'd by L.* 1913, *ch.* 145.]

ARTICLE 13.

Convict-made Goods and Duties of Commissioner of Labor Relative Thereto.

[*Compare* § 620 *of the Penal Law, post. See also subject* PRISON LABOR, *post. As to constitutionality see People v. Beattie,* 96 *App. Div.* 383; *People ex rel. Appel v. Zimmerman,* 102 *App. Div.* 103; *People v. Hawkins,* 157 *N. Y.* 1; *and People ex rel. Phillips v. Raynes,* 136 *App. Div.* 417, *aff'd* 198 *N. Y. Mem.* 39. *Also Constitution, art.* III, § 29, *under* PRISON LABOR, *post.*]

§ 190. **License for sale of convict-made goods.**— No person or corporation shall sell, or expose for sale, any convict-made goods, wares or merchandise, either by sample or otherwise, without a license therefor. Such license may be obtained upon application in writing to the comptroller, setting forth the residence or post-office address of the applicant, the class of goods desired to be dealt in, the town, village or city, with the street number, if any, at which the business of such applicant is to be located. Such application shall be accompanied with a bond, executed by two or more responsible citizens, or some legally incorporated surety company authorized to do business in this state, to be approved by the comptroller, in the sum of five thousand dollars, and conditioned that such applicant will comply with all the provisions of law relative to the sale of convict-made goods, wares and merchandise. Such license shall be for a term of one year unless sooner revoked. Such person or corporation shall pay, annually, on or before the fifteenth day of January, the sum of five hundred dollars as a license fee, into the treasury of the state, which amount shall be credited to the maintenance account of the state prisons.

Such license shall be kept conspicuously posted in the place of business of such licensee.

The requirement of a license as in this section is unconstitutional: People ex rel. Phillips v. Raynes, 136 App. Div. 417, aff'd 198 N. Y. Mem. 39.

Products of labor of prisoners in this state not to be sold: Const., art. III, § 29, *post.*

§ 191. **Revocation of license.**— The comptroller may revoke the license of any such person or corporation, upon satisfactory evidence of, or upon con-

viction for the violation of any statute regulating the sale of convict-made goods, wares or merchandise; such revocation shall not be made until after due notice to the licensee so complained of. For the purpose of this section, the comptroller or any person duly appointed by him, may administer oaths and subpœna witnesses and take and hear testimony.

§ 192. **Annual statement of licensee.**— Each person or corporation so licensed shall, annually, on or before the fifteenth day of January, transmit to the secretary of state a verified statement setting forth:

1. The name of the person or corporation licensed.

2. The names of the persons, agents, wardens or keepers of any prison, jail, penitentiary, reformatory or establishment using convict labor, with whom he has done business, and the name and address of the person or corporation to whom he has sold goods, wares and merchandise, and

3. In general terms, the amount paid to each of such agents, wardens or keepers, for goods, wares or merchandise and the character thereof.

§ 193. **Labeling and marking convict-made goods.**—All goods, wares and merchandise made by convict labor in a penitentiary, prison, reformatory or other establishment in which convict labor is employed, shall be branded, labeled or marked as herein provided. The brand, label or mark, used for such purpose, shall contain at the head or top thereof, the words "convict-made," followed by the year when, and the name of the penitentiary, prison, reformatory or other establishment in which the article branded, labeled or marked was made.

Such brands, labels and marks shall be printed in plain English lettering, of the style and size known as great primer Roman condensed capitals. A brand or mark shall be used in all cases where the nature of the article will permit and only where such branding or marking is impossible shall a label be used. Such label shall be in the form of a paper tag and shall be attached by wire to each article, where the nature of the article will permit, and shall be placed securely upon the box, crate or other covering in which such goods, wares or merchandise are packed, shipped or exposed for sale.

Such brand, mark or label shall be placed upon the most conspicuous part of the finished article and its box, crate or covering.

No convict-made goods, wares or merchandise shall be sold or exposed for sale without such brand, mark or label.

The requirement of branding of goods from other states was held unconstitutional in 1898 in People v. Hawkins, 157 N. Y. 1.

§ 194. **Duties of commissioner of labor relative to violations; fines upon convictions.**— The commissioner of labor shall enforce the provisions of this article. If he has reason to believe that any of such provisions are being violated, he shall advise the district attorney of the county wherein such alleged violation has occurred of such fact, giving the information in support of his conclusion. The district attorney shall, at once, institute the proper proceedings to compel compliance with this article and secure conviction for such violations.

Upon the conviction of a person or corporation for a violation of this article, one-half of the fine recovered shall be paid and certified by the district attorney to the commissioner of labor, who shall use such money in

investigating and securing information in regard to violations of this chapter, and in paying the expenses of such conviction.

Cf. Penal Law, § 620, *post.*

§ 195. **Article not to apply to goods manufactured for use of state or a municipal corporation.**—Nothing in this article shall apply to or affect the manufacture in state prisons, reformatories and penitentiaries, and furnishing of articles for the use of the offices, departments and institutions of the state or any political division thereof, as provided by section one hundred fifty-eight, one hundred seventy to one hundred seventy-five, both inclusive, one hundred seventy-seven, one hundred seventy-eight, one hundred eighty-one, one hundred eighty-three, one hundred eighty-five, one hundred eighty-six, one hundred eighty-nine, and one hundred ninety-one of the prison law.

ARTICLE 14.

Employer's Liability.

[*In the case of railway employees there should be read with this article section* 64 *of the Railroad Law given under* DUTIES AND LIABILITIES OF EMPLOYERS AND EMPLOYEES, *post. Court decisions under the liability laws are very numerous, but a large proportion of these are of little general significance outside of the particular case in hand. Only a few of those which seem of leading importance since the amendment of* 1910 *are here referred to in notes.*]

§ 200. **Employer's liability for injuries.**—When personal injury is caused to an employee who is himself in the exercise of due care and diligence at the time:

1. By reason of any defect in the condition of the ways, works, machinery, or plant, connected with or used in the business of the employer which arose from or had not been discovered or remedied owing to the negligence of the employer or of any person in the service of the employer and intrusted by him with the duty of seeing that the ways, works, machinery, or plant, were in proper condition;

2. By reason of the negligence of any person in the service of the employer intrusted with any superintendence or by reason of the negligence of any person intrusted with authority to direct, control or command any employee in the performance of the duty of such employee. The employee, or in case the injury results in death, the executor or administrator of a deceased employee who has left him surviving a husband, wife or next of kin, shall have the same right of compensation and remedies against the employer as if the employee had not been an employee of nor in the service of the

employer nor engaged in his work. The provisions of law relating to actions for causing death by negligence, so far as the same are consistent with this act, shall apply to an action brought by an executor or administrator of a deceased employee, suing under the provisions of this article. If an employer enters into a contract, written or verbal, with an independent contractor to do part of such employer's work, or if such contractor enters into a contract with a subcontractor to do all or any part of the work comprised in such contractor's contract with the employer, such contract or subcontract shall not bar the liability of the employer for the injuries to the employees of such contractor or subcontractor, caused by any defect in the condition of the ways, works, machinery, or plant, if they are the property of the employer or are furnished by him, and if such defect arose, or had not been discovered or remedied, through the negligence of the employer, or of some person intrusted by him with the duty of seeing that they were in proper condition. [*As am'd by L.* 1910, *ch.* 352.]

As to scope of word "plant" see Lipstein v. Provident Loan Society, 154 App. Div. 732.

§ 201. Notice to be served.—No action for recovery of compensation for injury or death under this article shall be maintained unless notice of the time, place and cause of the injury is given to the employer within one hundred and twenty days and the action is commenced within one year after the occurrence of the accident causing the injury or death. The notice required by this section shall be in writing and signed by the person injured or by some one in his behalf, but if from physical or mental incapacity it is impossible for the person injured to give notice within the time provided in this section, he may give the same within ten days after such incapacity is removed. In case of his death without having given such notice, his executor or administrator may give such notice within sixty days after his appointment, but no notice under the provisions of this section shall be deemed to be invalid or insufficient solely by reason of any inaccuracy in stating the time, place or cause of the injury if it be shown that there was no intention to mislead and that the party entitled to notice was not in fact misled thereby. If such notice does not apprise the employer of the time, place or cause of injury, he may, within eight days after service thereof, serve upon the sender a written demand for a further notice, which demand must specify the particular in which the first notice is claimed to be defective, and a failure by the employer to make such demand as herein provided shall be a waiver of all defects that the notice may contain. After service of such demand as herein provided, the sender of such notice may at any time within eight days thereafter serve an amended notice which shall supersede such first notice and have the same effect as an original notice hereunder. The notice required by this section shall be served on the employer, or if there is more than one employer, upon one of such employers, and may be served by delivering the same to or at the residence or place of business of the person on whom it is to be served. The notice or demand may be served by post by letter addressed to the person on whom it is to be served, at his last known place of residence or place of business, and if served by post shall be deemed to have been served at the time when the letter containing the same would be delivered in the ordinary course of the post. When the employer is a

corporation, notice shall be served by delivering the same or by sending it by post addressed to the office or principal place of business of such corporation. [*As am'd by L.* 1910, *ch.* 352.]

§ 202. **Assumption of risks; contributory negligence, when a question of fact.**— An employee by entering upon or continuing in the service of the employer shall be presumed to have assented to the necessary risks of the occupation or employment and no others. The necessary risks of the occupation or employment shall, in all cases arising after this article takes effect, be considered as including those risks, and those only, inherent in the nature of the business which remain after the employer has exercised due care in providing for the safety of his employees, and has complied with the laws affecting or regulating such business or occupation for the greater safety of such employees. In an action brought to recover damages for personal injury or for death resulting therefrom received after this act takes effect, owing to any cause, including open and visible defects, for which the employer would be liable but for the hitherto available defense of assumption of risk by the employee, the fact that the employee continued in the service of the employer in the same place and course of employment after the discovery by such employee, or after he had been informed of the danger of personal injury therefrom shall not be, as matter of fact or as matter of law, an assumption of the risk of injury therefrom, but an employee, or his legal representative, shall not be entitled under this article to any right of compensation or remedy against the employer in any case where such employee knew of the defect or negligence which caused the injury and failed, within a reasonable time, to give, or cause to be given, information thereof to the employer, or to some person superior to himself in the service of the employer, or who had intrusted to him some superintendence, unless it shall appear on the trial that such defect or negligence was known to such employer, or superior person, prior to such injuries to the employee; or unless such defect could have been discovered by such employer by reasonable and proper care, tests or inspection. [*As am'd by L.* 1910, *ch.* 352.]

§ 202-a. **Trial; burden of proof.**— On the trial of any action brought by an employee or his personal representative to recover damages for negligence arising out of and in the course of such employment, contributory negligence of the injured employee shall be a defense to be so pleaded and proved by the defendant. [*Added by L.* 1910, *ch.* 352.]

Contributory negligence may be predicated as matter of law: Hogan v. N. Y. C. & H. R. R. R. Co., 208 N. Y. 445.

§ 203. **Defense; insurance fund.**— An employer who shall have contributed to an insurance fund created and maintained for the mutual purpose of indemnifying an employee for personal injuries, for which compensation may be recovered under this article, or to any relief society or benefit fund created under the laws of this state, may prove in mitigation of damages recoverable by an employee under this article such proportion of the pecuniary benefit which has been received by such employee from such fund or society on account of such contribution of the employer, as the contribution of such employer to such fund or society bears to the whole contribution thereto.

Under the common law an agreement relieving the employer from liability is void: Johnston v. Fargo, as President of the American Express Company, 184

N. Y. 379 (1906), aff'g 98 App. Div. 436. But an employee may release an employer from liability in consideration of benefits from a relief fund: Colaizzi v. Pennsylvania R. R. Co., 208 N. Y. 275 (1913), aff'g 143 App. Div. 638.

§ 204. **Existing rights of action continued.**— Every existing right of action for negligence or to recover damages for injuries resulting in death is continued and nothing in this article contained shall be construed as limiting any such right of action, nor shall the failure to give the notice provided for in section two hundred and one of this article be a bar to the maintenance of a suit upon any such existing right of action.

§ 205. **Consent by employer and employee to compensation plan.**— When and if any employer in this state and any of his employees shall consent to the compensation plan described in sections two hundred and six to two hundred and twelve, inclusive, of this article, hereinafter referred to as the plan, and shall signify their consent thereto in writing signed by each of them or their authorized agents, and acknowledged in the manner prescribed by law for taking the acknowledgment of a conveyance of real property, and such writing is filed with the county clerk of the county in which it is signed by the employee, then so long as such consent has not expired or been canceled as hereinafter provided, such employee, or in case injury to him results in death, his executor or administrator, shall have no other right of action against the employer for personal injury or death of any kind, under any statute or at common law, save under the plan so consented to, except where personal injury to the employee is caused in whole or in part by the failure of the employer to obey a valid order made by the commissioner of labor or other public authority authorized to require the employer to safeguard his employees, or where such injury is caused by the serious or willful misconduct of the employer. In such excepted cases thus described, no right of action which the employee has at common law or by any other statute shall be affected or lost by his consent to the plan, if such employee, or in case of death his executor or administrator, commences such action before accepting any benefit under such plan or giving any notice of injury as provided in section two hundred and six hereof. The commencing of any legal action whatsoever at common law or by any statute against the employer on account of such injury, except under the plan, shall bar the employee, and in the event of his death his executors, administrators, dependents and other beneficiaries, from all benefit under the plan. This section and sections two hundred and six to two hundred and twelve, inclusive, of this article shall not apply to a railroad corporation, foreign or domestic, doing business in this state, or a receiver thereof, or to any person employed by such corporation or receiver. [*Added by L.* 1910, *ch.* 352.]

§ 206. **Liability to pay compensation; notice of accident.**— If personal injury by accident arising out of and in the course of the employment is caused to the employee, the employer shall, subject as hereinafter mentioned, be liable to pay compensation under the plan at the rates set out in section two hundred and seven of this article: provided that the employer shall not be liable in respect of any injury which does not disable the employee for a period of at least two weeks from earning full wages at the work at which he was employed, and that the employer shall not be liable in respect of any injury to the employee which is caused by the serious and willful miscon-

duct of that employee. No proceedings for recovery under the plan provided hereby shall be maintained unless notice of the accident has been given to the employer as soon as practicable after the happening thereof and before the employee has voluntarily left the employment in which he was injured and during such disability, and unless claim for compensation with respect to the accident has been made within six months from the occurrence of the accident, or in the case of death of the employee, or in the event of his physical or mental incapacity within six months after such death or removal of such physical or mental incapacity, or in the event that weekly payments have been made under the plan, within six months after such payments have ceased; but no want of or defect or inaccuracy of a notice shall be a bar to the maintenance of proceedings under the plan unless the employer proves that he is prejudiced by said want, defect or inaccuracy. Notice of the accident shall apprise the employer of the claim for compensation under this plan and shall state the name and address of the employee injured, the date and place of the accident and in simple language the cause thereof. The notice may be served personally or by sending it by mail in a registered letter addressed to the employer at his last known residence or place of business. [*Added by L.* 1910, *ch.* 352.]

§ 207. **Amount of compensation; persons entitled; physical examination.**— The amount of compensation under the plan shall be: 1. In case death results from injury:

(a) If the employee leaves a widow or next of kin at the time of his death wholly dependent on his earnings, a sum equal to twelve hundred times the daily earnings of the employee at the rate at which he was being paid by the employer at the time of the accident, but not more in any event than three thousand dollars. Any weekly payments previously made under the plan shall be deducted in ascertaining such amount payable on death.

(b) If such widow or next of kin or any of them are in part only dependent upon his earnings, such sum not exceeding that provided in subdivision a as may be determined to be reasonable and proportionate to the injury to such dependents.

(c) If he leaves no widow, or next of kin so dependent in whole or in part, the reasonable expenses of his medical attendance and burial, not exceeding one hundred dollars. Whatever sum may be determined to be payable under the plan, in case of death of the injured employee, shall be paid to his legal representative for the benefit of such dependents, or if he leaves no such dependents, for the benefit of the person to whom the expenses of medical attendance and burial are due.

2. Where total or partial incapacity for work at any gainful employment results to the employee from the injury, a weekly payment commencing at the end of the second week after the injury and continuing during incapacity, subject as herein provided, not exceeding fifty per centum of his average weekly earnings when at work on full time during the preceding year during which he shall have been in the employment of the same employer, or if he shall have been employed less than a year, then a weekly payment of not exceeding three times the average daily earnings on full time for such less period.

In fixing the amount of the weekly payment, regard shall be had to any payment, allowance or benefit which the workman may have received from

the employer during the period of his incapacity, and in the case of partial incapacity the weekly payment shall in no case exceed the difference between the amount of the average weekly earnings of the workman before the accident and the average amount which he is earning or is able to earn in some suitable employment or business after the accident but shall amount to one-half of such difference. In no event shall any weekly payment payable under the plan exceed ten dollars per week or extend over more than eight years from the date of the accident. Any person entitled to receive weekly payments under the plan is required, if requested by the employer, to submit himself for examination by a duly qualified medical practitioner or surgeon provided and paid for by the employer, at a time and place reasonably convenient for the employee, within three weeks after the injury, and thereafter at intervals not oftener than once in six weeks. If the workman refuses so to submit or obstructs the same, his right to weekly payments shall be suspended until such examination shall have taken place, and no compensation shall be payable under the plan during such period. In case an injured employee shall be mentally incompetent at the time when any right or privilege accrues to him under the plan, a committee or guardian of the incompetent appointed pursuant to law may, on behalf of such incompetent, claim and exercise any such right or privilege with the same force and effect as if the employee himself had been competent and had claimed or exercised any such right or privilege; and no limitation of time herein provided for shall run so long as said incompetent employee has no committee or guardian. [*Added by L.* 1910, *ch.* 352.]

§ 208. **Settlement of disputes.**— Any question of law or fact arising in regard to the application of the plan in determining the compensation payable thereunder or otherwise shall be determined either by agreement or by arbitration as provided in the code of civil procedure, or by an action at law as herein provided. In case the employer shall be in default in any of his obligations to the employee under the plan, the injured employee or his committee or guardian, if such be appointed, or his executor or administrator, may then bring an action to recover compensation under the plan in any court having jurisdiction thereof as on a written contract. Such action shall be conducted in the same manner as an action at law for the recovery of damages for breach of a written contract, and shall for all purposes, including the determination of jurisdiction, be deemed such an action. The judgment in such action, in favor of the plaintiff, shall be for a lump sum equal to the amount of the payments then due and prospectively due under the plan. In such action by an executor or administrator the judgment may provide the proportions of the award or the costs to be distributed to or between the several dependents. If such determination is not made it shall be determined by the surrogate's court by which such executor or administrator is appointed, in accordance with the terms of this article on petition of any party on such notice as such court may direct. [*Added by L.* 1910, *ch.* 352.]

§ 209. **Preferential claim; not assignable or subject to attachment; attorney's fees.**— Any person entitled to weekly payments under the plan against any employer shall have the same preferential claim therefor against the assets of the employer as now allowed by law for a claim by such person

against such employer for unpaid wages or personal services. Weekly payments due under the plan shall not be assignable or subject to attachment, levy or execution. No claim of an attorney for any contingent interest in any recovery under the plan for services in securing such recovery shall be an enforceable lien thereon, unless the amount of the same be approved in writing by a justice of the supreme court, or in case the same is tried in any court, before the justice presiding at such trial. [*Added by L.* 1910, *ch.* 352.]

§ 210. **Cancellation of consent.**— When a consent to the plan shall have been filed in the office of the county clerk as herein provided, it shall be binding upon both parties thereto as long as the relation of employer and employee exists between the parties, and expire at the end of such employment, but it may at any time be canceled on sixty days' notice in writing from either party to the other. Such notice of cancellation shall be effective only if served personally or sent by registered letter to the last known post-office address of the party to whom it is addressed, but no notice of cancellation shall be effective as to a claim for injury occurring previous thereto. [*Added by L.* 1910, *ch.* 352.]

§ 211. **Reports of compensation plan.**— Each employer who shall sign with any employee a consent to the plan shall, within thirty days thereafter, file with the commissioner of labor a statement thereof, signed by such employer, which shall show (a) the name of the employer and his post-office address, (b) the name of the employee and his last known post-office address, (c) the date of, and office where the original consent is filed, (d) the weekly wage of the employee at the time the consent is signed; unless such statement is duly filed, such consent of the employee shall not be a bar to any proceeding at law commenced by the employee against the employer. [*Added by L.* 1910, *ch.* 352.]

§ 212. **Reports by employer.**— Each employer of labor in this state who shall have entered into the plan with any employee shall, on or before the first day of January, nineteen hundred and eleven, and thereafter and at such times as may be required by the commissioner of labor, make a report to such commissioner of all amounts, if any, paid by him under such plan to injured employees, stating the name of such employees, and showing separately the amounts paid under agreement with the employees, and the amounts paid after proceedings at law, and the proceedings at law under the plan then pending. Such reports shall be verified by the employer or a duly authorized agent in the same manner as affidavits. [*Added by L.* 1910, *ch.* 352.]

ARTICLE 14-a.

[*Added by L.* 1910, *ch.* 674.]

Workmen's Compensation in Certain Dangerous Employments.

[*This article was held unconstitutional by the Court of Appeals in Ives* v. *South Buffalo Ry. Co.*, 201 *N. Y.* 271 (1911).]

§ 215. **Application of article.**—This article shall apply only to workmen engaged in manual or mechanical labor in the following employments, each of which is hereby determined to be especially dangerous, in which from the nature, conditions or means of prosecution of the work therein, extraordinary risks to the life and limb of workmen engaged therein are inherent, necessary or substantially unavoidable, and as to each of which employments it is deemed necessary to establish a new system of compensation for accidents to workmen.

1. The erection or demolition of any bridge or building in which there is, or in which the plans and specifications require, iron or steel frame work.

2. The operation of elevators, elevating machines or derricks or hoisting apparatus used within or on the outside of any bridge or building for the conveying of materials in connection with the erection or demolition of such bridge or building.

3. Work on scaffolds of any kind elevated twenty feet or more above the ground, water, or floor beneath in the erection, construction, painting, alteration or repair of buildings, bridges or structures.

4. Construction, operation, alteration or repair of wires, cables, switchboards or apparatus charged with electric currents.

5. All work necessitating dangerous proximity to gunpowder, blasting powder, dynamite or any other explosives, where the same are used as instrumentalities of the industry.

6. The operation on steam railroads of locomotives, engines, trains, motors or cars propelled by gravity or steam, electricity or other mechanical power, or the construction or repair of steam railroad tracks and road beds over which such locomotives, engines, trains, motors or cars are operated.

7. The construction of tunnels and subways.

8. All work carried on under compressed air.

§ 216. **Definitions.**—The words, "employer," "workman" and "employment," or their plurals, used in this article, shall be construed to apply to all the employments above described.

§ 217. **Basis of liability.**—If, in the course of any of the employments above described, personal injury by accident arising out of and in the course of the employment after this article takes effect is caused to any workman employed therein, in whole or in part, or the damage or injury caused thereby is in whole or part contributed to by

a. A necessary risk or danger of the employment or one inherent in the nature thereof; or

b. Failure of the employer of such workman or any of his or its officers, agents or employees to exercise due care, or to comply with any law affecting such employment; then such employer shall, subject as hereinafter mentioned, be liable to pay compensation at the rates set out in section two hundred and nineteen-a of this title; provided that the employer shall not be liable in respect of any injury which does not disable the workman for a

period of at least two weeks from earning full wages at the work at which he was employed, and provided that the employer shall not be liable in respect of any injury to the workman which is caused in whole or in part by the serious and willful misconduct of the workman.

§ 218. **Rights of action not affected.**—The right of action for damages caused by any such injury, at common law or under any statute in force on January one, nineteen hundred and ten, shall not be affected by this article, and every existing right of action for negligence or to recover damages for injuries resulting in death is continued, and nothing in this article shall be construed as limiting such right of action, but in case the injured workman, or in event of his death his executor or administrator, shall avail himself of this article, either by accepting any compensation hereunder in accordance with section two hundred and nineteen-a hereof or by beginning proceedings therefor in any manner on account of any such injury, he shall be barred from recovery in and deemed thereby to have released every other action at common law or under any other statute on account of the same injury after this article takes effect. In case after such injury the workman, or in the event of his death his executor or administrator, shall commence any action at common law or under any statute other than this article against the employer therefor he shall be barred from all benefit of this article in regard thereto.

§ 219. **Notice of accident.**—No proceedings for compensation under this article shall be maintained unless notice of the accident as hereinafter provided has been given to the employer as soon as practicable after the happening thereof and before the workman has voluntarily left the employment in which he was injured, and during such disability, but no want or defect or inaccuracy of a notice shall be a bar to the maintenance of proceedings unless the employer proves that he is prejudiced by such want, defect or inaccuracy. Notice of the accident shall state the name and address of the workman injured, the date and place of the accident, and in simple language the physical cause thereof, if known. The notice may be served personally or by sending it by mail in a registered letter addressed to the employer at his last known residence or place of business.

§ 219-a. **Scale of compensation.**—The amount of compensation shall be in case death results from injury:

a. If the workman leaves a widow or next of kin at the time of his death wholly dependent on his earnings, a sum equal to twelve hundred times the daily earnings of such workman at the rate at which he was being paid by such employer at the time of the injury subject as hereinafter provided, and in no event more than three thousand dollars. Any weekly payments made under this article shall be deducted in ascertaining such amount.

b. If such widow or next of kin at the time of his death are in part only dependent upon his earnings, such proportionate sum not exceeding that provided in subdivision a as may be determined according to the injury to such dependents.

c. If he leaves no dependents, the reasonable expenses of his medical attendance and burial, not exceeding one hundred dollars.

Whatever sum may be determined to be payable under this article in case

of death of the injured workman shall be paid to his legal representative for the benefit of such dependents, or if he leaves no such dependents, for the benefit of the persons to whom the expenses of medical attendance and burial are due.

2. Where total or partial incapacity for work at any gainful employment results to the workman from the injury, a weekly payment commencing at the end of the second week after the injury and continuing during such incapacity, subject as herein provided, equal to fifty per centum of his average weekly earnings when at work on full time during the preceding year during which he shall have been in the employment of the same employer, or if he shall have been in the employment of the same employer for less than a year, then a weekly payment of not exceeding three times the average daily earnings on full time for such less period. In fixing the amount of the weekly payment, regard shall be had to the difference between the amount of the average earnings of the workman before the accident and the average amount he is able to earn thereafter as wages in the same employment or otherwise. In fixing the amount of the weekly payment, regard shall be had to any payment, allowance or benefit which the workman may have received from the employer during the period of his incapacity, and in the case of partial incapacity the weekly payment shall in no case exceed the difference between the amount of the average weekly earnings of the workman before the accident and the average weekly amount which he is earning or is able to earn in the same employment or otherwise after the accident, but shall amount to one-half of such difference. In no event shall any compensation paid under this article exceed the damage suffered, nor shall any weekly payment payable under this article in any event exceed ten dollars a week or extend over more than eight years from the date of the accident.

§ 219-b. **Medical examinations.**— Any workman entitled to receive weekly payments under this article is required, if requested by the employer, to submit himself for examination by a duly qualified medical practitioner or surgeon provided and paid for by the employer, at a time and place reasonably convenient for the workman, within three weeks after the injury, and thereafter at intervals not oftener than once in six weeks. If the workman refuses to submit to such examination, or obstructs the same, his right to weekly payments shall be suspended until such examination has taken place, and no compensation shall be payable during or for account of such period.

§ 219-c. **Incompetency of workman.**— In case an injured workman shall be mentally incompetent at the time when any right or privilege accrues to him under this article, a committee or guardian of the incompetent appointed pursuant to the law may, on behalf of such incompetent, claim and exercise any such right or privilege with the same force and effect as if the workman himself had been competent and had claimed or exercised any such right or privilege; and no limitation of time in this article provided for shall run so long as said incompetent workman has no committee or guardian.

§ 219-d. **Settlement of disputes.**— Any question which may arise under this act shall be determined either by agreement or by arbitration as provided in the code of civil procedure or by an action at law as herein provided. In case

the employer fail to make compensation as herein provided, the injured workman, or his committee or guardian, if such be appointed, or his executor or administrator, may then bring an action to recover compensation under this article in any court having jurisdiction thereof, or in any court which would have had jurisdiction of an action for recovery of damages for negligence for the same injury between the same parties. This article however shall not be construed as extending the jurisdiction of any such court to award judgment for an amount greater than now allowed by law. Such action shall be conducted in the same manner as actions at law for the recovery of damages for negligence. The judgment in such action if in favor of the plaintiff shall be for a sum equal to the amount of payments then due and prospectively due under this article. Such action must be commenced within six months after the happening of the accident or in case of the death of the workman by such accident within six months after the appointment of his legal representative in this state, or in the event of his physical incapacity, within six months after the removal thereof, or in the event of weekly payments by the employer hereunder, within six months after such payments have ceased. In such action by an executor or administrator the judgment may provide the proportions of the award or the costs to be distributed to or between the several dependents. If such determination is not made it shall be determined by the surrogate's court, in which such executor or administrator is appointed, in accordance with this article, on petition of any party interested on such notice as such court may direct.

§ 219-e. **Preferences and exemptions.**— Any person entitled to weekly payments under this article against any employer shall have the same preferential claim therefor against the assets of the employer as allowed by law for a claim by such person against such employer for unpaid wages or personal services. Weekly payments due under this article shall not be assignable or subject to levy, execution or attachment.

§ 219-f. **Attorneys' liens.**— No claim of an attorney-at-law for any contingent interest in any recovery under this article for services in securing such recovery or for disbursements shall be an enforceable lien on such recovery, unless the amount of the same be approved in writing by a justice of the supreme court, or in case the same be tried in any court, by the justice presiding at such trial.

§ 219-g. **Liability of principal contractors.**— If an employer who shall be the principal enters into a contract with an independent contractor to do part of such employer's work, or if such contractor enters into a contract with a subcontractor to do all or any part of the work comprised in such contractor's contract with the employer, the said principal shall be liable to pay to any workman employed in the execution of the work any compensation under this article which he would have been liable to pay if that workman had been immediately employed by him; and where compensation is claimed from or proceedings are taken against the principal then, in the application of this article, references to the principal shall be substituted for references to the employer, except that the amount of compensation shall be calculated with reference to the earnings of the workman under the contractor or employer by whom he is immediately employed. Where such principal is

liable to pay compensation he shall be entitled to be indemnified by any person who would have been liable to pay compensation to the workman independently of this section. Nothing in this section shall be construed as preventing a workman from recovering compensation under this article from the contractor or subcontractor, instead of the principal; nor shall this section apply in any case where the accident shall occur elsewhere than on, or in, or about the premises on which the principal has undertaken to execute the work or which are otherwise under his control or management.

ARTICLE 15.

Employment of Children in Street Trades.

§ 220. **Prohibited employment of children in street trades.**—No male child under twelve, and no girl under sixteen years of age, shall in any city of the first, second or third class sell or expose or offer for sale newspapers, magazines or periodicals in any street or public place. [*As am'd by L.* 1913, *ch.* 618.]

Relative to employment of minors in mercantile establishments or as messengers see §§ 161–161-a, *ante*.

This section does not apply to boys employed by newspapers as carriers to deliver papers (opinion of Attorney-General, July 7, 1913).

§ 221. **Permit and badge for children engaged in street trades, how issued.**—No male child under fourteen years of age shall sell or expose or offer for sale said articles unless a permit and badge as hereinafter provided shall have been issued to him by the district superintendent of the board of education of the city and school district where said child resides, or by such other officer thereof as may be officially designated by such board for that purpose, on the application of the parent, guardian or other person having the custody of the child desiring such permit and badge, or in case said child has no parent, guardian or custodian then on the application of his next friend, being an adult. Such permit and badge shall not be issued until the officer issuing the same shall have received, examined, approved and placed on file in his office satisfactory proof that such male child is of the age of twelve years or upwards, and shall also have received, examined and placed on file the written statement of the principal or chief executive officer of the school which the child is attending, stating that such child is an attendant at such school, that he is of normal development of a child of his age and physically fit for such employment, and that said principal or chief executive officer approves the granting of a permit and badge to such child. No such permit or badge shall be valid for any purpose except during the period in which such proof and written statement shall remain on file, nor shall such permit or badge be authority beyond the period fixed therein for its duration. After having received, examined and placed on file such papers the officer

shall issue to the child a permit and badge. Principals or chief executive officers of schools in which children under fourteen years are pupils shall keep complete lists of all children in their schools to whom a permit and badge as herein provided have been granted. [*As am'd by L.* 1913, *ch.* 618.]

§ 222. **Contents of permit and badge.**— Such permit shall state the date and place of birth of the child, the name and address of its parent, guardian, custodian or next friend, as the case may be, and describe the color of hair and eyes, the height, weight and any distinguishing facial mark of such child, and shall further state that the papers required by the preceding section have been duly examined and filed; and that the child named in such permit has appeared before the officer issuing the permit. The badge furnished by the officer issuing the permit shall bear on its face a number corresponding to the number of the permit, and the name of the child. Every such permit, and every such badge on its reverse side, shall be signed in the presence of the officer issuing the same by the child in whose name it is issued. [*As am'd by L.* 1913, *ch.* 618.]

§ 223. **Regulations concerning badge and permit.**— The badge provided for herein shall be worn conspicuously at all times by such child while so working; and all such permits and badges shall expire annually on the first day of January. The color of the badge shall be changed each year. No child to whom such permit and badge are issued shall transfer the same to any other person nor be engaged in any city of the first, second or third class as a newsboy, or shall sell or expose or offer for sale newspapers, magazines or periodicals in any street or public place without having conspicuously upon his person such badge, and he shall exhibit the same upon demand at any time to any police, or attendance officer. [*As am'd by L.* 1913, *ch.* 618.]

§ 224. **Limit of hours.**— No child to whom a permit and badge are issued as provided for in the preceding section shall sell or expose or offer for sale any newspapers, magazines or periodicals after eight o'clock in the evening, or before six o'clock in the morning. [*As am'd by L.* 1913, *ch.* 618.]

§ 225. **Enforcement of article.**— In cities of the first, second or third class, police officers, and the regular attendance officers appointed by the board of education, who are hereby vested with the powers of peace officers for the purpose, shall enforce the provisions of this article. [*As Am'd by L.* 1913, *ch.* 618.]

§ 226. **Violation of this article, how punished.**— Any child who shall, in any city of the first, second or third class, sell or expose or offer for sale newspapers, magazines or periodicals in violation of the provisions of this article may be deemed and adjudged in need of the care and protection of the state, and if over seven years of age may be adjudged guilty of juvenile delinquency. A child violating the provisions of this act may be arrested and in the city of New York be brought before a children's court and in any other city be brought before a court or magistrate having jurisdiction to commit a child to an incorporated charitable reformatory or other institution and be dealt with according to law. If any such child is committed to an institution, it shall, when practicable, be committed to an institution governed by the same religious faith as the parents of such child. The permit and badge of any child who violates the provisions of this article may be revoked

by the officer issuing the same, upon the recommendation of the principal or chief executive officer of the school which such child is attending, or upon the complaint of any police officer or attendance officer, and such child shall surrender the permit and badge so revoked upon the demand of any attendance officer or police officer charged with the duty of enforcing the provisions of this article. The refusal of any child to surrender such permit and badge, upon such demand, or the sale or offering for sale of newspapers, magazines or periodicals in any street or public place by any child after notice of the revocation of such permit and badge shall be deemed a violation of this article and shall subject the child to the penalties provided for in this section. [*As am'd by L.* 1913, *ch.* 618.]

§ 227. **Punishment of parent, guardian or other person for contributing to the delinquency of children.**—The parent, guardian or other person having the custody of a child, who omits to exercise reasonable diligence to prevent such child from violating the provisions of this act, shall be guilty of a misdemeanor and shall be dealt with as provided by section four hundred and ninety-four of the penal law. In any such proceedings against any such parent, guardian or other person having custody of such child, proof of the presence of such child in the public streets engaged in the sale or exposure or offering for sale of newspapers, magazines or periodicals in violation of the provisions of this article, shall be deemed prima facie proof of the lack of reasonable diligence in the control of such child by such parent, guardian or custodian, to prevent such offense by such child. [*Added by L.* 1913, *ch.* 618.]

ARTICLE 16.

Laws Repealed; When to Take Effect.

§ 240. **Laws repealed.**—Of the laws enumerated in the schedule hereto annexed, that portion specified in the last column is hereby repealed.

§ 241. **When to take effect.**—This chapter shall take effect immediately.*

SCHEDULE OF LAWS REPEALED.

Laws of	Chapter	Section
1833.....	87.....	All
1853.....	641.....	All
1867.....	856.....	All
1867.....	969.....	All
1868.....	717.....	2, part suspending operation of L. 1867, Ch. 969, § 10, last two sentences
1869.....	822.....	2, part amending L. 1867, Ch. 969
1870.....	385.....	All
1871.....	934.....	3
1874.....	614.....	All
1875.....	472.....	All
1881.....	298.....	All
1883.....	356.....	All
1885.....	314.....	All

* February 17, 1909.

Laws of	Chapter	Section
1885.....	376.....	All
1886.....	151.....	All
1886.....	205.....	All
1886.....	409.....	All, except § 21, as added by L. 1887, Ch. 462, § 4
1886.....	410.....	All
1887.....	63.....	All
1887.....	323.....	All
1887.....	462.....	All
1887.....	529.....	All
1888.....	437.....	All
1889.....	380.....	All
1889.....	381.....	All
1889.....	385.....	All
1889.....	560.....	All
1890.....	218.....	All
1890.....	388.....	All
1890.....	394.....	All
1890.....	398.....	All
1891.....	214.....	All
1892.....	517.....	All
1892.....	667.....	All
1892.....	673.....	All
1892.....	711.....	All
1893.....	173.....	All
1893.....	219.....	All
1893.....	339.....	All
1893.....	691.....	All
1893.....	715.....	All
1893.....	717.....	All
1894.....	277.....	All
1894.....	373.....	All
1894.....	622.....	All
1894.....	698.....	All
1894.....	699.....	All
1895.....	324.....	All
1895.....	413.....	All
1895.....	518.....	All
1895.....	670.....	All
1895.....	765.....	All
1895.....	791.....	All
1895.....	899.....	All
1896.....	271.....	All
1896.....	384.....	All
1896.....	672.....	All
1896.....	789.....	All
1896.....	931.....	1–4, 6, 7

Laws of	Chapter	Section
1896.....	936.....	All
1896.....	982.....	All
1896.....	991.....	All
1897.....	148.....	All
1897.....	415.....	All
1899.....	191.....	All
1899.....	192.....	All
1899.....	375.....	All
1899.....	558.....	All
1899.....	567.....	All
1900.....	298.....	All
1900.....	533.....	All
1901.....	9.....	All
1901.....	306.....	All
1901.....	475.....	All
1901.....	477.....	All
1901.....	478.....	All
1902.....	88.....	All
1902.....	454.....	All
1902.....	600.....	All
1903.....	151.....	All
1903.....	184.....	All
1903.....	255.....	All
1903.....	561.....	All
1904.....	291.....	All
1904.....	523.....	All
1904.....	550.....	All
1905.....	493.....	All
1905.....	518.....	All
1905.....	519.....	All
1905.....	520.....	All
1906.....	129.....	All
1906.....	158.....	All
1906.....	178.....	All
1906.....	216.....	All
1906.....	275.....	All
1906.....	316.....	All
1906.....	366.....	All
1906.....	375.....	All
1906.....	401.....	All
1906.....	490.....	All
1906.....	506.....	All
1907.....	83.....	All
1907.....	243.....	All
1907.....	286.....	All
1907.....	291.....	All
1907.....	399.....	All
1907.....	418.....	All

Laws of	Chapter	Section
1907.....	485.....	All
1907.....	490.....	All
1907.....	505.....	All
1907.....	507.....	All
1907.....	588.....	All
1907.....	627.....	All
1908.....	89.....	All
1908.....	174.....	All
1908.....	426.....	All
1908.....	442.....	All
1908.....	443.....	All
1908.....	520.....	All

PENALTIES FOR VIOLATION OF THE LABOR LAW.

THE PENAL LAW, CHAPTER 40 OF THE CONSOLIDATED LAWS.

§ 444. * **Manufacture and sale of mattresses.**— Any person who 1. Manufactures, sells, offers for sale or possesses with intent to sell any mattress not properly branded or labeled, as required by the general business law, or

2. Manufactures, sells, offers for sale or possesses with intent to sell any mattress which is falsely branded or labeled, or

3. Uses in the manufacture of mattresses any cotton or other material which has been used as a mattress, pillow or bedding in any public or private hospital, or which has been used by any person having an infectious or contagious disease, shall be guilty of a misdemeanor, punishable by a fine of not more than five hundred dollars or by imprisonment for not more than six months or by both. [*Added by L.* 1913, *ch.* 503.]

§ 620. **Unlawful dealing in convict made goods.**—A person who:

1. Sells or exposes for sale convict made goods, wares or merchandise, without a license therefor, or having such license does not transmit to the secretary of state the statement required by article thirteen of the labor law; or,

2. Sells, offers for sale, or has in his possession for sale any such convict made goods, wares or merchandise without the brand, mark or label required by article thirteen of the labor law; or,

3. Removes or defaces or in any way alters such brand, mark or label,

Is guilty of a misdemeanor, and upon conviction therefor shall be punished by a fine of not more than one thousand or less than one hundred dollars, or by imprisonment for not less than ten days or by both such fine and imprisonment.

Cf. notes with §§ 190 and 193 of the Labor Law, *ante.*

ARTICLE 120.

Labor.

§ 1270. **Refusal to admit inspector to mines, tunnels, and quarries; failure to comply with requirements of inspector.**—A person:

1. Refusing to admit the commissioner of labor, or any person authorized by him, to a mine, tunnel or quarry, and to each and every part thereof, for the purpose of examination and inspection; or,

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* Another section, also numbered 444, relating to stock exchanges was added by L. 1913, ch. 477.

2. Neglecting or refusing to comply with the provisions of article nine of the labor law upon written notice of the commissioner of labor,

Is guilty of a misdemeanor, and upon conviction therefor shall be punished by a fine of not less than fifty dollars, or by imprisonment for not less than thirty days.

§ 1271. Hours of labor to be required.—Any person or corporation:

1. Who, contracting with the state or municipal corporation, shall require more than eight hours' work for a day's labor; or,

2. Who shall require more than ten hours' labor, including one-half hour for dinner, to be performed within twelve consecutive hours, by the employees of a street surface and elevated railway owned or operated by corporations whose main line of travel or routes lie principally within the corporate limits of cities of more than one hundred thousand inhabitants; or,

3. Who shall require the employees of a corporation owning or operating a brickyard to work contrary to the requirements of section five of the labor law; or,

4. Who shall require or permit any employee engaged in or connected with the movement of any train of a corporation operating a line of railroad of thirty miles in length, or over, in whole or in part within this state, to remain on duty more than sixteen consecutive hours; or to require or permit any such employee who has been on duty sixteen consecutive hours to go on duty without having had at least ten hours off duty; or to require or permit any such employee who has been on duty sixteen hours in the aggregate in any twenty-four hour period, to continue on duty or to go on duty without having had at least eight hours off duty within such twenty-four hour period; except when by casualty occurring after such employee has started on his trip, or by unknown casualty occurring before he started on his trip, and except when by accident or unexpected delay of trains scheduled to make connection with the train on which such employee is serving, he is prevented from reaching his terminal;

Is guilty of a misdemeanor, and on conviction therefor shall be punished by a fine of not less than five hundred nor more than one thousand dollars for each offense.

If any contractor with the state or a municipal corporation shall require more than eight hours for a day's labor, upon conviction therefor in addition to such fine, the contract shall be forfeited at the option of the municipal corporation.

See §§ 3–8 of the Labor Law, *ante*.

§ 1272. Payment of wages.—A corporation or joint stock association or person carrying on the business thereof, by lease or otherwise, who does not pay the wages of all its employees in accordance with the provisions of the labor law, is guilty of a misdemeanor, and upon conviction therefor, shall be fined not less than one hundred nor more than ten thousand dollars for each offense. An indictment of a person or corporation operating a steam surface railroad for an offense specified in this section may be found and tried in any county within the state in which such railroad ran at the time of such offense. [*As am'd by L.* 1909, *ch.* 205.]

See §§ 9, 10, 11 and 12 of the Labor Law, *ante*.

§ 1274. No fees to be charged for services rendered by free public employ-

ment bureaus.—A person connected with or employed in a free public employment bureau, who shall charge or receive directly or indirectly, any fee or compensation from any person applying to such bureau for help or employment, is guilty of a misdemeanor.

§ 1275. **Violations of provisions of labor law; the industrial code; the rules and regulations of the industrial board of the department of labor; orders of the commissioner of labor.**— Any person who violates or does not comply with any provision of the labor law, any provision of the industrial code, any rule or regulation of the industrial board of the department of labor, or any lawful order of the commissioner of labor; and any person who knowingly makes a false statement in or in relation to any application made for an employment certificate as to any matter required by articles six and eleven* of the labor law to appear in any affidavit, record, transcript or certificate therein provided for, is guilty of a misdemeanor and upon conviction shall be punished, except as in this chapter otherwise provided, for a first offense by a fine of not less than twenty nor more than fifty dollars; for a second offense by a fine of not less than fifty nor more than two hundred and fifty dollars, or by imprisonment for not more than thirty days or by both such fine and imprisonment; for a third offense by a fine of not less than two hundred and fifty dollars, or by imprisonment for not more than sixty days, or by both such fine and imprisonment. [*As am'd by L.* 1911, *ch.* 749, *L.* 1912, *ch.* 383, *and L.* 1913, *ch.* 349.]

§ 1276. **Negligently furnishing insecure scaffolding.**—A person or corporation employing or directing another to do or perform any labor in the erection, repairing, altering or painting, any house, building or structure within this state, who knowingly or negligently furnishes or erects or causes to be furnished or erected for the performance of such labor, unsafe, unsuitable or improper scaffolding, hoists, stays, ladders or other mechanical contrivances; or who hinders or obstructs any officer detailed to inspect the same, destroys or defaces any notice posted thereon, or permits the use thereof after the same has been declared unsafe by such officer contrary to the provisions of article two of the labor law, is guilty of a misdemeanor.

See §§ 18 and 19 of the Labor Law, *ante.*

§ 1277. **Neglect to complete or plank floors of buildings constructed in cities.**—A person, constructing a building in a city, as owner or contractor, who violates the provisions of article two of the labor law, relating to the completing or laying of floors, or the planking of such floors or tiers of beams as the work of construction progresses, is guilty of a misdemeanor, and upon conviction therefor shall be punished by a fine for each offense of not less than twenty-five nor more than two hundred dollars.

See § 20 of the Labor Law, *ante.*

§ 1278. **Fraudulent representation in labor organizations.**— [See under TRADE UNIONS, *post.*]

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* Article eleven here referred to was renumbered article twelve by chapter 145 of the laws of 1913.

CHILD LABOR.

[The employment of children during the school sessions is regulated by Article 23 of the Education Law, printed below.

The employment of children in factories is regulated by Article 6 of the Labor Law, *ante;* in stores, hotels, offices, etc., by Article 12, *ante,* and in the selling of newspapers by Article 15, *ante.*

Article 44 of the Penal Law (§§ 480–494), entitled "Children," contains provisions relative to the employment of children in occupations dangerous to health or morals. Certain of these sections are printed below. See further § 1982 of the Penal Law prohibiting the employment of minors under 18 as telegraph operators on railroads; and the Liquor Tax Law, § 30-f, forbidding girls and minors under 18 to sell or serve liquors.

As to registration of births, from which evidence of a child's attainment of the legal age of employment is derived, see Public Health Law, § 382.]

EDUCATIONAL RESTRICTIONS.

COMPULSORY EDUCATION LAW: ARTICLE 23 OF CHAPTER 16 OF THE CONSOLIDATED LAWS.

[*Enacted by ch.* 140 *of Laws of* 1910, *amending ch.* 16 *of the Consolidated Laws* of 1909.]

§ 620. **Instruction required.**—The instruction required under this article shall be:

1. At a public school in which at least the six common school branches of reading, spelling, writing, arithmetic, English language and geography are taught in English.

2. Elsewhere than a public school upon instruction in the same subjects taught in English by a competent teacher.

§ 621. **Required attendance upon instruction.**—1. Every child within the compulsory school ages, in proper physical and mental condition to attend school, residing in a city or school district having a population of five thousand or more and employing a superintendent of schools, shall regularly attend upon instruction as follows:

(a) Each child between seven and fourteen years of age shall attend the entire time during which the school attended is in session, which period shall not be less than one hundred and sixty days of actual school.

(b) Each child between fourteen and sixteen years of age not regularly and lawfully engaged in any useful employment or service, and to whom an employment certificate has not been duly issued under the provisions of the labor law, shall so attend the entire time during which the school attended is in session.

2. Every such child, residing elsewhere than in a city or school district having a population of five thousand or more and employing a superintendent of schools, shall attend upon instruction during the entire time that the school in the district shall be in session as follows:

(a) Each child between eight and fourteen years of age.

(b) Each child between fourteen and sixteen years of age not regularly and lawfully engaged in any useful employment or service. [*As am'd by L.* 1913, *ch.* 511.]

3. The provisions of this section are intended to include all blind children, except such as may receive appointments under the provisions of article thirty-eight of this chapter. [*Subdivision* 3 *added by L.* 1912, *ch* 710.]

§ 622. When a boy is required to attend evening school.—1. Every boy between fourteen and sixteen years of age, in a city of the first class or a city of the second class in possession of an employment certificate duly issued under the provisions of the labor law, who has not completed such course of study as is required for graduation from the elementary public schools of such city, and who does not hold either a certificate of graduation from the public elementary school or the pre-academic certificate issued by the regents or the certificate of the completion of an elementary course issued by the education department, shall attend the public evening schools of such city, or other evening schools offering an equivalent course of instruction, for not less than six hours each week, for a period of not less than sixteen weeks.

2. When the board of education in a city or district shall have established part-time and continuation schools or courses of instruction for the education of young persons between fourteen and sixteen years of age who are regularly employed in such city or district, said board of education may require the attendance in such schools or on such courses of instruction of any young person in such a city or district who is in possession of an employment certificate duly issued under the provisions of the labor law, who has not completed such courses of study as are required for graduation from the elementary public schools of such city or district, or equivalent courses of study in parochial or other elementary schools, who does not hold either a certificate of graduation from the public elementary school or a pre-academic certificate of the completion of the elementary course issued by the education department, and who is not otherwise receiving instruction approved by the board of education as equivalent to that provided for in the schools and courses of instruction established under the provisions of this act. The required attendance provided for in this paragraph shall be for a total of not less than thirty-six weeks per year, at the rate of not less than four and not more than eight hours per week, and shall be between the hours of eight o'clock in the morning and five o'clock in the afternoon of any working day or days.

3. The children attending such part-time or continuation schools as required in paragraph two of this section shall be exempt from the attendance on evening schools required in paragraph one of this section. [*As am'd by L.* 1913, *ch.* 748.]

§ 623. Instruction elsewhere than at a public school.—If any such child shall so attend upon instruction elsewhere than at a public school, such instruction shall be at least substantially equivalent to the instruction given children of like age at the public school of the city or district in which such child resides; and such attendance shall be for at least as many hours each day thereof as are required of children of like age at public schools; and no greater total amount of holidays or vacations shall be deducted from such attendance during the period such attendance is required than is allowed in such public school to children of like age. Occasional absences from such attendance, not amounting to irregular attendance in the fair meaning of the

term, shall be allowed upon such excuses only as would be allowed in like cases by the general rules and practice of such public school.

§ 624. **Duties of persons in parental relation to children.**—Every person in parental relation to a child within the compulsory school ages and in proper physical and mental condition to attend school, shall cause such child to attend upon instruction, as follows:

1. In cities and school districts having a population of five thousand or above, every child between seven and sixteen years of age as required by section six hundred and twenty-one of this act unless an employment certificate shall have been duly issued to such child under the provisions of the labor law and he is regularly employed thereunder.

2. Elsewhere than in a city or school district having a population of five thousand or above, every child between eight and sixteen years of age, unless such child shall have received an employment certificate duly issued under the provisions of the labor law and is regularly employed thereunder in a factory or mercantile establishment, business or telegraph office, restaurant, hotel, apartment house or in the distribution or transmission of merchandise or messages, or unless such child shall have received the school record certificate issued under section six hundred and thirty of this act and is regularly employed elsewhere than in the factory or mercantile establishment, business or telegraph office, restaurant, hotel, apartment house or in the distribution or transmission of merchandise or messages.

§ 625. **Penalty for failure to perform parental duty.**—A violation of section six hundred and twenty-four shall be a misdemeanor, punishable for the first offense by a fine not exceeding five dollars, or five days' imprisonment, and for each subsequent offense by a fine not exceeding fifty dollars, or by imprisonment not exceeding thirty days, or by both such fine and imprisonment. Courts of special session and police magistrates shall, subject to removal as provided in sections fifty-seven and fifty-eight of the Code of Criminal Procedure, have exclusive jurisdiction in the first instance to hear, try and determine charges of violations of this section within their respective jurisdictions.

§ 626. **Unlawful employment of children and penalty therefor.**—It shall be unlawful for any person, firm or corporation:

1. To *employe any child under fourteen years of age, in any business or service whatever, for any part of the term during which the public schools of the district or city in which the child resides are in session.

2. To employ, elsewhere than in a city of the first class or a city of the second class, in a factory or mercantile establishment, business or telegraph office, restaurant, hotel, apartment house or in the distribution or transmission of merchandise or messages, any child between fourteen and sixteen years of age who does not at the time of such employment present an employment certificate duly issued under the provisions of the labor law, or to employ any such child in any other capacity who does not at the time of such employment present a school record certificate as provided in section six hundred and thirty of this chapter.

3. To employ any child between fourteen and sixteen years of age in a city of the first class or a city of the second class who does not, at the time

* So in original.

of such employment, present an employment certificate, duly issued under the provisions of the labor law.

§ 627. **Employer must display record certificate and evening part-time or continuation school certificate.**— The employer of any child between fourteen and sixteen years of age in a city or district shall keep and shall display in the place where such child is employed, the employment certificate and also his evening, part-time or continuation school certificate issued by the school authorities of said city or district or by an authorized representative of such school authorities, certifying that the said child is regularly in attendance at an evening, part-time or continuation school of said city as provided in section six hundred and thirty-one of this chapter. [*As am'd by L.* 1913, *ch.* 748.]

§ 628. **Punishment for unlawful employment of children.**— Any person, firm, or corporation, or any officer, manager, superintendent or employee acting therefor, who shall employ any child contrary to the provisions of sections six hundred and twenty-six and six hundred and twenty-seven hereof shall be guilty of a misdemeanor, and the punishment therefor shall be for the first offense a fine of not less than twenty dollars nor more than fifty dollars; for a second and each subsequent offense, a fine of not less than fifty dollars nor more than two hundred dollars. [*As am'd by L.* 1913, *ch.* 748.]

Constitutionality affirmed in City of New York v. Chelsea Jute Mills, 43 Misc. 266.

§ 629. **Teachers must keep record of attendance.**—An accurate record of the attendance of all children between seven and sixteen years of age shall be kept by the teacher of every school, showing each day by the year, month, day of the month and day of the week, such attendance, and the number of hours in each day thereof; and each teacher upon whose instruction any such child shall attend elsewhere than at school, shall keep a like record of such attendance. Such record shall, at all times, be open to the attendance officers or other person duly authorized by the school authorities of the city or district, who may inspect or copy the same; and every such teacher shall fully answer all inquiries lawfully made by such authorities, inspectors, or other persons, and a wilful neglect or refusal so to answer any such inquiry shall be a misdemeanor.

§ 630. **School record certificate.**— 1. A school-record certificate shall contain a statement certifying that a child has regularly attended the public schools, or schools equivalent thereto, or parochial schools, for not less than one hundred and thirty days during the twelve months next preceding his fourteenth birthday or during the twelve months next preceding his application for such school record, and that he is able to read and write simple sentences in the English language and has received during such period instruction in reading, writing, spelling, English grammar and geography and is familiar with the fundamental operations of arithmetic up to and including fractions, and has completed the work prescribed for the first six years of the public elementary school, or school equivalent thereto, or parochial school, from which such school record is issued. Such record shall also give the date of birth and residence of the child, as shown on the school records, and the name of the child's parents, guardian or custodian. [*As am'd by L.* 1913, *ch.* 101.]

2. A teacher or superintendent to whom application shall be made for a school record certificate required under the provisions of the labor law shall issue a school record certificate to any child who, after due investigation and examination, may be found to be entitled to the same as follows:

a. In a city of the first class by the principal or chief executive of a school.

b. In all other cities and in school districts having a population of five thousand or more and employing a superintendent of schools, by the superintendent of schools only.

c. In all other school districts by the principal teacher of the school.

d. In each city or school district such certificate shall be furnished on demand to a child entitled thereto or to the Board or Commissioner of Health.

§ 631. Evening, part-time or continuation school certificate.—The school authorities in a city or district, or officers designated by them, are hereby required to issue to each child lawfully in attendance at an evening, part-time or continuation school, an evening, part-time or continuation school certificate at least once in each month during the months said evening, part-time or continuation school is in session and at the close of the term of said evening, part-time or continuation school, provided that said child has been in attendance upon said evening school, for not less than six hours each week or upon said part-time or continuation school for not less than four hours each week, for such number of weeks as will, when taken in connection with the number of weeks such evening, part-time or continuation school respectively, shall be in session during the remainder of the current or calendar year, make up a total attendance on the part of said child in said evening school, of not less than six hours per week for a period of not less than sixteen weeks or in said part-time or continuation school, of not less than four hours per week for a period of not less than thirty-six weeks. Such certificate shall state fully the period of time which the child to whom it is issued was in attendance upon such evening, part-time or continuation school. [*As am'd by L.* 1913, *ch.* 748.]

§ 632. Attendance officers.— 1. The school authorities of each city, union free school district, or common school district whose limits include in whole or in part an incorporated village, shall appoint and may remove at pleasure one or more attendance officers of such city or district, and shall fix their compensation and may prescribe their duties not inconsistent with this article and make rules and regulations for the performance thereof; and the superintendent of schools shall supervise the enforcement of this article within such city or school district.

2. The town board of each town shall appoint, subject to the written approval of the school commissioner of the district, one or more attendance officers, whose jurisdiction shall extend over all school districts in said town, and which are not by this section otherwise provided for, and shall fix their compensation, which shall be a town charge; and such attendance officers, appointed by said board, shall be removable at the pleasure of the school commissioner in whose commissioner district such town is situated.

§ 633. Arrest of truants.— 1. The attendance officer may arrest without a warrant any child between seven and sixteen years of age who is a truant from instruction upon which he is lawfully required to attend within the

city or district of such attendance officer. He shall forthwith deliver the child so arrested to a teacher from whom such child is then a truant, or, in case of habitual and incorrigible truants, shall bring them before a police magistrate for commitment to a truant school as provided in section six hundred and thirty-five.

2. The attendance officer shall promptly report such arrest and the disposition which he makes of such child, to the school authorities of the said city or district where such child is lawfully required to attend upon instruction.

3. A truant officer in the performance of his duties may enter, during business hours, any factory, mercantile or other establishment within the city or school district in which he is appointed and shall be entitled to examine employment certificates or registry of children employed therein on demand.

§ 634. Interference with attendance officer.— Any person interfering with an attendance officer in the lawful discharge of his duties and any person owning or operating a factory, mercantile or other establishment who shall refuse on demand to exhibit to such attendance officer the registry of the children employed or the employment certificate of such children shall be guilty of a misdemeanor.

§ 635. Truant schools.— 1. The school authorities of any city or school district may establish schools, or set apart separate rooms in public school buildings, for children between seven and sixteen years of age, who are habitual truants from instruction upon which they are lawfully required to attend, or who are insubordinate or disorderly during their attendance upon such instruction, or irregular in such attendance. Such school or room shall be known as a truant school; but no person convicted of crimes or misdemeanors, other than truancy, shall be committed thereto.

2. School authorities may provide for the confinement, maintenance and instruction of such truants in such schools; and they, or the superintendent of schools in any city or school district, may, after reasonable notice to such child and the persons in parental relation to such child, and an opportunity for them to be heard, and with the consent in writing of the persons in parental relation to such child, order such child to attend such school, or to be confined and maintained therein, under such rules and regulations as such authorities may prescribe, for a period not exceeding two years; but in no case shall a child be so confined after he is sixteen years of age.

3. Such authorities may order such a child to be confined and maintained during such period in any private school, orphans' home or similar institution controlled by persons of the same religious faith as the persons in parental relation to such child, and which is willing and able to receive, confine and maintain such child, upon such terms as to compensation as may be agreed upon between such authorities and such private school, orphans' home or similar institution.

4. If the person in parental relation to such child shall not consent to either of such orders said person shall be proceeded against in court under section six hundred and twenty-five of this chapter by the school authorities or such officer as they may designate. In case the person in parental relation

to such child establishes to the satisfaction of the court that such child is beyond his control such child shall be proceeded against as a disorderly person, and upon conviction thereof, if the child was lawfully required to attend a public school, the child shall be sentenced to be confined and maintained in such truant school for a period not exceeding two years; or if such child was lawfully required to attend upon instruction otherwise than at a public school, the child may be sentenced to be confined and maintained for a period not exceeding two years in such private school, orphans' home or other similar institutions, if there be one, controlled by persons of the same religious faith as the persons in parental relation to such child, which is willing and able to receive, confine and maintain such child for a reasonable compensation. Such confinement shall be conducted with a view to the improvement and to the restoration, as soon as practicable, of such child to the institution elsewhere, upon which he may be lawfully required to attend.

5. The authorities committing any such child, and in cities and districts having a superintendent of schools such superintendent shall have authority, in his discretion, to parole at any time any truant so committed by them.

6. Every child lawfully suspended from attendance upon instruction for more than one week, shall be required to attend such truant school during the period of such suspension.

7. The school authorities of any city or school district, not having a truant school, may contract with any other city or district having a truant school, for the confinement, maintenance and instruction therein of children whom such school authorities might require to attend a truant school, if there were one in their own city or district.

8. Industrial training shall be furnished in every such truant school.

9. The expense attending the commitment and cost of maintenance of any truant residing in any city, or district, employing a superintendent of schools shall be a charge against such city, or district, and in all other cases shall be a county charge.

§ 636. Enforcement of law and withholding the state moneys by commissioner of education.— 1. The commissioner of education shall supervise the enforcement of this law and he may withhold one-half of all public school moneys from any city or district, which, in his judgment, wilfully omits and refuses to enforce the provisions of this article, after due notice, so often and so long as such wilful omission and refusal shall, in his judgment, continue

2. If the provisions of this article are complied with at any time within one year from the date on which said moneys were withheld, the moneys so withheld shall be paid over by said commissioner of education to such district or city, otherwise forfeited to the state.

CERTAIN EMPLOYMENTS OF CHILDREN PROHIBITED.

PENAL LAW, CHAPTER 40 OF CONSOLIDATED LAWS.

§ 483. Endangering life or health of child.—A person who:

1. Wilfully causes or permits the life or limb of any child actually or apparently under the age of sixteen years to be endangered, or its health to be injured, or its morals to become depraved; or,

2. Wilfully causes or permits such child to be placed in such a situation or to engage in such an occupation that its life or limb is endangered, or its health is likely to be injured, or its morals likely to be impaired,

Is guilty of a misdemeanor.

[Subd. 3. Contributing to juvenile delinquency. Repealed by L. 1910, ch. 699, § 494, relative to the same subject, added by L. 1910, ch. 699.]

§ 485. **Certain employment of children prohibited.**—A person who employs or causes to be employed, or who exhibits, uses, or has in custody, or trains for the purpose of the exhibition, use or employment of, any child actually or apparently under the age of sixteen years; or who having the care, custody or control of such a child as parent, relative, guardian, employer or otherwise, sells, lets out, gives away, so trains, or in any way procures or consents to the employment, or to such training, or use, or exhibition of such child; or who neglects or refuses to restrain such child from such training, or from engaging or acting:

1. As a rope or wire walker, gymnast, wrestler, contortionist, rider or acrobat; or upon any bicycle or similar mechanical vehicle or contrivance; or,

2. In begging or receiving or soliciting alms in any manner or under any pretense, or in any mendicant occupation; or in gathering or picking rags, or collecting cigar stumps, bones or refuse from markets; or in peddling; or,

3. In singing; or dancing; or playing upon a musical instrument; or in a theatrical exhibition; or in any wandering occupation; or,

4. In any illegal, indecent or immoral exhibition or practice; or in the exhibition of any such child when insane, idiotic, or when presenting the appearance of any deformity or unnatural physical formation or development; or,

5. In any practice or exhibition or place dangerous or injurious to the life, limb, health or morals of the child,

Is guilty of a misdemeanor.

But this section does not apply to the employment of any child as a singer or musician in a church, school or academy; or in teaching or learning the science or practice of music; or as a musician in any concert or in a theatrical exhibition, with the written consent of the mayor of the city, or the president of the board of trustees of the village where such concert or exhibition takes place. Such consent shall not be given unless forty-eight hours previous notice of the application shall have been served in writing upon the society mentioned in section four hundred and ninety-one of this chapter, if there be one within the county, and a hearing had thereon if requested, and shall be revocable at the will of the authority giving it. It shall specify the name of the child, its age, the names and residence of its parents or guardians, the nature, time, duration and number of performances permitted, together with the place and character of the exhibition. But no such consent shall be deemed to authorize any violation of the first, second, fourth or fifth subdivisions of this section.

Not an unconstitutional infringement of the parents' rights or the rights of the child 8 N. Y. Cr. 383; People v. Ewer, 141 N. Y. 129.

§ 486. **Prohibited acts; destitute children.**— Any child actually or apparently under the age of sixteen years who is found:

1. Begging or receiving or soliciting alms, in any manner or under any

pretense; or gathering or picking rags, or collecting cigar stumps, bones or refuse from markets; or,

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5. Coming within any of the descriptions of children mentioned in section four hundred and eighty-five,

Must be arrested and brought before a proper court or magistrate, who may commit the child to any incorporated charitable reformatory, or other institution, and when practicable, to such as is governed by persons of the same religious faith as the parents of the child, or may make any disposition of the child such as now is, or hereafter may be authorized in the cases of vagrants, truants, paupers or disorderly persons, but such commitment shall, so far as practicable, be made to such charitable or reformatory institutions.

If it shall appear to the board of managers, trustees or other officers in charge of said incorporated charitable, reformatory or other institution to which any such child has been so committed that said child be incorrigible and that his or her presence therein is seriously detrimental to the welfare of the institution and other children therein, an application may be made to the court or magistrate who committed the said child to said institution, or to a justice of the supreme court in the judicial district in which said institution is located, for an order transferring said child to another incorporated charitable, reformatory or other institution, governed or controlled by persons of the same religious faith as the parents of the said child, when practicable, said institution or reformatory to be one designated by the state board of charities for the receipt and detention of such incorrigible children. Such application shall be by petition signed by the officer or the person in charge of such institution and shall state the causes for seeking such transfer, and due notice of such application with a copy of the petition shall be served personally or by mail at least eight days before the hearing, on the parents or guardian of said child and the officer of the locality would be chargeable for the support of such child so transferred, and upon the hearing of said petition such court, magistrate or justice may grant such order of transfer if it appears to his satisfaction that the facts alleged are true and that such transfer should be made; and any child so transferred shall be confined in such institution to which such transfer shall be made with the same force and effect as the confinement in the institution in the first instance and under the same terms and conditions. [*As am'd by L.* 1912, *ch.* 169.]

§ 488. **Sending messenger boys to certain places.**—A corporation or person employing messenger boys who:

1. Knowingly places or permits to remain in a disorderly house, or in an unlicensed saloon, inn, tavern or other unlicensed place where malt or spirituous liquors or wines are sold, any instrument or device by which communication may be had between such disorderly house, saloon, inn, tavern or unlicensed place, and any office or place of business of such corporation or person; or,

2. Knowingly sends or permits any person to send any messenger boy to any disorderly house, unlicensed saloon, inn, tavern, or other unlicensed place, where malt or spirituous liquors or wines are sold, on any errand or business whatsoever except to deliver telegrams at the door of such house,

Is guilty of a misdemeanor, and incurs a penalty of fifty dollars to be recovered by the district attorney.

Compare § 161-a of the Labor Law, *ante*.

TAKING APPRENTICE WITHOUT GUARDIAN'S CONSENT.

§ 493. Taking apprentice without consent of guardian.—A person who takes an apprentice without having first obtained the consent of his legal guardian or unless a written agreement has been entered into as prescribed by law, is guilty of a misdemeanor.

For the law regulating apprenticeship, see under INDUSTRIAL EDUCATION, *post*.

PAYMENT OF WAGES TO MINORS.

THE DOMESTIC RELATIONS LAW, CHAPTER 14 OF THE CONSOLIDATED LAWS.

§ 72. Payment of wages to minor; when valid.—Where a minor is in the employment of a person other than his parent or guardian, payment to such minor of his wages is valid, unless such parent or guardian notify the employer in writing, within thirty days after the commencement of such service, that such wages are claimed by such parent or guardian, but whenever such notice is given at any time payments to the minor shall not be valid for services rendered thereafter.

HOURS OF LABOR.*

DRUG CLERKS.

PUBLIC HEALTH LAW, CHAPTER 45 OF THE CONSOLIDATED LAWS.

§ 236. **Working hours and sleeping apartments.**—No apprentice or employee in any pharmacy or drug store shall be required or permitted to work more than seventy hours a week. Nothing in this section prohibits working six hours overtime any week for the purpose of making a shorter succeeding week, provided, however, that the aggregate number of hours in any such two weeks shall not exceed one hundred and thirty-two hours. The hours shall be so arranged that an employee shall be entitled to and shall receive at least one full day off in two consecutive weeks. No proprietor of any pharmacy or drug store shall require any clerk to sleep in any room or apartment in or connected with such store that does not comply with the sanitary regulations of the local board of health. [*As am'd by L.* 1910, *ch.* 422, *and L.* 1911, *ch.* 630.]

The provision for one day's rest in two weeks was impliedly repealed by § 8-a of the Labor Law, added by L. 1913, ch. 740 (ruling of Attorney-General, October 6, 1913).

§ 240. **Revocation of license; misdemeanors; violations and penalties.**—

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The wilful and repeated violation of any of the provisions of this article or the rules is sufficient cause for the revocation of a license or certificate. The license or certificate revoked shall on formal notice be delivered immediately to the board.

Misdemeanors. It is a misdemeanor for

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9. Any proprietor of a pharmacy or drug store to require more than seventy working hours a week in other arrangement than that permitted by section two hundred and thirty-six; and for any proprietor of a pharmacy or drug store to violate the provisions of the same section in regard to sleeping apartments. [*As am'd by L.* 1910, *ch.* 422 *and L.* 1911, *ch.* 630.]

PUBLIC HOLIDAYS.

GENERAL CONSTRUCTION LAW, CHAPTER 22 OF THE CONSOLIDATED LAWS.

§ 24. **Holidays; half-holiday.**—The term holiday includes the following days in each year: The first day of January, known as New Year's day; the twelfth day of February, known as Lincoln's birthday; the twenty-second day of February, known as Washington's birthday; the thirtieth day of May, known as Memorial day; the fourth day of July, known as Independence day; the first Monday of September, known as Labor day; the twelfth day of October, known as Columbus day, and the twenty-fifth day of December, known as Christmas day, and if either of such days is Sunday, the next day thereafter; each general election day and each day appointed by the president of the United States or by the governor of this state as a day of general thanksgiving, general fasting and prayer, or other general religious observances. The term half-holiday includes the period from noon to midnight of each Saturday which is not a holiday. [*As am'd by L.* 1909, *ch.* 112.]

* Most of the legal restrictions upon the hours of labor are to be found in the Labor Law (articles 1, 6, 8 and 12, *ante*). See also under Public Works, *post.*

SUNDAY LABOR.*

ARTICLE 192 OF PENAL LAW, CHAPTER 40 OF THE CONSOLIDATED LAWS.

§ 2143. **Labor prohibited on Sunday.**—All labor on Sunday is prohibited, excepting the works of necessity and charity. In works of necessity or charity is included whatever is needful during the day for the good order, health or comfort of the community.

§ 2144. **Persons observing another day as a Sabbath.**— It is a sufficient defense to a prosecution for work or labor on the first day of the week that the defendant uniformly keeps another day of the week as holy time, and does not labor on that day, and that the labor complained of was done in such manner as not to interrupt or disturb other persons in observing the first day of the week as holy time.

§ 2146. **Trades, manufactures, and mechanical employments prohibited on Sunday.**—All trades, manufactures, agricultural or mechanical employments upon the first day of the week are prohibited, except that when the same are works of necessity they may be performed on that day in their usual and orderly manner, so as not to interfere with the repose and religious liberty of the community.

§ 2147. **Public traffic on Sunday.**— All manner of public selling or offering for sale of any property upon Sunday is prohibited, except as follows:

1. Articles of food may be sold, served, supplied and delivered at any time before ten o'clock in the morning;

2. Meals may be sold to be eaten on the premises where sold at any time of the day;

3. Caterers may serve meals to their patrons at any time of the day;

4. Prepared tobacco, milk, eggs, ice, soda-water, fruit, flowers, confectionery, newspapers, drugs, medicines and surgical instruments, may be sold in places other than a room where spirituous or malt liquors or wines are kept or offered for sale and may be delivered at any time of the day:

5. Delicatessen dealers may sell, supply, serve and deliver cooked and prepared foods, between the hours of four o'clock in the afternoon and half past seven o'clock in the evening, in addition to the time provided for in subdivision one hereof.

The provisions of this section, however, shall not be construed to allow or permit the public sale or exposing for sale or delivery of uncooked flesh foods, or meats, fresh or salt, at any hour or time of the day. Delicatessen dealers shall not be considered as caterers within subdivision three hereof. [*As am'd by L.* 1913, *ch.* 346.]

The prohibition of the sale of uncooked meat at any hour on Sunday is constitutional: People *ex rel.* Woodin v. Hagan, 36 Misc. 349.

§ 2153. **Barbering on Sunday.**—Any person who carries on or engages in the business of shaving, hair cutting or other work of a barber on the first day of the week, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not more than five dollars; and upon a second conviction for a like offense shall be fined not less than ten dollars and not more than twenty-five dollars, or be imprisoned in the county jail for a period of not less than ten days, nor more than twenty-five days, or be punishable by both such fine and such imprisonment at the discretion of the court

* Compare the "one day of rest in seven" law in § 8-a of the Labor Law, *ante.*

or magistrate; provided, that in the village of Saratoga Springs, from the fifteenth day of June to the fifteenth day of September, inclusive, and in the city of New York throughout the year, barber shops or other places where a barber is engaged in shaving, hair cutting or other work of a barber, may be kept open, and the work of a barber may be performed therein until one o'clock of the afternoon of the first day of the week.

Held to be constitutional: People v. Haynor, 149 N. Y. 195 (1896).

VACATIONS OF PUBLIC EMPLOYEES.

ARTICLE 4 OF THE PUBLIC OFFICERS LAW, CHAPTER 47 OF THE CONSOLIDATED LAWS.

§ 71. **Vacations for employees of the state and the several civil subdivisions thereof.**— The executive officers of every public department, bureau, commission, or board of the state and of each county, city or other civil division thereof are authorized and empowered to grant to every employee under their supervision, who shall have been in such employ for at least one year, a vacation of not less than two weeks in each year, and for such further period of time as in the opinion and judgment of the executive officers, the duties, position, length of service and other circumstances may warrant, at such time as the executive officers may fix and during such vacation the said employee shall be allowed the same compensation as if actually employed. [*Added by L.* 1910, *ch.* 680.]

TITLE 3 OF CHAPTER 23 OF THE GREATER NEW YORK CHARTER.

§ 1567. The executive heads of the various departments are authorized and empowered to grant to every employee of the city of New York, or of any department or bureau thereof, and of the department of education, a vacation of not less than two weeks in each year and for such further period of time as the duties, length of service and other qualifications of an employee may warrant, at such time as the executive head of the department or any officer having supervision over said employee may fix, and for such time they shall be allowed the same compensation as if actually employed, except that no such vacation shall be granted to per diem employees for longer than two weeks and only during the months of June, July, August and September. [*Added by L.* 1909, *ch.* 559 *and am'd by L.* 1910, *ch.* 679, *and by L.* 1913, *ch.* 121.]

The granting of vacations under this section is permissive, not mandatory: People *ex rel.* Denery v. Drummond, in Supreme Court in New York City, Aug., 1910.

DUTIES AND LIABILITIES OF EMPLOYERS AND EMPLOYEES.

LIABILITY OF RAILWAY COMPANIES.*

RAILROAD LAW, CHAPTER 49 OF THE CONSOLIDATED LAWS.

§ 64. Injuries to employees.— In all actions against a railroad corporation, foreign or domestic, doing business in this state, or against a receiver thereof, for personal injury to, or death resulting from personal injury of any person, while in the employment of such corporation, or receiver, arising from the negligence of such corporation or receiver or of any of its or his officers or employees, every employee, or his legal representatives, shall have the same rights and remedies for an injury, or for death, suffered by him, from the act or omission of such corporation or receiver or of its or his officers or employees, as are now allowed by law, and, in addition to the liability now existing by law, it shall be held in such actions that persons engaged in the service of any railroad corporation, foreign or domestic, doing business in this state, or in the service of a receiver thereof, who are intrusted by such corporation or receiver, with the authority of superintendence, control or command of other persons in the employment of such corporation or receiver, or with the authority to direct or control any other employee in the performance of the duty of such employee, or who have, as a part of their duty, for the time being, physical control or direction of the movement of a signal, switch, locomotive engine, car, train or telegraph office, are vice-principals of such corporation or receiver, and are not fellow-servants of such injured or deceased employee. If an employee, engaged in the service of any such railroad corporation, or of a receiver thereof, shall receive any injury by reason of any defect in the condition of the ways, works, machinery, plant, tools or implements, or of any car, train, locomotive or attachment thereto belonging, owned or operated, or being run and operated by such corporation or receiver, when such defect could have been discovered by such corporation or receiver, by reasonable and proper care, tests or inspection, such corporation or receiver shall be deemed to have had knowledge of such defect before and at the time such injury is sustained; and when the fact of such defect shall be proved upon the trial of any action in the courts of this state, brought by such employee or his legal representatives, against any such railroad corporation or receiver, on account of such injuries so received, the same shall be prima facie evidence of negligence on the part of such corporation or receiver. This section shall not affect actions or causes of action existing on May twenty-ninth, nineteen hundred and six; and no contract, receipt, rule or regulation between an employee and a railroad corporation or receiver, shall exempt or limit the liability of such corporation or receiver from the provisions of this section.

This section applies to street surface railroads: Kent v. Jamestown Street Ry. Co., 205 N. Y. 361.

DAMAGES FOR INJURIES CAUSING DEATH.

ARTICLE I OF THE CONSTITUTION.

Section 18. The right of action now existing to recover damages for injuries resulting in death, shall never be abrogated; and the amount recoverable shall not be subject to any statutory limitation.

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* For the General Employers' Liability Law, see Article 14 of the Labor Law, *ante*.

CODE OF CIVIL PROCEDURE.

§ 1902. The executor or administrator of a decedent, who has left, him or her surviving, a husband, wife, or next of kin, may maintain an action to recover damages for a wrongful act, neglect, or default, by which the decedent's death was caused, against a natural person who, or a corporation which, would have been liable to an action in favor of the decedent, by reason thereof, if death had not ensued. Such an action must be commenced within two years after the decedent's death.

CRIMINAL LIABILITY FOR NEGLIGENCE.

PENAL LAW, CHAPTER 40 OF THE CONSOLIDATED LAWS, § 1052 (PART).

Negligent use of machinery.—A person who, by any act of negligence or misconduct in a business or employment in which he is engaged, or in the use or management of any machinery, animals, or property of any kind, intrusted to his care, or under his control, or by any unlawful, negligent or reckless act, not specified by or coming within the foregoing provisions of this article, or the provisions of some other statute, occasions the death of a human being, is guilty of manslaughter in the second degree.

Persons in charge of steamboats.— A person having charge of a steamboat used for the conveyance of passengers, or of a boiler or engine thereof, who, from ignorance, recklessness, or gross neglect, or for the purpose of excelling any other boat in speed, creates, or allows to be created, such an undue quantity of steam as to burst the boiler, or other apparatus in which it is generated or contained, or to break any apparatus or machinery connected therewith, whereby the death of a human being is occasioned, is guilty of manslaughter in the second degree.

Persons in charge of steam engines.— An engineer or other person, having charge of a steam boiler, steam engine, or other apparatus for generating or applying steam, employed in a boat or railway, or in a manufactory, or in any mechanical works, who wilfully, or from ignorance or gross neglect, creates or allows to be created, such an undue quantity of steam as to burst the boiler, engine, or apparatus, or to cause any other accident, whereby the death of a human being is produced, is guilty of manslaughter in the second degree.

§ 1893. Mismanagement of steam boilers.—An engineer or other person having charge of a steam boiler, steam engine, or other apparatus for generating or employing steam, employed in a railway, manufactory, or other mechanical works, who, wilfully or from ignorance or gross neglect, creates or allows to be created such an undue quantity of steam as to burst the boiler, engine or apparatus, or cause any other accident whereby human life is endangered, is guilty of a misdemeanor.

See also §§ 1891, 1892.

EMPLOYEES NOT TO DISPOSE OF MATERIAL FURNISHED.

PENAL LAW, CHAPTER 40 OF THE CONSOLIDATED LAWS.

§ 1310. Conversion of materials furnished to a person for purpose of being manufactured.— Any person who shall wilfully pawn, pledge, sell or convert to his or her own use any material furnished to him or her for the purpose of being manufactured, if the same be of the value of more than

twenty-five dollars, shall, upon conviction thereof, be adjudged guilty of grand larceny, and imprisoned in a state prison for a term not exceeding five years, but if the same be of the value of twenty-five dollars or under, he or she shall, upon conviction, be adjudged guilty of petit larceny, and be punished by imprisonment in a county jail not exceeding six months, or by fine not exceeding one hundred dollars, or by both such fine and imprisonment.

Nothing in this section contained shall be deemed or held to discharge any mechanic's lien, or right of lien in favor of any employee as now recognized by law.

CORRUPT INFLUENCING OF AGENTS, EMPLOYEES OR SERVANTS.

PENAL LAW, CHAPTER 40 OF THE CONSOLIDATED LAWS.

§ 439. **Corrupt influencing of agents, employees or servants.**— Whoever gives, offers or promises to an agent, employee or servant, any gift or gratuity whatever, without the knowledge and consent of the principal, employer or master of such agent, employee or servant, with intent to influence his action in relation to his principal's, employer's or master's business; or an agent, employee or servant who without the knowledge and consent of his principal, employer or master, requests or accepts a gift or gratuity or a promise to make a gift or to do an act beneficial to himself, under an agreement or with an understanding that he shall act in any particular manner to his principal's, employer's or master's business; or an agent, employee or servant, who, being authorized to procure materials, supplies or other articles either by purchase or contract for his principal, employer or master, or to employ service or labor for his principal, employer or master, receives directly or indirectly, for himself or for another, a commission, discount or bonus from the person who makes such sale or contract, or furnishes such materials, supplies or other articles, or from a person who renders such service or labor; and any person who gives or offers such an agent, employee or servant such commission, discount or bonus shall be guilty of a misdemeanor and shall be punished by a fine of not less than ten dollars nor more than five hundred dollars, or by such fine and by imprisonment for not more than one year.

Cf. "Bribery of labor representatives," under TRADE UNIONS, *post*.

POLITICAL AND LEGAL RIGHTS AND PRIVILEGES OF WORKINGMEN.

ALLOWING TIME FOR EMPLOYEES TO VOTE WITHOUT LOSS OF PAY.

ELECTION LAW, CHAPTER 17 OF THE CONSOLIDATED LAWS.

§ 365. Time allowed employees to vote.—Any person entitled to vote at a general election held within this state, shall on the day of such election be entitled to absent himself from any service or employment in which he is then engaged or employed, for a period of two hours, while the polls of such election are open. If such voter shall notify his employer before the day of such election of such intended absence, and if thereupon two successive hours for such absence shall be designated by the employer, and such absence shall be during such designated hours, or if the employer upon the day of such notice makes no designation, and such absence shall be during any two consecutive hours while such polls are open, no deduction shall be made from the usual salary or wages of such voter, and no other penalty shall be imposed upon him by his employer by reason of such absence. This section shall be deemed to include all employees of municipalities.

PENAL LAW, CHAPTER 40 OF THE CONSOLIDATED LAWS.

§ 759. Refusal to permit employees to attend election.—A person or corporation who refuses to an employee entitled to vote at an election or town meeting, the privilege of attending thereat, as provided by the election law, or subjects such employee to a penalty or reduction of wages because of the exercise of such privilege, is guilty of a misdemeanor.

TO PREVENT EMPLOYERS FROM COERCING EMPLOYEES IN THEIR EXERCISE OF THE SUFFRAGE.

PENAL LAW, CHAPTER 40 OF THE CONSOLIDATED LAWS.

§ 772. Duress and intimidation of voters.—Any person or corporation who directly or indirectly:

1. Uses or threatens to use any force, violence or restraint, or inflicts or threatens to inflict any injury, damage, harm or loss, or in any other manner practices intimidation upon or against any person in order to induce or compel such person to vote or refrain from voting at any election or to vote or refrain from voting for or against any particular person or for or against any proposition submitted to voters at such election, or to place or cause to be placed or refrain from placing or causing to be placed his name upon a registry of voters, or on account of such person having voted or refrained from voting at such election, or having voted or refrained from voting for or against any particular person or persons, or for or against any proposition submitted to voters at such election, or having registered or refrained from registering as a voter; or,

2. By abduction, duress or any forcible or fraudulent device or contrivance whatever impedes, prevents or otherwise interferes with the free exercise of the elective franchise by any voter, or compels, induces or prevails upon any voter to give or refrain from giving his vote for or against any particular person at any election; or,

3. Being an employer pays his employees the salary or wages due in "pay envelopes," upon which there is written or printed any political motto, device or argument containing threats, express or implied, intended or calculated to influence the political opinions or actions of such employees, or within ninety days of a general election puts or otherwise exhibits in the establishment or place where his employees are engaged in labor, any handbill or placard containing any threat, notice or information, that if any particular ticket or candidate is elected or defeated, work in his place or establishment will cease, in whole or in part, his establishment be closed up, or the wages of his employees reduced, or other threats, express or implied, intended or calculated to influence the political opinions or actions of his employees,

Is guilty of a misdemeanor, and if a corporation shall in addition forfeit its charter.

EXEMPTION OF MECHANICS' TOOLS FROM ATTACHMENT.

CODE OF CIVIL PROCEDURE (CHAPTER 13, TITLE 2, ARTICLE I).

§ 1390. The following personal property, when owned by a householder is exempt from levy and sale by virtue of an execution, and each movable article thereof continues to be so exempt, while the family, or any of them, are removing from one residence to another:

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6. The tools and implements of a mechanic, necessary to the carrying on of his trade, not exceeding in value twenty-five dollars.

§ 1391. In addition to the exemptions, allowed by the last section, necessary household furniture, working tools and team, professional instruments, furniture and library, not exceeding in value two hundred and fifty dollars, together with the necessary food for the team, for ninety days, are exempt from levy and sale by virtue of an execution, when owned by a person, being a householder, or having a family for which he provides, except where the execution is issued upon a judgment, recovered wholly upon one or more demands, either for work performed in the family as a domestic or for the purchase money of one or more articles, exempt as prescribed in this or the last section. Where a judgment has been recovered and where an execution issued upon said judgment has been returned wholly or partly unsatisfied, and where any wages, debts, earnings, salary, income from trust funds or profits are due and owing to the judgment debtor or shall thereafter become due and owing to him, to the amount of twelve dollars or more per week, the judgment creditor may apply to the court in which said judgment was recovered or the court having jurisdiction of the same without notice to the judgment debtor and upon satisfactory proof of such facts by affidavits or otherwise, the court, if a court not of record, a judge or justice thereof, must issue, or if a court of record, a judge or justice must grant an order directing that an execution issue against the wages, debts, earnings, salary, income from trust funds or profits of said judgment debtor, and on presentation of such execution by the officer to whom delivered for collection to the person or persons from whom such wages, debts, earnings, salary, income from trust funds or profits are due and owing, or may thereafter become due and owing to the judgment debtor, said execution shall become a lien and a continuing levy upon the wages, earnings, debts, salary, income from trust

funds or profits due or to become due to said judgment debtor to the amount specified therein which shall not exceed ten per centum thereof, and said levy shall be a continuing levy until said execution and the expenses thereof are fully satisfied and paid or until modified as hereinafter provided, but only one execution against the wages, debts, earnings, salary, income from trust funds or profits of said judgment debtor shall be satisfied at one time and where more than one execution has been issued or shall be issued pursuant to the provisions of this section against the same judgment debtor, they shall be satisfied in the order of priority in which such executions are presented to the person or persons from whom such wages, debts, earnings, salary, income from trust funds or profits are due and owing. It shall be the duty of any person or corporation, municipal or otherwise, to whom said execution shall be presented, and who shall at such time be indebted to the judgment debtor named in such execution, or who shall become indebted to such judgment debtor in the future, and while said execution shall remain a lien upon said indebtedness to pay over to the officer presenting the same, such amount of such indebtedness as such execution shall prescribe until said execution shall be wholly satisfied and such payment shall be a bar to any action therefor by any such judgment debtor. If such person or corporation, municipal or otherwise, to whom said execution shall be presented shall fail, or refuse to pay over to said officer presenting said execution, the percentage of said indebtedness, he shall be liable to an action therefor by the judgment creditor named in such execution, and the amount so recovered by such judgment creditor shall be applied towards the payment of said execution. Either party may apply at any time to the court from which such execution shall issue, or to any judge or justice issuing the same, or to the county judge of the county, and in any county where there is no county judge, to any justice of the city court upon such notice to the other party as such court, judge, or justice shall direct for a modification of said execution, and upon such hearing the said court, judge or justice may make such modification of said execution as shall be deemed just, and such execution as so modified shall continue in full force and effect until fully paid and satisfied, or until further modified as herein provided. This section, so far as it relates to wages and salary, due and owing or to become due and owing to the judgment debtor, shall not apply to judgments recovered more than ten years prior to September first, nineteen hundred and eight, and any execution heretofore issued upon such judgments pursuant to an order heretofore granted under this section shall, when this act takes effect, cease to be a lien and continuing levy upon wages and salary thereafter to become due and owing to the judgment debtor. [*As am'd by L.* 1911, *chs.* 489 *and* 532.]

The above section exempts from attachment wages of less than $12 per week. Section 1879 of the Code of Civil Procedure also exempts from execution on judgment creditor's action "the earnings of the judgment debtor for his personal services, rendered within sixty days next before the commencement of the action, where it is made to appear, by his oath, or otherwise that those earnings are necessary for the use of a family, wholly or partly supported by his labor."

This section applies to state employees: See section 2-a of the State Finance Law (which provides also for semi-monthly pay for such employees and which was added in 1910) given under PUBLIC WORK AND PUBLIC CONTRACTS, *post.* Prior to the addition of this section to the Finance Law, the garnishee law had been held not to apply to state employees: Osterhoudt v. Stade, 133 App. Div. 83.

TAKING SECURITY FOR USURIOUS LOANS.

PENAL LAW, CHAPTER 40 OF THE CONSOLIDATED LAWS.

§ 2400. Taking security upon certain property for usurious loans.—A person who takes security, upon any household furniture, sewing machines, plate or silverware in actual use, tools or implements of trade, wearing apparel or jewelry, for a loan or forbearance of money, or for the use or sale of his personal credit, conditioned upon the payment of a greater rate than six per centum per annum or, who as security for such loan, use or sale of personal credit as aforesaid, makes a pretended purchase of such property from any person, upon the like condition, and permits the pledger to retain the possession thereof is guilty of a misdemeanor.

ASSIGNMENT OF WAGES.

[There are two statutes dealing with assignment of wages for loans. One is section 42 of the Personal Property Law which is of general application to all such loans. The other is article 5-A of the General Business Law which provides for the licensing and state supervision of small loan brokers. Both are reproduced below. The first mentioned is not restricted in its application, while the second is limited by section 59-j. As will be seen by comparison, the regulations as to assignment of wages differ materially in the two laws.]

PERSONAL PROPERTY LAW, CHAPTER 41 OF THE CONSOLIDATED LAWS.

§ 42. Regulating loans of money on salaries.—1. Any person or persons, firm, corporation or company, who shall after the passage of this act, make to any employee an advance of money, or loan, on account of salary or wages due or to be earned in the future by such individual, upon an assignment or note covering such loans or advances, shall not acquire any right to collect or attach the same while in the possession or control of the employer, unless such note or assignment is dated on the same day on which such loan is actually made, and unless within a period of three days after such loan and assignment or note are actually made the party making such loan or loans and taking such assignment or notes shall have filed with the employer or employers of the individual or individuals so assigning his present or prospective salary or wages, a duly authenticated copy of such agreement or assignment or notes under which the claim is made. The day of making a loan or advance within the meaning of this act shall be deemed to be the day when the money is delivered to the borrower, and the subsequent execution of an instrument by virtue of a power of attorney shall not be deemed to affect the time of the actual making of such loan or advance.

2. No action shall be maintained in any of the courts of this state, brought by the holder of any such contract, assignment or notes, given by an employee for moneys loaned on account of salary or wages, in which it is sought to charge in any manner the employer or employers, unless a copy of such agreement, assignment or notes, together with a notice of lien, was duly filed with the employer or employers of the person making such agreement, assignment or notes, by the person or persons, corporation or company making said loan within three days after the said loan was actually made and the said agreement, assignment or notes were given as provided in the previous section.

3. Every person, firm or corporation engaged in or seeking to engage in the business of loaning money upon security of an assignment of salary

or wages either earned or to be earned shall, on or before the first day of July next ensuing the passage of this act, file with the clerk of the county in which said person, firm or corporation has its place of business or transacts business a statement under oath containing the name and residence of the individual; or in case of a firm, the names and residences of the partners; or in the case of a corporation, the names and residences of the officers and directors, managers or trustees of such corporation; and the place or places where said business is transacted by such an individual, firm or corporation. After July the first next ensuing the passage of this act it shall be unlawful to engage in the business of loaning money in the manner set forth in this act without, prior to engaging in such business, filing a statement as provided in this act.

4. The several county clerks of this state shall keep an alphabetical index of all persons, firms or corporations filing certificates provided for herein, and for the indexing and filing of such certificates, they shall receive a fee of twenty-five cents. A copy of such certificate, duly certified to by the county clerk in whose office the same was filed, shall be presumptive evidence in all courts of law in this state of the facts therein contained.

5. After the passage of this act, no persons shall directly or indirectly receive or accept for the use and sale of his personal credit or for making any advance or loan of money, either wholly or partly in anticipation of salary or wages due or to be earned, a greater sum than at the rate of eighteen per centum per annum on the amount of such loan or advance, either as a bonus, interest or otherwise, or under the guise of a charge for investigating the status of a person applying for such loan or advance, drawing of papers or other service in connection with such loan or advance, except such charges as are now permitted by section three hundred and eighty of chapter twenty-five of the laws of nineteen hundred and nine, known as the "general business law."

6. Every person, firm, corporation, director, agent, officer or member thereof who shall violate any provision of this act, directly or indirectly, or assent to such violation, shall be guilty of a misdemeanor. [*As am'd by L.* 1911, *ch.* 626.]

See also § 13 of the Labor Law, *ante.*

GENERAL BUSINESS LAW, CHAPTER 20 OF CONSOLIDATED LAWS.

ARTICLE 5-A.

[*Added by L.* 1913, *ch.* 579.]

Supervisor of Small Loans; Business of Small Loan Brokers Regulated.

Section 59-g. Regulations respecting collection of loans.
59-h. Penalties.
59-i. False statements by borrower.
59-j. Application of article.
59-k. Limitation of usury law.

§ 55. **Supervisor of small loans.**— The office of supervisor of small loans is hereby established. The supervisor of small loans shall be appointed by the governor by and with the advice and consent of the senate. His term of office shall be three years. His salary shall be five thousand dollars. He may appoint and at pleasure remove a deputy, at an annual salary of three thousand dollars, and such clerical and other assistants as may be needed, within the amount of the appropriation therefor. His office shall be deemed a bureau in the office of the state comptroller, and the state comptroller shall assign to him office space in the state comptroller's offices at Albany and New York for the conduct of the business of his office.

§ 56. **License.**— Every person, firm or corporation engaged in or seeking to engage in the business of loaning money in sums of two hundred dollars or less amounts on chattel mortgage, on assignment of salary or wages, either earned or to be earned, or promissory note or confession of judgment, shall procure a license to conduct such business from the supervisor of small loans. Such license shall be issued only upon written application therefor, stating

1. The name and residence of the individual, or in case of a firm, the name and residence of each of the partners, or in case of a corporation, the names and residences of each officer and director of such corporation.

2. If the applicant be a corporation, the date and place of its incorporation, and the office or offices in which its certificate of incorporation is filed,

3. The city, town or village in which it is proposed to transact the business and the location by street and number of the office or place of business in which the business is to be conducted.

§ 57. **Bonds.**— A license shall not be issued under this article, unless the applicant shall file with the state comptroller a bond in the sum of three thousand dollars, if the applicant desires to engage in business in a city of the first or second class, and if elsewhere, in the sum of one thousand dollars, executed by the applicant and by a surety company approved by the supervisor of small loans, conditioned for the faithful and honest conduct of such business by the applicant, compliance with all the provisions of law relating thereto, and the prompt payment of any judgment recovered against him for which he may be liable under the provisions of this article.

§ 58. **Issue of license.**— Upon the receipt of such application and the filing of such bond and the payment of the license fee as hereinafter provided, the supervisor of small loans shall issue a license for the transaction of such business by the applicant. If the applicant be a nonresident, or a partnership, at least one of the members of which does not reside within the state, or a foreign corporation, such license shall only be issued upon the filing by the applicant with the supervisor of small loans of the designation of a resident agent for the transaction of business within the state. The action of the supervisor of small loans in refusing to grant or renew such a license shall be reviewable by certiorari. After sixty days from the date this article takes effect, no person, firm or corporation shall conduct in this state the

business of loaning money in sums of two hundred dollars or less on chattel mortgage, or assignment of salary or wages, either earned or to be earned, on promissory notes, or on confessions of judgment, unless such license shall have been procured and be displayed conspicuously in the place of business of such individual firm or corporation.

§ 5.* **License fee; issuance of license.** Upon making application for such license, the applicant shall pay to the state comptroller a license fee of one hundred dollars, which shall be paid into the state treasury. Upon the filing of such application and the payment of such fee, the supervisor of small loans shall issue to the applicant a license stating fully the name or names of the persons or corporation, and of every member of the firm or association authorized to do business thereunder, the location of the office of the corporation or place of business in which the business is to be conducted, and if the licensee be a corporation, the date and place of incorporation, the name of the president or other managing officer, and the name of its directors. Every license shall expire on the first day of May succeeding the date of issue thereof, and no reduction of fee shall be made for a license issued for less than a year.

§ 59-a. **Manner and place of transacting business.**— No person, firm, corporation or association so licensed shall transact or solicit business under any other name or at any other office or place of business than that named in the license. Not more than one office or place of business shall be maintained under the same license, and no loan or advance shall be made at any other place than that designated in the license. If it be desired to remove the office or the place of business to another place in the same county and in the same city, town or village, the supervisor of small loans shall, on application, indorse on the license a transfer to the new office or place of business, with the date of such transfer, and from the time of such indorsement the name and place so designated shall be deemed the place named and designated in the license. No additional fee shall be exacted for such indorsement.

§ 59-b. **General powers and duties of supervisor respecting licenses.**— The supervisor of small loans shall

1. Have power to investigate all complaints made against every person, firm or corporation licensed pursuant to this article, for the purpose of ascertaining whether the laws of the state in respect to the transaction of such business or regulating the interest chargeable by such licenses are being complied with;

2. Have power to take proof and testimony in relation to any matter subject to investigation by him;

3. Notify the proper prosecuting officer of violations of this article that come to his attention, and act as complainant in the prosecution thereof;

4. Report annually, on or before January fifteenth, to the state comptroller, in relation to the conduct of his office during the preceding calendar year, stating particularly every investigation made by him and every violation of the laws of the state that shall have come to his attention, and recommending such legislation as he deems advisable in respect to the business of persons, firms and corporations subject to investigation by him.

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* So in original. Should be § 59.

§ 59-c. **Loans.**— A person, firm or corporation, licensed under this article, shall not make a single loan in excess of the amount of two hundred dollars, or more than one loan to any individual, firm or corporation, unless all prior loans made to such individual, firm or corporation shall have been paid in full. At the time a loan is actually made, the person, firm or corporation making the same shall deliver to the borrower a duplicate copy of every assignment, promissory note, chattel mortgage, confession of judgment, power of attorney or other paper or document signed by the borrower, relating to such loan. If this be done an assignment of salary or wages need not be filed with the employer or employers by whom such salary or wages is to be paid. Upon the repayment of a loan in full, every paper signed by the borrower shall be returned to the borrower, destroyed in his presence, or his signature torn from each of such papers and returned to him. No assignment of salary or wages or order for the payment thereof shall be valid for a period exceeding one year from the making of such assignment, and not exceeding ten per centum of a borrower's monthly salary or wages shall be collectible under such an assignment or order, if the amount of the loan be not paid in accordance with the terms thereof.

§ 59-d. **Interest on loans; investigation fees.**— No person, firm or corporation licensed under this article shall, directly or indirectly, charge or receive for the use and sale of his personal credit or for making any advance or loan of money either wholly or partly in anticipation of salary or wages due or to be earned whether secured by a bill of sale or assignment of salary or wages, power of attorney, promissory note, confession of judgment or bona fide chattel mortgage, a greater sum than at the rate of three per centum per month if the amount of the loan be fifty dollars or less; two and one-half per centum per month if the amount of the loan be over fifty dollars and not more than one hundred dollars; two per centum per month if the amount of the loan be over one hundred and not more than two hundred dollars; but such firm, person or corporation may charge a fee for investigating the status of an applicant for such loan or advance to establish his credit or for the examination of valuation of property, the examination of title, drawing, registration and recording papers, acknowledgments, affidavits, insurance or any other expense of any kind connected with such loan, not exceeding one dollar if the loan or advance be twenty-five dollars or less, not exceeding one dollar and fifty cents if the loan or advance be over twenty-five dollars and not to exceed one hundred dollars, not to exceed two dollars and fifty cents if the loan or advance be over one hundred dollars and not to exceed two hundred dollars. If after investigation an application for loan be rejected, one-half of the investigation fee shall be returned to the applicant, upon demand.

§ 59-e. **Regulations respecting the making of loans.**— Interest or charges must not be deducted when a loan is made. It shall not be lawful in any manner or under any pretense whatever to divide or split up a loan, either directly or indirectly, for the purpose of exacting or receiving any charge, cost or expense of any kind in addition to or in excess of that authorized by this article.

§ 59-f. **Actions, where brought.**— An action brought to enforce a contract, assignment or a note, given by a borrower for money loaned by licensee under

this article shall be brought within the county wherein the loan was made and the money was actually received by the borrower, and any confession of judgment taken as security may be filed only in the county wherein it is certified.

§ 59-g. **Regulations respecting collection of loans.**— Any person or persons, firm, corporation or association, who shall, after this article takes effect, make to any employee an advance of money, or loan, on account of salary or wages due or to be earned in the future by such individual upon an assignment or sale of salary, promissory note or other written instrument covering such loan or advance, shall not acquire any right to collect or attach the same while in the possession or control of the employer unless such assignment or sale of salary, promissory note or other written instrument be dated on the same day on which such loan is actually made and such person or persons, firm, corporation or association is licensed under this article.

§ 59-h. **Penalties.**— Any violation of this article shall be a misdemeanor punishable by a fine not to exceed one hundred dollars and any loan or loans made in connection with such violation shall be void and unenforceable. If a licensee be convicted of a second offense his license shall be deemed revoked from the date of such conviction, and any loan or loans made in connection with such second violation shall be void and unenforceable and another license shall not be issued to the same person, firm or corporation within one year. The discounting or indorsing of notes by a person, firm or corporation, not exempt from the provisions of this article, engaged in such business without a license, or receiving or exacting a greater interest, charge, fee or remuneration than six per centum on loans of less than two hundred dollars shall be deemed an evasion of the provisions of this article and constitute a misdemeanor, punishable by a fine of not more than one hundred dollars, and any such loan or loans made in connection therewith shall be void and unenforceable. A loan or advance upon security of an assignment of salary or wages either earned or to be earned, or made on chattels, promissory note, bill of sale or confession of judgment after the sixtieth day from the date when this article takes effect by any person, firm or corporation, engaged in the business of loaning money in sums less than two hundred dollars, at a rate exceeding the legal rate of six per centum per annum shall be null and void, unless such person, firm or corporation shall have procured a license as required by this article; and such unlicensed money lender shall forfeit both the principal and the interest on such loan or advance.

§ 59-i. **False statements by borrower.**— If an applicant for a loan or advance from a licensee under this article makes a false statement in writing to the licensee in reference to the amount of salary or wages received by him or in reference to his title to personal property mortgaged to secure such loan or advance, he shall be guilty of a misdemeanor, punishable by a fine of not more than one hundred dollars, or six months' imprisonment or both.

§ 59-j. **Application of article.**— This article shall not apply to licensed pawnbrokers, nor to personal loan associations authorized to transact business under article ten of the banking law, nor to individual or private bankers, or corporations incorporated under or subject to the banking law, nor to any transactions with such bankers or corporations, nor to loans made by

manufacturers or merchants to their customers and secured by chattel mortgages or conditional sale agreement.

§ 59-k. **Limitation of usury law.**— The provisions of any other statute limiting the amount chargeable for the loan or forbearance of money or loan of credit, or prescribing the punishment for exacting, demanding or receiving usurious interest shall not apply to any person, firm or corporation licensed under this article.

ORDINARY EXEMPTIONS NOT VALID AGAINST WAGE DEBTS.

LAWS OF 1902, CHAPTER 580.

AN ACT in relation to the municipal court of the city of New York, its officers and marshals.

§ 274. **Judgment in favor of wage earners.**— In an action, brought in the municipal court, by a journeyman, laborer, or other employee whose employment answered to the general description of wage earner, for services rendered or wages earned in such capacity, if the plaintiff recovers a judgment for a sum not exceeding fifty dollars, exclusive of costs, and the action shall have been brought within two months after the cause of action accrued, no property of the defendant is exempt from levy and sale by virtue of an execution against property, issued thereupon; and, if such an execution is returned wholly or partly unsatisfied, the clerk must, upon the application of the plaintiff, issue an execution against the person of the defendant for the sum remaining uncollected, if the indorsement required by this act to the effect that defendant was liable to arrest was complied with. A defendant arrested by virtue of an execution so issued against his person, must be actually confined in the jail, and is not entitled to the liberties thereof; but he must be discharged after having been so confined for fifteen days. After his discharge another execution against his person cannot be issued upon the judgment, but the judgment creditor may enforce the judgment against property as if the execution, from which the judgment debtor is discharged, has been returned, without his being taken. [*As am'd by L.* 1907, *ch.* 425.]

MAKING EMPLOYEES PREFERRED CREDITORS.

DEBTOR AND CREDITOR LAW, CHAPTER 12 OF THE CONSOLIDATED LAWS.

§ 27. **Wages preferred claims.**— In all distribution of assets under all assignments made in pursuance of this article, the wages or salaries actually owing to the employees of the assignor or assignors at the time of the execution of the assignment for services rendered within one year prior to the execution of the assignment, shall be preferred before any other debt; and should the assets of the assignor or assignors not be sufficient to pay in full all the claims preferred, pursuant to this section, they shall be applied to the payment of the same pro rata to the amount of each such claim.

Cf. § 9 of the Labor Law, "Payment of wages by receivers," *ante;* and the Lien Law, ch. 38 of the Consolidated Laws.

The statute is constitutional: 104 N. Y. 606.

LIABILITY OF STOCKHOLDERS FOR WAGE DEBTS.

STOCK CORPORATION LAW, CHAPTER 59 OF THE CONSOLIDATED LAWS.

§ 56. **Liabilities of stockholders.**— Every holder of capital stock not fully paid, in any stock corporation, shall be personally liable to its creditors, to

an amount equal to the amount unpaid on the stock held by him for debts of the corporation contracted while such stock was held by him. As to existing corporations the liability imposed by this section shall be in lieu of the liability imposed upon stockholders of any existing corporation, under any general or special law, excepting laws relating to moneyed corporations, and corporations and associations for banking purposes, on account of any indebtedness hereafter contracted or any stock hereafter issued; but nothing in this section contained shall create or increase any liability of stockholders of any existing corporation under any general or special law.

§ 57. **Liabilities of stockholders to laborers, servants or employees.**— The stockholders of every stock corporation shall jointly and severally be personally liable for all debts due and owing to any of its laborers, servants or employees other than contractors, for services performed by them for such corporation. Before such laborer, servant or employee shall charge such stockholder for such services, he shall give him notice in writing, within thirty days after the termination of such services, that he intends to hold him liable, and shall commence an action therefor within thirty days after the return of an execution unsatisfied against the corporation upon a judgment recovered against it for services.

§ 58. **Non-liability in certain cases.**— No person holding stock in any corporation as collateral security, or as executor, administrator, guardian or trustee, unless he shall have voluntarily invested the trust funds in such stock, shall be personally subject to liability as a stockholder; but the person pledging such stock shall be considered the holder thereof and shall be liable as stockholder, and the estates and funds in the hands of such executor, administrator, guardian or trustee shall be liable in the like manner and to the same extent as the testator or intestate, or the ward or person interested in such trust fund would have been, if he had been living and competent to act and held the same stock in his own name, unless it appears that such executor, administrator, guardian or trustee voluntarily invested the trust funds in such stocks, in which case he shall be personally liable as a stockholder.

LIABILITY OF RAILROAD CORPORATIONS TO EMPLOYEES OF CONTRACTORS FOR WAGE DEBTS.

RAILROAD LAW, CHAPTER 49 OF THE CONSOLIDATED LAWS.

§ 50. **Liability of corporation to employees of contractor.**—An action may be maintained against any railroad corporation by any laborer for the amount due him from any contractor for the construction of any part of its road, for ninety or any less number of days' labor performed by him in constructing such road, if within twenty days thereafter a written notice shall have been served upon the corporation, and the action shall have been commenced after the expiration of ten days and within six months after the service of such notice, which shall contain a statement of the month and particular days upon which the labor was performed and for which it was unpaid, the price per day, the amount due, the name of the contractor from whom due, and the section upon which performed, and shall be signed by the laborer or his attorney and verified by him to the effect that of his own knowledge the statements contained in it are true. The notice shall be

served by delivering the same to an engineer, agent or superintendent having charge of the section of the road, upon which the labor was performed, personally, or by leaving it at his office or usual place of business with some person of suitable age or discretion; and if the corporation has no such agent, engineer or superintendent, or in case he can not be found and has no place of business open, service may in like manner be made on any officer or director of the corporation.

See further Lien Law, § 6, "Liens for labor on railroad"; also § 145 of the Canal Law providing security for wages of laborers on canals, *post*.

Laborers employed by sub-contractors are protected by this act (42 Hun 53).

NO COURT FEES REQUIRED IN CERTAIN SUITS FOR WAGES.

LAWS OF 1902, CHAPTER 580.

AN ACT in relation to the municipal court of the city of New York, its officers and marshals.

§ 44. Where employee is party.— When an action is brought by an employee against an employer for services performed by such employee, male or female, the clerk of the said municipal court in the district in which the action is brought, shall issue a free summons when the plaintiff's demand is less than fifty dollars and the plaintiff is a resident of the city of New York, and proof by the plaintiff's own affidavit that he has a good and meritorious cause of action and of the nature of such action and of said plaintiff's residence, and whether previous application therefor has been made, shall be duly presented to and filed with the clerk of the municipal court where such action shall be brought and he shall not demand or receive any fee whatsoever from the plaintiff or his agents or attorneys in such action, unless the plaintiff shall demand a trial jury, in which case the plaintiff must pay to the clerk of the municipal court where such action shall be pending the sum of four dollars and fifty cents.

§ 340. Costs in action by working woman.— In an action brought to recover a sum of money for wages earned by a female employee, other than a domestic servant; or for material furnished by such an employee, in the course of her employment, or in or about the subject-matter thereof, or for both, the plaintiff, if entitled to costs, may, in the discretion of the court, be allowed the sum of ten dollars as costs, in addition to the costs allowed in this court, unless the amount of damages recovered is less than ten dollars; in which case, the plaintiff may, in the discretion of the court, be allowed the sum of five dollars as such additional costs. When the employee is the plaintiff in such an action, she is entitled upon a settlement thereof, to the full amount of costs, which she would have recovered, if judgment had been rendered in her favor, for the sum received by her upon the settlement. [*As am'd by L.* 1912, *ch.* 468.]

§ 348. **Employee's action; no fees.**— When the action is brought by an employee against an employer for services performed by such employee, male or female, the clerks of this court shall not demand or receive any fees whatsoever from the plaintiff or his agents or attorneys in such action, if the plaintiff shall present proof by his own affidavit that his demand is less than fifty dollars, that he is a resident of the city of New York, that he has a good and meritorious cause of action against the defendant, and the nature

thereof; that he has made either a written or a personal demand upon the defendant or his agent or representative, for payment thereof, and that payment was refused. Except that if the plaintiff shall demand a trial by jury, he must pay to the clerk the fees therefor prescribed in this act.

Sec. 274 of the Municipal Code provides for body executions against employers whose property is insufficient to satisfy judgments in wage suits. (See "Ordinary exemptions not valid against wage debts," *ante*.)

MARRIED WOMAN'S RIGHT OF ACTION FOR WAGES, ETC.

DOMESTIC RELATIONS LAW, CHAPTER 14 OF THE CONSOLIDATED LAWS.

§ 60. Married woman's right of action for wages.—A married woman shall have a cause of action in her own sole and separate right for all wages, salary, profits, compensation or other remuneration for which she may render work, labor or services, or which may be derived from any trade, business or occupation carried on by her, and her husband shall have no right of action therefor unless she or he with her knowledge and consent has otherwise expressly agreed with the person obligated to pay such wages, salary, profits, compensation or other remuneration. In any action or proceeding in which a married woman or her husband shall seek to recover wages, salary, profits, compensation or other remuneration for which such married woman has rendered work, labor or services or which was derived from any trade, business or occupation carried on by her or in which the loss of such wages, salary, profits, compensation or other remuneration shall be an item of damage claimed by a married woman or her husband, the presumption of law in all such cases shall be that such married woman is alone entitled thereto, unless the contrary expressly appears. This section shall not affect any right, cause of action or defense existing prior to May seventeenth, nineteen hundred and five.

PUBLIC WORK AND CONTRACTS.

[Besides sections 3 and 14 of the Labor Law, *ante*, there is on the statute books a large body of laws for the regulation of wages, hours, etc., of persons employed on public work. Of this legislation only a few examples can be reproduced in this compilation. In addition to the statutes respecting employees of state prisons and armories, the Insanity Law (ch. 27 of the Consolidated Laws) contains an extremely detailed schedule of wages and salaries (*cf.* Report of the Commissioner of Labor, 1904, p. 105). Of the numerous laws fixing the terms of employment of municipal employees, again, only one example is here printed — that of the street cleaners of New York City. Nearly every city charter contains provisions as to the hours of work, compensation, etc., of policemen, firemen, and other employees, while the larger cities have established, through action of the Legislature, retirement funds or service pensions. An example of the latter may be seen in the provision for street cleaners' pensions in New York City given below. Such privileges are deemed to counterbalance the loss of certain constitutional rights upon entrance in the public service; firemen, for example, having no right to become members of an association that has for its object the influencing of legislation (People *ex rel.* Clifford v. Scannell, 74 App. Div. 406). The validity of this legislation has never been successfully challenged, so far as it relates to direct employment by public authorities. Public work done by contract, however, has been distinguished by the courts from work done by the employees of public authorities, but the amendment of the Constitution of 1905 brought such work under the authority of legislative enactment.]

EMPOWERING THE LEGISLATURE TO REGULATE THE CONDITIONS OF EMPLOYMENT ON PUBLIC WORK.

CONSTITUTION OF THE STATE OF NEW YORK, ARTICLE XII.

Section 1. It shall be the duty of the Legislature to provide for the organization of cities and incorporated villages, and to restrict their power of taxation, assessment, borrowing money, contracting debts, and loaning their credit, so as to prevent abuses in assessments and in contracting debt by such municipal corporations; and the Legislature may regulate and fix the wages or salaries, the hours of work or labor, and make provision for the protection, welfare and safety of persons employed by the State or by any county, city, town, village or other civil division of the State, or by any contractor or sub-contractor performing work, labor or services for the State, or for any county, city, town, village or other civil division thereof. [*As amended in* 1905.]

LABORERS EMPLOYED IN THE STATE SERVICE.

CIVIL SERVICE LAW, CHAPTER 7 OF THE CONSOLIDATED LAWS.

§ 10. **Rules for the classified state service.** * * * No examination or registration shall be required of persons to be employed as laborers in the state service. * * * * * * * * * *

Cf. § 18 below, requiring registration of laborers for ***municipal*** employment.

SEMI-MONTHLY PAYMENT OF WAGES TO STATE EMPLOYEES.

STATE FINANCE LAW, CHAPTER 56 OF THE CONSOLIDATED LAWS.

§ 2-a. The salaries of all officers of the state, and the wages of all employees thereof shall be due from and payable by the state twice each month, on the first and sixteenth days thereof, except where such days fall upon Sunday or a legal holiday when such payments shall be made upon

the succeeding business day. Said salaries and wages shall be subject to all the provisions of section thirteen hundred and ninety-one of the code of civil procedure applicable to any wages, debts, earnings or salary, as if the state and the said wages and salary due and payable by it had been particularly designated therein. The provisions of this section shall be deemed to supersede any other provision of this chapter or of any general or special law inconsistent herewith. [*Added by L.* 1910, *ch.* 317.]

FIXING THE COMPENSATION OF EMPLOYEES OF STATE PRISONS.

Prison Law, Chapter 43 of the Consolidated Laws.

§ 114. **Compensation of other officers.**— The superintendent of state prisons shall, from time to time, prescribe the compensation of the other officers of said prisons, but the compensation so fixed and prescribed for the following officers in each of such prisons shall not in any case exceed the rate of an annual salary, as follows: To the principal keeper, two thousand dollars; to the kitchen-keeper, store-keeper, hall-keeper, yard-keeper and sergeant of the guard, each twelve hundred dollars; to the state detective at Sing Sing prison, eighteen hundred dollars. The compensation of guards and attendants in prison hospitals shall be as follows: For the first year's service, eight hundred dollars; for the second year's service, nine hundred dollars; for the third year's service, ten hundred dollars; for the fourth year's service, eleven hundred dollars; for the fifth year's service, and thereafter, twelve hundred dollars. [*As am'd by L.* 1912, *ch.* 50.]

LABORERS AND MECHANICS IN STATE ARMORIES.

Military Law, Chapter 36 of the Consolidated Laws.

§ 189. **Compensation of employees in armories.**— The persons appointed under the provisions of the two preceding sections shall receive compensation for the time actually and necessarily employed in their duties, to be fixed by the officer appointing such persons as follows: When employed in armories or arsenals, armorers, janitors, electricians and engineers not to exceed four dollars per day. An armorer, janitor, electrician, engineer or laborer appointed by the commanding officer of an organization located in a city who under orders duly issued by such officer performs the whole or any part of his duties outside the limits of such city shall receive the compensation provided for an armorer, janitor, electrician, engineer or laborer employed in an armory, located in such city; laborers not to exceed three dollars per day. An armorer employed in an arsenal or armory having two hundred thousand or more square feet of floor surface and occupied by a regiment may in the discretion of the officer appointing, receive compensation not to exceed five dollars per day. The chief engineer in an armory having over two hundred thousand square feet of floor surface occupied by a regiment and lighted by electricity produced by machinery operated within such armory, may receive not to exceed five dollars per day. The compensation, as certified to by the officer appointing such persons, under the provisions of the two preceding sections, shall be paid semi-monthly upon the certificate of such officer, and shall in counties outside the city of New York be a charge upon the counties constituting the brigade district and within the city of New York upon the county in which such armory or arsenal is situated;

and shall be levied, collected and paid in the same manner as other brigade district or county charges are levied, collected and paid. A commissioned officer in active service shall not be eligible for appointment to, and shall not hold the position of armorer, janitor, electrician, engineer or laborer in any armory or arsenal. The appointing officer shall grant to each employee a vacation of fourteen days per year with pay. [*As am'd by L.* 1911, *ch.* 102, *L.* 1912, *ch.* 242 *and L.* 1913, *ch.* 558.]

REGISTRATION OF LABORERS FOR MUNICIPAL EMPLOYMENT.

THE CIVIL SERVICE LAW, CHAPTER 7 OF THE CONSOLIDATED LAWS.

§ 18. The labor class in cities.—The labor class in cities shall include unskilled laborers and such skilled laborers as are not included in the competitive class or the noncompetitive class. Vacancies in the labor class in cities shall be filled by appointment from lists of applicants registered by the municipal commissions. Preference in employment from such lists shall be given according to date of application. There shall be separate lists of applicants for different kinds of labor or employment, and the commissions may establish separate labor lists for various institutions and departments. Where the labor service of any department or institution extends to separate localities, the commissions may provide separate registration lists for each district or locality. The commissions shall require an applicant for registration for the labor service to furnish such evidence or pass such examination as they may deem proper with respect to his age, residence, physical condition, ability to labor, skill, capacity and experience in the trade or employment for which he applies.

Veterans of the Civil War, who, under the terms of the Constitution (Art. V, § 9) are entitled to preference in the civil service "without regard to their standing," are to be placed at the head of registration lists as though their application had been filed prior to those of persons not entitled to preference (§ 21 of the Civil Service Law).

FIXING WAGES AND SALARIES OF EMPLOYEES OF THE STREET CLEANING DEPARTMENT, NEW YORK CITY.

THE REVISED CHARTER (LAWS OF 1901, CHAPTER 466).

§ 536. The members of the department of street cleaning shall be divided into two general classes, to be designated, respectively, the clerical force and the uniformed force. The clerical force shall consist of a chief clerk, medical examiners, not exceeding three in number, and such and so many clerks and messengers as the commissioner of street cleaning shall deem necessary. The uniformed force shall be appointed by the commissioner of street cleaning, and shall consist of one general superintendent, one assistant superintendent, one superintendent of final disposition, one assistant superintendent of final disposition, district superintendents, not exceeding twenty-one in number; time collectors, not exceeding eight in number; section foremen, not exceeding one hundred and twenty-five in number; dump inspectors, not exceeding forty-three in number; assistant dump inspectors, not exceeding forty-three in number; sweepers, not exceeding thirty-one hundred in number; dump boardmen, not exceeding forty-three in number; drivers, not exceeding sixteen hundred in number; stable foremen, not exceeding twenty-one in number; assistant stable foremen, not exceeding twenty-one in

number; hostlers, not exceeding one head hostler to each stable and additional hostlers not exceeding one for each ten horses; a master mechanic and such and so many mechanics and helpers as may be necessary. The commissioner of street cleaning shall have power and is hereby authorized to increase the said uniformed force, from time to time, by adding to the number of sweepers, drivers and hostlers provided the board of estimate and apportionment and the board of aldermen shall have previously made an appropriation for the purpose of permitting such increase. The annual salaries and compensations of the members of the uniformed force of the department of street cleaning shall not exceed the following: Of the general superintendent, three thousand dollars; of the assistant superintendent, two thousand five hundred dollars; of the master mechanic, one thousand eight hundred dollars; of the superintendent of final disposition, two thousand dollars; of the assistant superintendent of final disposition, one thousand five hundred dollars; of the district superintendents, one thousand eight hundred dollars each; of the time collectors, one thousand two hundred dollars each; of the section foremen, one thousand two hundred dollars each; of sweepers or drivers acting as assistants to the section or stable foremen, nine hundred dollars each; of the dump inspectors, one thousand two hundred dollars each; of the assistant dump inspectors, nine hundred dollars each; of the dump boardmen, seven hundred and twenty dollars each; of the sweepers, seven hundred and twenty dollars each; of the drivers, seven hundred and twenty dollars each; of the stable foremen, one thousand three hundred dollars each; of the assistant stable foremen, one thousand dollars each; of the hostlers, seven hundred and twenty dollars each. Hostlers may receive extra pay for Sundays if an appropriation therefor is made by the board of estimate and apportionment. The members of the department of street cleaning shall be employed at all such times and during such hours and upon such duties as the commissioner of street cleaning shall direct for the purpose of an effective performance of the work devolving upon the said department. In case of a snow fall or other emergency, the commissioner of street cleaning or the deputy commissioner may hire and employ temporarily such and so many men, carts and horses as shall be rendered necessary by such emergency, forthwith reporting such action with the full particulars thereof to the mayor, but no man, cart or horse, shall be so hired or employed for a longer period than three days, except that any person registered or eligible to appointment as a driver, or as a sweeper, may be temporarily employed at any time as an extra driver or sweeper to fill the place of a driver or sweeper who is suspended or temporarily absent from duty from any cause. The rate of compensation for such extra drivers or sweepers shall be two dollars per day, and the driver or sweeper whose place is so filled shall not receive any compensation for the time during which he is so absent from duty or his place is so filled, unless such injury or illness was caused by service in the department. The service of any person employed, and of carts and horses hired pursuant to this section, shall be paid for in full and directly by the department of street cleaning, at such times as may be prescribed by such department; and they, and each of them, shall be employed and hired directly by the department of street cleaning and not through contractors or other persons, unless the

commissioner himself shall determine that this requirement must for proper action in a particular instance be dispensed with. Nothing herein contained shall affect any existing contracts made with or by the department of street cleaning in regard to the cleaning of Broadway below Fourteenth street in said city or the renewal thereof, if deemed best by the commissioner of said department. Neither the commissioner of street cleaning, nor any deputy commissioner of street cleaning, nor any member of the uniformed force of the street cleaning department, shall be permitted to contribute any moneys, directly or indirectly, to any political fund, or intended to affect legislation for or on behalf of the street cleaning department or any member thereof.

RELIEF AND PENSION FUND FOR NEW YORK CITY STREET CLEANERS.

THE REVISED CHARTER (LAWS OF 1901, CHAPTER 466).

§ 548. There shall be a relief and pension fund of the department of street cleaning which shall be made up, administered and used for the benefit of the members of the clerical and uniformed forces of the department of street cleaning as defined by section five hundred and thirty-six of the charter, and the incumbents of such other positions in said department as have been created and not specified in section five hundred and thirty-six of the charter. [*Added by L.* 1911, *ch.* 839.]

§ 549. The relief and pension fund of the department of street cleaning of the city of New York shall consist of the following moneys and the interest and income thereof:

First. A sum of money equal to, but not greater than, three per centum of the weekly or monthly pay, salary or compensation of each such member of the department of street cleaning, which sum shall be deducted, weekly or monthly, as the case may be, by the comptroller from the pay, salary or compensation, of each and every such member of the department of street cleaning, and the said comptroller is hereby authorized, empowered and directed to deduct said sum of money as aforesaid, and to pay the same monthly to the treasurer and trustee of the relief and pension fund of the department of street cleaning.

Second. All money, pay, compensation or salary, or any part thereof, forfeited, deducted or withheld from any such member of the department of street cleaning on account of fines, suspensions or absence from any cause, loss of time, sickness or other disability, physical or mental, to be paid monthly by the comptroller to the treasurer and trustee of said pension fund, except in the case of a sweeper, driver, hostler, stableman or other employee who may have been sick or absent from any cause, and whose position has been filled by an extra sweeper, driver, stableman or other temporary employee, to whom compensation has been paid.

Third. All moneys received for the privilege of scow trimming or assorting of refuse at the various dumps in the boroughs of Manhattan, Brooklyn or Bronx, or at any other place where refuse may be disposed of, excepting in so far as the provisions of any contract now in force between the city of New York and contractors give such privilege to the contractors. All contracts hereafter made shall stipulate that the proceeds from such trim-

ming or assorting of refuse shall be paid by the comptroller to the trustee and treasurer of said pension fund.

Fourth. All moneys received from the sale of steam or house ashes, garbage and refuse, collected by the department of street cleaning, and any moneys that may be received for the disposal of such steam or house ashes, garbage or refuse.

Fifth. All proceeds of sales of condemned horses or other property of said department, excepting real property; and so much of the proceeds of sales of unharnessed trucks, carts, wagons and vehicles of any description, and of all boxes, barrels, bales or other merchandise, or other movable property, found in any public street or place and removed therefrom by the commissioner of street cleaning under any provision of law authorizing said commissioner to remove and to sell such incumbrances, as exceeds the necessary expense of the sales of such condemned property or unredeemed incumbrances and which is not under such provision of the law, payable to the lawful owner or owners of such incumbrances so sold, and all moneys collected for the release of merchandise, unharnessed vehicles or movable property removed as aforesaid.

Sixth. Any and all unexpended balances of amounts appropriated for the payment of salaries or compensation of such members of the department of street cleaning remaining unexpended after the allowance of all claims payable therefrom. And the comptroller is hereby authorized to pay over such unexpended balances to the treasurer and trustee of said pension fund at any time after the expiration of the year for which such amounts were appropriated, after allowing sufficient to satisfy all the claims payable therefrom as aforesaid.

Seventh. All gifts or bequests which may be made to said fund or the commissioner of street cleaning as treasurer and trustee of said fund. [*Added by L.* 1911, *ch.* 839.]

§ 550. The commissioner of street cleaning shall be the trustee and treasurer of said relief and pension fund. He shall, before entering upon his duties as treasurer and trustee thereof, deliver to the comptroller a bond in the penal sum of seventy-five thousand dollars, to be approved by the comptroller, conditioned for the faithful discharge and performance of his duties as such treasurer and trustee. Compensation shall be made to the commissioner of street cleaning for the expense of procuring sureties for said bond, to be paid out of said pension fund. Said treasurer and trustee shall have charge of and administer said fund. He shall receive all moneys applicable to said fund, and, from time to time, shall invest such moneys, or any part thereof, in any manner allowed by law for investments by savings banks, as he shall deem beneficial to said fund; and he is empowered to make all necessary contracts and to conduct necessary and proper actions and proceedings in the premises, and to pay from said fund the relief or pensions granted in pursuance of this act. And he is authorized and empowered to establish, from time to time, such rules and regulations for the disposition and investment, preservation and administration of said pension fund as he may deem best. No payment whatever shall be allowed or made by said treasurer and trustee from said fund as reward, gratuity or compensation to any person for salary or service rendered to or for said treasurer and trustee, except payment of necessary legal expenses and compensa-

tion as aforesaid for the expenses of procuring sureties on said bond. The commissioner of street cleaning may employ the members of the clerical force in such clerical work as may be necessary for the care and administration of said fund as a part of their regular duties and without extra compensation. On or before the first day of February of each year the said treasurer and trustee shall make a verified report to the mayor containing a statement of the account of said fund under his control and of all receipts, investments and disbursements, on account of said fund, together with the name and residence of each beneficiary. There shall be an auditing committee consisting of three members of the department of street cleaning, to be appointed by the mayor. It shall be the duty of such auditing committee, on or before the first day of March in each year, to examine the condition of said relief and pension fund and to audit the accounts of said treasurer and trustee and to make report thereon to the mayor within thirty days thereafter. [*Added by L.* 1911, *ch.* 839.]

§ 551. The commissioner of street cleaning, as treasurer and trustee of said relief and pension fund, is hereby authorized and empowered to take and hold any and all gifts or bequests which may be made to such fund, and to transfer such gifts or bequests to his successor, together with all other moneys or property belonging to said fund. [*Added by L.* 1911, *ch.* 839.]

§ 552. The commissioner of street cleaning shall have power in his discretion to retire and dismiss from membership in his department a member of the department of street cleaning as hereinafter provided; and he shall grant relief or a pension to such member so retired and dismissed from membership, and to the widows and orphans of members of said department who may be entitled to receive such relief or pension, to be paid from said relief or pension fund, in monthly instalments, as follows:

First. To any such member who, at any time after the passage of this act, while in the actual performance of duty, and without fault or misconduct on the part of such member, shall have become permanently disabled, physically or mentally, so as to be unfit to perform the duties required of such member, provided that such unfitness for duty has been certified to by a majority of the medical examiners of said department, the sum of twenty-five dollars per month.

Second. To the widow of any member of the department of street cleaning who, after the passage of this act, shall have been killed while in the actual performance of his duty, or shall have died from the effects of any injury received while in the actual performance of such duty, the sum of not more than three hundred dollars per annum; and to the widow of any member of such force who shall hereafter die and who shall have been ten years in the service in said department at the time of his death, or who shall have been retired on a pension, as hereinafter provided, if there shall be no child or children of such member under eighteen years of age, the sum of not more than two hundred dollars per annum, in the discretion of said treasurer and trustee; and if there be such child or children of such member under the age aforesaid, then such sum may be divided between such widow, child or children in such proportion and in such manner as the said treasurer and trustee may direct. The right of such widow to such pension shall cease and terminate at her death or remarriage; or if she shall

have been guilty of conduct which in the opinion of said treasurer and trustee renders payment inexpedient.

Third. To any child or children under eighteen years of age of such member killed or dying as aforesaid, or dying after retirement leaving no widow, or if a widow, then after her death, a sum not exceeding two hundred dollars per annum to be paid as such treasurer and trustee shall direct until such child or children shall have attained the age of eighteen years or shall have married.

Fourth. To the widowed mother of any such member, who was the sole support of such mother, who shall die after the passage of this act, a sum not to exceed two hundred dollars per annum, to cease upon the death or remarriage of such widowed mother. [*Added by L.* 1911, *ch.* 839.]

§ 533. Any such member who has or shall have performed duty as such member for a period of ten years or upwards shall be relieved and dismissed from said force upon his or her own application, or by order of the commissioner, upon an examination by the medical examiners of said department, to be made at any time when so applied for or when so ordered, if a majority of such medical examiners shall certify that such member is permanently disabled, physically or mentally, so as to be unfit for duty; and such member so relieved and dismissed from said force shall be paid from said fund in monthly instalments during his or her lifetime a sum not less than one-half of the annual salary or compensation of such member when he or she was so retired; and any such member who shall have performed duty on said force for a period of twenty years or upward, whether continuous or rendered during different periods, and who has reached the age of sixty years, may, upon the application of such member in writing, be relieved and dismissed from said force and service, and shall be paid from said fund in monthly instalments during his or her lifetime a sum not less than one-half of the annual salary or compensation of such member when so retired; provided, however, that no such member shall be so retired or granted a pension while there are charges of official misconduct pending against him or her. Pensions granted under this section shall be for the natural life of the pensioner and shall not be revoked, repealed or diminished. [*Added by L.* 1911, *ch.* 839.]

§ 554. The commissioner of street cleaning, as such treasurer and trustee, is authorized and empowered to make and enforce all such rules, orders and regulations as may be necessary to carry out the provisions of this act relative to pensions and may employ members of the department for such purpose so far as may be required. [*Added by L.* 1911, *ch.* 839.]

§ 555. The moneys or other property of the relief and pension fund of the department of street cleaning and all pensions or relief moneys granted and payable from said fund shall be, and the same are, exempt from levy and sale under execution, and from all processes or proceedings to enjoin payment, or to recover such moneys or property, by or on behalf of any creditor or other person having or asserting any claim against, or debt or liability of any person entitled to such pension or relief. [*Added by L.* 1911, *ch.* 839.]

§ 556. This act shall take effect October first, nineteen hundred and eleven, so far as it applies to the deduction by the comptroller of three per centum of the pay, salary or compensation of the members of the department of

street cleaning, and to the collection and taking over by said treasurer and trustee of such other moneys as are provided by this act to be taken for such fund, and all such moneys shall be so taken and held for such purpose by said treasurer and trustee on and after said date. Provided, however, that no such deduction of such per centum shall be made by the comptroller from the pay, salary or compensation of any person who is or was a member of the department of street cleaning on or before September first, nineteen hundred and eleven, unless such member shall have given his or her consent in writing to the commissioner of street cleaning on or before that date that he or she agrees to abide by the provisions of this act and authorizes the comptroller of the city of New York to so deduct such per centum; and any such member who fails to give such written consent shall not be entitled to be or to become a beneficiary of said relief and pension fund; but such deduction of such per centum shall be made by the comptroller without such consent from the pay, salary or compensation of any person who shall become a member of the department of street cleaning after September first, nineteen hundred and eleven, and all such persons shall be entitled to or become beneficiaries of said relief and pension fund without such written consent to such deduction. [*Added by L.* 1911, *ch.* 839.]

§ 557. No relief or pension shall be paid to any person under the provisions of this act, and no person shall be entitled to receive any of the benefits provided for in this act prior to January first, nineteen hundred and thirteen, excepting that relief and pensions granted under the provisions of this act shall be payable to and through members of the department who shall die or become disabled on and after September first, nineteen hundred and eleven, but the payment of such relief or pension shall be postponed until January first, nineteen hundred and thirteen, on which date the provisions of this act providing for the payment of relief or pensions shall take effect. [*Added by L.* 1911, *ch.* 839.]

PROHIBITING THE SUB-LETTING OF PUBLIC CONTRACTS.

GENERAL MUNICIPAL LAW, CHAPTER 24 OF THE CONSOLIDATED LAWS.

[*See also* § 43 *of State Finance Law, ch.* 56 *of the Consolidated Laws.*]

§ 86. Contractors not to assign contracts with municipality without its consent.— A clause shall be inserted in all specifications or contracts hereafter made or awarded by any municipal corporation, or any public department or official thereof, prohibiting any contractor, to whom any contract shall be let, granted or awarded, as required by law, from assigning, transferring, conveying, subletting or otherwise disposing of the same, or of his right, title or interest therein, or his power to execute such contract to any other person, company or corporation, without the previous consent in writing of the department or official awarding the same.

If any contractor, to whom any contract is hereafter let, granted or awarded, as required by law, by any municipal corporation in the state, or by any public department or official thereof, shall, without the previous written consent specified in the first paragraph of this section, assign, transfer, convey, sublet, or otherwise dispose of the same, or his right, title or interest therein, or his power to execute such contract, to any other person, company or other corporation, the municipal corporation, public department,

or official as the case may be, which let, made, granted or awarded said contract shall revoke and annul such contract, and the municipal corporation, public department or officer, as the case may be, shall be relieved and discharged from any and all liability and obligations growing out of said contract to such contractor, and to the person, company, or corporation to whom he shall assign, transfer, convey, sublet or otherwise dispose of the same, and said contractor, and his assignee, transferee, or sub-lessee, shall forfeit and lose all moneys, theretofore earned under said contract except so much as may be required to pay his employees; provided that nothing herein contained shall be construed to hinder, prevent or affect an assignment by such contractor for the benefit of his creditors, made pursuant to the statutes of this state.

SECURING THE PAYMENT OF WAGES TO EMPLOYEES OF CONTRACTORS UPON CANALS.

CANAL LAW, CHAPTER 5 OF THE CONSOLIDATED LAWS.

§ 145. Security for payment of laborers.— The superintendent of public works or assistant superintendent having charge, shall also require and take from the contractor, a bond with at least two good and sufficient sureties, conditioned that such contractor will well and truly pay in full, at least once in each month, all laborers employed by him on the work specified in such contract, which shall be duly acknowledged and filed in the office of the clerk of the county wherein such contract or work is to be performed, and if partly in two or more counties, such bond or a certified copy thereof shall be filed in the clerk's office of each county.

Actions may be brought for a breach of such bond by any laborer not paid in accordance with its terms, and the commencement or maintenance of an action by one or more laborers thereon shall not be a bar to the commencement and maintenance of other actions thereon by other laborers. No action shall be maintained against the sureties unless brought within thirty days after the completion of the labor the payment of which is secured by the bond.

Laborers are those who perform labor on canals and do not include sub-contractors. (Swift v. Kingsley, 24 Barb. 541; and see McCluskey v. Cromwell, 11 N. Y. 593.)

AUTHORIZING THE EIGHT HOUR DAY UPON RESERVOIR CONSTRUCTION IN NEW YORK CITY.

LAWS OF 1902, CHAPTER 588.

AN ACT relative to the powers of the aqueduct commissioners, provided for and holding office under and pursuant to the provisions of chapter four hundred and ninety of the laws of eighteen hundred and eighty-three, and its amendments.

Section 1. The aqueduct commissioners, provided for and holding office under and pursuant to the provisions of an act of the legislature of the state of New York, entitled "An act to provide new reservoirs, dams and a new aqueduct with the appurtenances thereto, for the purpose of supplying the city of New York with an increased supply of pure and wholesome water," said act being chapter four hundred and ninety of the laws of eighteen hundred and eighty-three, and its amendments, are hereby

authorized and empowered to agree with any person, firm or corporation with whom they have contracted or may hereafter contract, upon such terms and conditions as shall in their judgment and discretion, be for the best interests of the city of New York, that eight hours shall constitute a day's work for all laborers employed by said person, firm or corporation in the performance of his or its contract and that no laborer employed in the performance of any such contract shall be required, permitted or allowed to work more than eight hours. No agreement made under the provisions of this act shall be valid or binding until the same has been approved by the board of estimate and apportionment of the city of New York.

PRISON LABOR.*

OCCUPATION AND EMPLOYMENT OF CONVICTS.

CONSTITUTION OF STATE OF NEW YORK, ARTICLE III.

Section 29. The Legislature shall, by law, provide for the occupation and employment of prisoners sentenced to the several State prisons, penitentiaries, jails and reformatories in the State; and on and after the first day of January, in the year one thousand eight hundred and ninety-seven, no person in any such prison, penitentiary, jail or reformatory, shall be required or allowed to work, while under sentence thereto, at any trade, industry or occupation, wherein or whereby his work, or the product or profit of his work, shall be farmed out, contracted, given or sold to any person, firm, association or corporation. This section shall not be construed to prevent the Legislature from providing that convicts may work for, and that the products of their labor may be disposed of to, the State or any political division thereof, or for or to any public institution owned or managed and controlled by the State, or any political division thereof.

Trees raised by convicts under the supervision of the conservation commission and superintendent of prisons may be sold for private use in reforestration (opinion of Attorney-General, October 11, 1911).

PRISON LAW, CHAPTER 43 OF THE CONSOLIDATED LAWS.

ARTICLE 7.

Prison Labor.

§ 170. **Contracts prohibited.**— The superintendent of state prisons shall not, nor shall any other authority whatsoever, make any contract by which the

* See also article 13 of the Labor Law, *ante*.

labor or time of any prisoner in any state prison, reformatory, penitentiary or jail in this state, or the product or profit of his work, shall be contracted, let, farmed out, given or sold to any person, firm, association or corporation; except that the convicts in said penal institutions may work for, and the products of their labor may be disposed of to, the state or any political division thereof or for or to any public institution owned or managed and controlled by the state, or any political division thereof.

§ 171. **Prisoners to be employed; products of labor of prisoners.**—The superintendent of state prisons, the superintendents, managers and officials of all reformatories and penitentiaries in the state, shall, so far as practicable, cause all the prisoners in said institutions, who are physically capable thereof, to be employed at hard labor, for not to exceed eight hours of each day, other than Sundays and public holidays, but such hard labor shall be either for the purpose of production of supplies for said institutions, or for the state, or any political division thereof, or for any public institution owned or managed and controlled by the state, or any political division thereof; or for the purpose of industrial training and instruction, or partly for one, and partly for the other of such purposes.

§ 172. **Labor of prisoners of first grade, how directed.**—The labor of the prisoners of the first grade in each of said prisons, reformatories and penitentiaries, shall be directed with reference to fitting the prisoner to maintain himself by honest industry after his discharge from imprisonment, as the primary or sole object of such labor, and such prisoners of the first grade may be so employed at hard labor for industrial training and instruction solely, even though no useful or salable products result from their labor, but only in case such industrial training or instruction can be more effectively given in such manner. Otherwise, and so far as is consistent with the primary object of the labor of prisoners of the first grade as aforesaid, the labor of such prisoners shall be so directed as to produce the greatest amount of useful products, articles and supplies needed and used in the said institutions, and in the buildings and offices of the state, or those of any political division thereof, or in any public institution owned or managed and controlled by the state or any political division thereof, or said labor may be for the state, or any political division thereof.

§ 173. **Labor of prisoners of second grade, how directed.**—The labor of prisoners of the second grade in said prisons, reformatories and penitentiaries shall be directed primarily to labor for the state or any political division thereof, or to the production and manufacture of useful articles and supplies for said institutions, or for any public institution owned or managed and controlled by the state, or any political division thereof.

§ 174. **Labor of prisoners of third grade, how directed.**—The labor of prisoners of the third grade shall be directed to such exercise as shall tend to the preservation of health, or they shall be employed in labor for the state, or a political division thereof, or in the manufacture of such useful articles and supplies as are needed and used in the said institutions, and in the public institutions owned or managed and controlled by the state, or any political division thereof.

§ 175. **Prisoners employed for use of state, and divisions thereof.**—All convicts sentenced to state prisons, reformatories and penitentiaries in the state,

shall be employed for the state, or a political division thereof, or in productive industries for the benefit of the state, or the political divisions thereof, or for the use of public institutions owned or managed and controlled by the state, or the political divisions thereof, which shall be under rules and regulations for the distribution and diversification thereof, to be established by the state commission of prisons.

§ 176. **No printing or photo-engraving to be done by prisoners for use of state.**— No printing or photo-engraving shall be done in any state prison, penitentiary or reformatory for the state or any political division thereof, or for any public institution owned or managed and controlled by the state or any such political division, except such printing as may be required for or used in the penal and state charitable institutions, and the reports of the state commission of prisons and the superintendent of prisons, and all printing required in their offices.

§ 177. **Labor of prisoners in prisons, reformatories and penitentiaries.**— The labor of the convicts in the state prisons and reformatories in the state, after the necessary labor for and manufecture of all needed supplies, for said institutions, shall be primarily devoted to the state and the public buildings and institutions thereof, and the manufacture of supplies for the state, and public institutions thereof, and secondly to the political divisions of the state, and public institutions thereof; and the labor of the convicts in the penitentiaries, after the necessary labor for and manufacture of all needed supplies for the same, shall be primarily devoted to the counties, respectively, in which said penitentiaries are located, and the towns, cities and villages therein, and to the manufacture of supplies for the public institutions of the counties, or the political divisions thereof, and secondly to the state and the public institutions thereof.

§ 178. **Labor of prisoners in certain institutions.**— The state board of managers of reformatories, and the managing authorities of all the penitentiaries or other penal institutions in this state, are hereby authorized and directed to conduct the labor of prisoners therein, respectively, in like manner and under like restrictions, as labor is authorized by sections one hundred and seventy and one hundred and seventy-one of this article, to be conducted in state prisons.

§ 179. **Employment of convicts on public highways.**— The superintendent of state prisons may employ or cause to be employed, not to exceed three hundred of the convicts confined in each state prison in the improvement of the public highways, within a radius of thirty miles from such prison and outside of an incorporated city or village.

The agent and warden of each prison may make such rules as he may deem necessary for the proper care of such prisoners while so employed, subject to the approval of the superintendent of state prisons.

The agent and warden of each prison may designate, subject to the approval of the superintendent of state prisons, the highways and portions thereof upon which such labor shall be employed; and such portions so designated and approved shall be under his control during the time such improvements are in progress, and the state engineer and surveyor shall fix the grade and width of the roadway of such highways and direct the manner in which the work shall be done.

The superintendent of state prisons is hereby authorized to purchase any machinery, tools and materials necessary in such employment.

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A prison warden may not bid on a contract for highway construction, the labor to be performed by inmates of state prisons (opinion of Attorney-General, June 23, 1913).

§ 182. Articles manufactured to be furnished to the state or division thereof.— The superintendent of state prisons, and the superintendents of reformatories and penitentiaries, respectively, are authorized and directed to cause to be manufactured by the convicts in the prisons, reformatories and penitentiaries, such articles as are needed and used therein, and also such as are required by the state or political divisions thereof, and in the buildings, offices and public institutions owned or managed and controlled by the state, including articles and materials to be used in the erection of the buildings. All such articles manufactured in the state prisons, reformatories and penitentiaries, and not required for use therein, shall be of the styles, patterns, designs and qualities fixed by the board of classification, and may be furnished to the state, or to any political division thereof, or for or to any public institution owned or managed and controlled by the state, or any political division thereof, at and for such prices as shall be fixed and determined as hereinafter provided, upon the requisitions of the proper officials, trustees or managers thereof. No article so manufactured shall be purchased from any other source, for the state or public institutions of the state, or the political divisions thereof, unless said state commission of prisons shall certify that the same can not be furnished upon such requisition, and no claim therefor shall be audited or paid without such certificate.

This section requires the purchase of desks for use in public schools from penal institutions, if such institutions can furnish the desks (opinion of Attorney-General, April 15, 1913).

By section 135-a of the General Municipal Law, added by L. 1913, ch. 341, supplies may be manufactured in the workshops of municipal hospitals for tuberculosis by inmates thereof and sold to any department of such municipality notwithstanding the provisions of above section.

§ 183. Estimates of articles required to be furnished commission of prisons by officers.— On or before October first in each year, the proper officials of the state, and the political divisions thereof, and of the institutions of the state, or political divisions thereof, shall report to the said commission of prisons estimates for the ensuing year of the amount of supplies of different kinds required to be purchased by them that can be furnished by the penal institutions in the state. The said commission is authorized to make regulations for said reports, to provide for the manner in which requisitions shall be made for supplies, and to provide for the proper diversification of the industries in said penal institutions.

§ 184. Board of classification; prices to be fixed.— The fiscal supervisor of state charities, the state commission of prisons, and the superintendent of state prisons and the lunacy commission are hereby constituted a board to be known as the board of classification. Said board shall fix and determine the prices at which all labor performed, and all articles manufactured in the charitable institutions managed and controlled by the state and in the penal institutions in this state, and furnished to the state, or the political divisions thereof, or to the public institutions thereof, shall be furnished,

which prices shall be uniform to all, except that the prices for goods or labor furnished by the penitentiaries to or for the county in which they are located, or the political divisions thereof, shall be fixed by the board of supervisors of such counties, except New York and Kings counties, in which the prices shall be fixed by the commissioners of charities and correction, respectively. The prices shall be as near the usual market price for such labor and supplies as possible. The state commission of prisons shall devise and furnish to all such institutions a proper form for such requisition, and the comptroller shall devise and furnish a proper system of accounts to be kept for all such transactions. It shall also be the duty of the board of classification to classify the buildings, offices and institutions owned or managed and controlled by the state, and it shall fix and determine the styles, patterns, designs and qualities of the articles to be manufactured for such buildings, offices and public institutions, in the charitable and penal institutions in this state. So far as practicable, all supplies used in such buildings, offices and public institutions shall be uniform for each class, and of the styles, patterns, designs and qualities that can be manufactured in the penal institutions in this state.

§ 185. **Earnings of prisoners.**— Every prisoner confined in the state prisons, reformatories and penitentiaries, who shall become entitled to a diminution of his term of sentence by good conduct, may, in the discretion of the agent and warden, or of the superintendent of the reformatory, or superintendent of the penitentiary, receive compensation from the earnings of the prison or reformatory or penitentiary in which he is confined, such compensation to be graded by the agent and warden of the prison for the prisoners therein, and the superintendent of the reformatory and penitentiary for the prisoners therein, for the time such prisoner may work, but in no case shall the compensation allowed to such convicts exceed in amount ten percentum of the earnings of the prison or reformatory or penitentiary in which they are confined. The difference in the rate of compensation shall be based both on the pecuniary value of the work performed, and also on the willingness, industry and good conduct of such prisoner; provided, that whenever any prisoner shall forfeit his good time for misconduct or violation of the rules or regulations of the prison, reformatory or penitentiary, he shall forfeit out of the compensation allowed under this section fifty cents for each day of good time so forfeited; and provided, that prisoners serving life sentences shall be entitled to the benefit of this section when their conduct is such as would entitle other prisoners to a diminution of sentence, subject to forfeiture of good time for misconduct as herein provided. The agent and warden of each prison, or the superintendent of the reformatory or superintendent of the penitentiary may institute and maintain a uniform system of fines, to be imposed at his discretion, in place of his other penalties and punishments, to be deducted from such compensation standing to the credit of any prisoner, for misconduct by such prisoner.

EMPLOYMENT OF PRISONERS IN COUNTY JAILS.

The County Law, Chapter 11 of the Consolidated Laws.

§ 93. **Food and labor.**— Prisoners detained for trial, and those under sentence, shall be provided with a sufficient quantity of plain but wholesome food, at the expense of the county; but prisoners detained for trial may, at

their own expense, and under the direction of the keeper, be supplied with any other proper articles of food. Such keeper shall cause each prisoner committed to his jail for imprisonment under sentence, to be constantly employed at hard labor when practicable, during every day, except Sunday, and the board of supervisors of the county, or judge of the county, may prescribe the kind of labor at which such prisoner shall be employed; and the keeper shall account, at least annually, with the board of supervisors of the county, for the proceeds of such labor. Such keeper may, with the consent of the board of supervisors of the county, or the county judge, from time to time, cause such of the convicts under his charge as are capable of hard labor, to be employed outside of the jail in the same, or in an adjoining county, upon such terms as may be agreed upon between the keepers and the officers, or persons, under whose direction such convicts shall be placed, subject to such regulations as the board or judge may prescribe; and the board of supervisors of the several counties are authorized to employ convicts under sentence to confinement in the county jails, in building and repairing penal institutions of the county and in building and repairing the highways in their respective counties or in preparing the materials for such highways for sale to and for the use of such counties or towns, villages, and cities therein; and to make rules and regulations for their employment; and the said board of supervisors are hereby authorized to cause money to be raised by taxation for the purpose of furnishing materials and carrying this provision into effect; and the courts of this state are hereby authorized to sentence convicts committed to detention in the county jails to such hard labor as may be provided for them by the boards of supervisors.

EMPLOYMENT OF PRISONERS IN NEW YORK CITY PENAL INSTITUTIONS.

LAWS OF 1901, CHAPTER 466 (THE NEW YORK CITY CHARTER).

§ 700. Employment of inmates; articles manufactured; cultivation of lands. — Every inmate of an institution under the charge of the commissioner, whose age and health will permit, shall be employed in quarrying or cutting stone, or in cultivating land under the control of the commissioner, or in manufacturing such articles as may be required for ordinary use in the institutions under the control of the commissioner, or for the use of any department of The City of New York, or in preparing and building sea walls upon islands or other places belonging to The City of New York upon which public institutions now are or may hereafter be erected, or in public works carried on by any department of the city, or at such mechanical or other labor as shall be found from experience to be suited to the capacity of the individual. The articles raised or manufactured by such labor shall be subject to the order of and shall be placed under the control of the commissioner, and shall be utilized in the institutions under his charge or in some other department of the city. All the lands under the jurisdiction of the commissioner not otherwise occupied or utilized, and which are capable of cultivation shall in the discretion of the commissioner be used for agricultural purposes.

§ 701. Detail of inmates to work in other departments. — At the request of any of the heads of the administrative departments of The City of New York (who are hereby empowered to make such request) the commissioner of correction may detail and designate any inmate or inmates of any of the institutions in the department of correction to perform work,

labor and services in and upon the grounds and building or in and upon any public work or improvement under the charge of such other department. And such inmates when so employed shall at all times be under the personal oversight and direction of a keeper or keepers from the department of correction, but no inmate of any correctional institution shall be employed in any ward of any hospital except hospitals in penal institutions, while such ward is being used for hospital purposes. The provisions of this act or of law requiring advertisement for bids or proposals, or the awarding of contracts, for work to be done or supplies to be furnished for any of said departments shall not be applicable to public work which may be done or to the supplies which may be furnished under the provisions of the prison law.

§ 702. Hours of labor; discipline.— The hours of labor required of any inmate of any institution under the charge of the commissioner shall be fixed by the commissioner. * * * * * * * * * * * *

AGRICULTURAL LABOR.

THE AGRICULTURAL LAW, CHAPTER 1 OF THE CONSOLIDATED LAWS.

ARTICLE 12.

Agricultural Statistics.

§ 280. **Collection and dissemination of statistics.**— The commissioner of agriculture may collect and disseminate such information relative to agriculture, and agricultural labor within the state, as he may deem wise for the purpose of promoting agricultural production within this state.

§ 281. **Information to be furnished by supervisors.**— Supervisors of the different towns and wards in this state shall furnish to the commissioner of agriculture upon request from him, upon blanks to be furnished by the said commissioner, such information as may be in their possession or may be obtained by them relative to agriculture, agricultural production and agricultural labor within their respective towns or wards. Such information shall be furnished to said commissioner within thirty days from the time it is asked for. The expense incurred by the several supervisors in furnishing such information shall be a town charge to be paid in the manner now provided by law for the payment of services and disbursements by such supervisor.

RAILWAY LABOR.

[*See also* DUTIES AND LIABILITIES OF EMPLOYERS, ETC., *and sections* 6, 7 *and* 8 *of the Labor Law.*]

THE SAFETY OF RAILWAY EMPLOYEES.

THE RAILROAD LAW, CHAPTER 49 OF THE CONSOLIDATED LAWS.

§ 71. Duties imposed.— It shall be the duty of every railroad corporation operating its road by steam:

1. To lay, in the construction of new and in the renewal of existing switches, upon freight or passenger main line tracks, switches on the principle of either the so-called Tyler, Wharton, Lorenz, or split-point switch, or some other kind of safety switch, which shall prevent the derailment of a train, when such switch is misplaced or a switch interlocked with distant signals.

2. To erect and thereafter maintain such suitable warning signals at every road, bridge, or structure which crosses the railroad above the tracks, where such warning signals may be necessary, for the protection of employees on top of cars from injury.

3. To use upon every new freight car built or purchased for use, couplers which can be coupled and uncoupled automatically, without the necessity of having a person guide the link, lift the pin by hand, or go between the ends of the cars.

4. To attach to every car used for passenger transportation an automatic air-brake or other form of safety-power brake, applied from the locomotive, excepting cars attached to freight trains, the schedule rate of speed of which does not exceed twenty miles an hour.

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Every corporation, person or persons, operating such railroad, and violating any of the provisions of this section, except subdivision six, shall be liable to a penalty of one hundred dollars for each offense, and the further penalty of ten dollars for each day that it shall omit or neglect to comply with any of such provisions. For every violation of the provisions of the sixth subdivision of this section every such corporation shall be liable to a penalty of twenty-five dollars for each offense.

§ 72. Inspection of locomotive boilers.— It shall be the duty of every railroad corporation operated by steam power, within this state, and of the directors, managers or superintendents of such railroad to cause thorough inspections to be made of the boilers and their appurtenances of all the steam locomotives which shall be used by such corporation or corporations, on said railroads. Said inspections shall be made, at least every three months under the direction and superintendence of said corporations, or the directors, managers or superintendents thereof, by persons of suitable qualifications and attainments to perform the services required of inspectors of boilers, and who from their knowledge of the construction and use of boilers and the appurtenances therewith connected, are able to form a

reliable opinion of the strength, form, workmanship and suitableness of boilers, to be employed without hazard of life, from imperfections in material, workmanship or arrangement of any part of such boiler and appurtenances. All such boilers so used shall comply with the following requirements: The boilers must be made of good and suitable materials; the openings for the passage of water and steam respectively, and all pipes and tubes exposed to heat shall be of proper dimensions; the safety valves, fusible plugs, low water glass * indicater gauge cocks and steam gauges, shall be of such construction, condition and arrangement that the same may be safely employed in the active service of the railroad corporation without peril to life; and each inspector shall satisfy himself by thorough examination that said requirements have been fully complied with. No boiler, nor any connection therewith shall be approved which is unsafe in its form, or dangerous from defects, workmanship or other cause. The person or persons who shall make the said inspections if he or they approve of the boiler or boilers and the appurtenances throughout, shall make and subscribe his or their name to a written or printed certificate which shall contain the number of each boiler inspected, the date of its inspection, the condition of the boiler inspected, and such details as may be required by the forms and regulations which shall be prescribed by the public service commission. Every certificate shall be verified by the oath of the inspector, and he shall cause such certificate or certificates to be filed in the office of the public service commission, within ten days after each inspection shall have been made, and also a copy thereof with the chief operating officer or employee of such railroad having charge of the operation of such locomotive boiler; a copy shall also be placed by such officer or employee in a conspicuous place in the cab connected with the locomotive boiler inspected, and there kept framed under glass. The public service commission shall have power, from time to time, to formulate rules and regulations for the inspection and testing of boilers as aforesaid, and may require the removal of incompetent inspectors of boilers under the provisions of this section. Copies of such rules and regulations shall be mailed to every corporation operating a railroad by steam in this state. If it shall be ascertained by such inspection and test or otherwise, that any locomotive boiler is unsafe for use, the same shall not again be used until it shall be repaired, and made safe, so as to comply with the requirements of this section. Every corporation, director, manager or superintendent operating such railroad and violating any of the provisions of this section shall be liable to a penalty, to be paid to the people of the state of New York, of one hundred dollars for each offense, and the further penalty of one hundred dollars for each day it or he shall omit or neglect to comply with said provisions, and the making or filing of a false certificate shall be a misdemeanor, and every inspector who wilfully certifies falsely touching any steam boiler, or any appurtenance thereto belonging, or any matter or thing contained or required to be contained in any certificate, signed and sworn to by him, shall be guilty of a misdemeanor. Any person, upon application to the secretary of said commission and on the payment of such reasonable fee as said commission may by rule fix, shall be furnished with a copy of any such cer-

* So in original.

tificate. The public service commission shall enforce the provisions of this section as to penalties.

§ 73. **State inspector of locomotive boilers.**— The office of state inspector of locomotive boilers is continued. Said inspector shall be appointed by the public service commissions and shall receive a compensation to be fixed by the commission, not exceeding three thousand dollars per year. He shall, under the direction of the commission, inspect boilers or locomotives used by railroad corporations operating steam railroads within the state, and may cause the same to be tested by hydrostatic test and shall perform such other duties in connection with the inspection and test of locomotive boilers as the commission shall direct. But this section shall not relieve any railroad corporation from the duties imposed by the preceding section.

§ 74. **Care of steam locomotives; steam and water cocks; penalty.**—It shall be the duty of every corporation operating a steam railroad, within this state, and of its directors, managers or superintendents, to cause the boiler of every locomotive used on such railroad to be washed out as often as once every thirty days, and to equip each boiler with and maintain thereon at all times, a water glass, showing the height of water in the boiler, having two valves or shut-off cocks, one at each end of such glass, which valves or shut-off cocks shall be so constructed that they can be easily opened and closed by hand; also to cause such valves or shut-off cocks and all gauge cocks or try-cocks attached to the boiler to be removed and cleaned whenever the boiler is washed out pursuant to the foregoing requirements of this section; also to keep all steam valves, cocks and joints, studs, bolts and seams in such repair that they will not at any time emit steam in front of the engineer, so as to obscure his vision. No locomotive shall hereafter be driven in this state unless the same is equipped and cared for in conformity with the provisions of this section; but nothing herein contained shall be construed to excuse the observance of any other requirement imposed by this chapter upon railroad corporations, their directors, officers, managers and superintendents. Every corporation, person or persons operating a steam railroad and violating any of the provisions of this section, shall be liable to a penalty of one hundred dollars for each offense, and the further penalty of ten dollars for each day that such violation shall continue. The public service commission shall enforce the provisions of this section.

§ 75. **Public service commission may approve other safeguards.**—The public service commission may, on the application of any railroad corporation, authorize it to use any other safeguard or device approved by the commission, in place of any safeguard or device hereinbefore required by this article, which shall thereafter be used in lieu thereof, and the same penalties for neglect or refusal to use the same shall be incurred and imposed as for a failure to use the safeguard or device hereinbefore required, in lieu of which the same is to be used.

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§ 77. **Equipment of engines.**— It shall be unlawful for any railroad company to use within the state on its line or lines any locomotive engine not equipped with a power driving wheel brake and appliances for operating the train brake system.

§ 78. **Coal jimmies and caboose cars.**— The use of cars known and designated as "coal jimmies" in any form and the use of any car as a caboose unless it shall have a suitable and safe platform at each end thereof, and the usual railing for the protection of persons using such platform, shall be unlawful within the state, except upon any railroad whose main line is less than fifteen miles in length and whose average grade exceeds two hundred feet to the mile. This section shall not be construed to authorize the interchange of such "coal jimmies" with, and the use thereof upon, railroads of more than fifteen miles in length or whose average grade is less than two hundred feet to the mile.

From and after the first day of July, nineteen hundred and twenty, it shall be unlawful for any corporation or individual to man, equip, or to use within the state on any railroad a caboose car, or car to serve the purpose of a caboose car, which shall be less than twenty-four feet in length exclusive of the platform, or which shall have a center constructive strength less than that of the fifty ton freight cars built according to master car builders' standards. Such caboose or other equivalent car shall be constructed with steel center sills with two four-wheel trucks; with each platform not less than twenty-four inches wide, with proper guard rails, grab irons and steps, which shall be equipped with a suitable rod, board or other guard designed to prevent slipping from the car step. Each such car shall have a door at each end and shall be equipped with four separate sleeping berths not less than six feet and two inches in length. Each such car shall contain a properly furnished toilet room, sink, ice box, water cooler, clothing lockers, and with a cupola of sufficient size to accommodate at least two men. Whenever any caboose or other car used for like purpose now in use by any such railroad company shall, after this act goes into effect, be brought into any shop for general repairs it shall be unlawful to again put the same into use within this state, as a caboose or other car used for like purpose unless it be equipped as provided in this act.

This section shall not apply to cabooses or other equivalent cars used in the switching service or on trains operated wholly within twenty-five miles of yard limits.

Any violation of the provisions of this section shall be a misdemeanor, punishable by a fine of not less than one hundred dollars nor more than five hundred dollars for each separate offense. This penalty is in addition to that provided for in section eighty-one of this chapter. [*As am'd by L.* 1913, *ch.* 497.]

§ 79. **Air-brakes.**— It shall be unlawful for any railroad or other company to haul or permit to be hauled or used on its line or lines within this state any freight train that has not a sufficient number of cars in it so equipped with continuous power or air-brakes that the engineer on the locomotive drawing such train can control its speed without requiring brakemen to use the common hand brake for that purpose.

§ 80. **Couplers.**— It shall be unlawful for any railroad or other company to haul, or permit to be hauled or used, on its line or lines within the state, any freight car not equipped with couplers of the master car builders' type, and coupling automatically by impact, and which can be uncoupled, except in cases of accident, without the necessity of men going between the ends of the cars.

§ 81. **Violation of four preceding sections.**— Any railroad or other company hauling or permitting to be hauled on its line or lines any train in violation of any of the provisions of the preceding four sections shall be liable to a penalty of one hundred dollars for each and every violation, to be recovered in an action to be brought by the public service commission in the name of the people and in the judicial district wherein the principal office of the company within the state is located.

PENAL LAW, CHAPTER 40 OF THE CONSOLIDATED LAWS.

§ 1988. **Guard posts; automatic couplers.**— All corporations and persons other than employees, operating any steam railroad in this state:

1. Failing to cause guard posts to be placed in prolongation of the line of bridge trusses upon such railroad, so that in case of derailment, the posts and not the trusses shall receive the blow of the derailed locomotive or car, or in lieu thereof failing to cause guard rails to be placed within the running rails of its track, or such other safeguard as the public service commission shall order, for the same purpose; or

2. Failing to equip all of their own freight cars, run and used in freight or other trains on such railroad, with automatic self-couplers, or running or operating on such railroad any freight car belonging to any such person or corporation, without having the same equipped, except in case of accident or other emergency, with automatic self-couplers, and except within the extended time allowed by the public service commission, in pursuance of law, for equipping such car with such couplers, is guilty of a misdemeanor, punishable by a fine of five hundred dollars for each offense. [*As am'd by L.* 1913, *ch.* 398.]

PUBLIC SERVICE COMMISSIONS LAW, CHAPTER 48 OF THE CONSOLIDATED LAWS.

§ 47. **Investigation of accidents.**— Each commission shall investigate the cause of all accidents on any railroad or street railroad within its district which result in loss of life or injury to persons or property, and which in its judgment shall require investigation. Every common carrier, railroad corporation and street railroad corporation is hereby required to give immediate notice to the commission of every accident happening upon any line of railroad or street railroad owned, operated, controlled or leased by it, within the territory over which such commission has jurisdiction in such manner as the commission may direct. Such notice shall not be admitted as evidence or used for any purpose against such common carrier, railroad corporation or street railroad corporation giving such notice in any suit or action for damages growing out of any matter mentioned in said notice.

See also § 66 authorizing the Commissions to order improvements necessary to protect persons employed in the manufacture and distribution of gas or electricity, and § 80 for similar power as to the manufacture and distribution of steam for heat or power.

FULL CREW LAW.

THE RAILROAD LAW, CHAPTER 49 OF THE CONSOLIDATED LAWS.

§ 54-a. **Full crews for certain trains.**— No person, corporation, trustee, receiver, or other court officer, shall run or operate, or cause to be run or operated, outside of the yard limits, on any railroad of more than fifty miles in length within this state, a freight train of more than twenty-five cars, unless

said train shall be manned with a crew of not less than one engineer, one fireman, one conductor and three brakemen; nor any train other than a freight train of five cars or more, without a crew of not less than one engineer, one fireman, one conductor and two brakemen, and if the train is a baggage train or a passenger train having a baggage car or baggage compartment without a baggageman in addition to said crew; nor any freight train of twenty-five cars or less without a crew of not less than one engineer, one fireman, one conductor and two brakeman; nor any light engine without a car or cars, without a crew of not less than one engineer, one fireman and one conductor or brakeman. Each separate violation of the provisions of this section shall be a misdemeanor punishable by a fine of not less than one hundred dollars nor more than five hundred dollars. Each train or light engine run in violation of the provisions of this section shall be deemed to be a separate offense. [*Added by L.* 1913, *ch.* 146.]

ENCLOSURE OF STREET CAR PLATFORMS.

THE RAILROAD LAW, CHAPTER 49 OF THE CONSOLIDATED LAWS.

§ 194. **Protection of employees.**— Every corporation operating a street surface railroad in this state, except such as operate a railroad or railroads either in the borough of Manhattan or Brooklyn, in the city of New York, shall cause the front and rear platforms of every passenger car propelled by electricity, cable or compressed air, operated on any division of such railroad which extends in or between towns or outside of city limits, during the months of December, January, February and March, except cars attached to the rear of other cars, to be inclosed from the fronts of the platforms to the fronts of the hoods, so as to afford protection to any person stationed by such corporation on such platforms to perform duties in connection with the operation of such cars. Every corporation or person using and operating a car in violation of this section shall be liable to a penalty of twenty-five dollars per day for each car so used and operated, to be collected in an action brought by the public service commission and to be paid to the treasurer of the state of New York, or in a suit by the attorney of the municipality in which the violation of the provisions of this section occurs, to be paid into the treasury of such municipality.

§ 195. **Platforms on new cars, how constructed.**— All street surface railroad passenger cars purchased, built or rebuilt after the first day of December, nineteen hundred and four, and operated in the state of New York on and after said date, except those owned by any company operating either in the borough of Manhattan or Brooklyn, in the city of New York, shall be constructed in accordance with the provisions of the preceding section.

§ 196. **Protection to employees in the counties of Albany and Rensselaer.**— Every corporation operating a street surface railroad in the counties of Albany and Rensselaer shall cause the front and rear platforms of every car propelled by electricity, cable or compressed air, during the months of December, January, February and March, except cars attached to the rear of other cars, to be inclosed from the front and at least one side of the platform to the hood, so as to afford protection to any person stationed by such corporation on such platforms to perform duties in connection with the operation of such cars. Platforms on cars on such street surface railroads used more than one mile outside the limits of a city shall be com-

pletely inclosed from platform to hood. Every corporation using and operating a car in violation of this section shall be liable to a penalty of twenty-five dollars per day for each car so used and operated, to be collected by the people to the use of the poor of the county in which such corporation has its principal office, in an action brought by the public service commission or the district attorney of such county. The supreme court may, on the application of a citizen, direct the district attorney to bring such action.

§ 197. **Protection of employees in the counties of Kings and Queens.**—Every corporation operating a street surface railroad in the counties of Kings or Queens, shall cause the front and rear platforms of every passenger car propelled by electricity, cable or compressed air, operated on any division of such railroad during the months of December, January, February and March, except cars attached to the rear of other cars, to be inclosed from the fronts of the platforms to the fronts of the hoods so as to afford protection to any person stationed by such corporation on such platforms to perform duties connected with the operation of such cars. Every corporation or person using and operating a car in violation of this section shall be liable to a penalty of twenty-five dollars per day for each car used and operated, to be collected in an action brought by the public service commission and to be paid to the treasurer of the city of New York, or in a suit by the district attorney of the counties of Kings or Queens to be paid into the treasury of the city of New York.

QUALIFICATIONS OF ENGINEERS AND TELEGRAPHERS.

Penal Law, Chapter 40 of the Consolidated Laws.

§ 1982. **Person unable to read not to act or be employed as engineer.**—Any person unable to read the time-tables of a railroad and ordinary handwriting, who acts as an engineer or runs a locomotive or train on any railroad in this state; or any person who, in his own behalf, or in the behalf of any other person or corporation, knowingly employs a person so unable to read to act as such engineer or to run any such locomotive; or who employs a person as a telegraph operator who is under the age of eighteen years, or who has less than one year's experience in telegraphing, to receive or transmit a telegraphic message or train order for the movement of trains, is guilty of a misdemeanor.

QUALIFICATIONS OF STREET RAILWAY CONDUCTORS, MOTORMEN, ETC.

The Railroad Law, Chapter 49 of the Consolidated Laws.

§ 63. **Persons employed as drivers, conductors, motormen or gripmen.**—Any railroad corporation may employ any inhabitant of the state, of the age of twenty-one years, not addicted to the use of intoxicating liquors, as a car driver, conductor, motorman or gripman, or in any other capacity, if fit and competent therefor. All applicants for positions as motormen or gripmen on any street surface railroad in this state shall be subjected to a thorough examination by the officers of the corporation as to their habits, physical ability and intelligence. If this examination is satisfactory, the applicant shall be placed in the shop or power house where he can be made familiar with the power and machinery he is about to control. He shall

then be placed on a car with an instructor, and when the latter is satisfied as to the applicant's capability for the position of motorman or gripman, he shall so certify to the officers of the company, and, if appointed, the applicant shall first serve on the lines of least travel. Any violation of the provisions of this section shall be a misdemeanor.

EMPLOYMENT OF INTEMPERATE PERSONS ON RAILWAYS AND STEAMBOATS.

PENAL LAW, CHAPTER 40 OF THE CONSOLIDATED LAWS.

§ 1913. **Employment by common carrier of person addicted to intoxication.** — Any person or officer of an association or corporation engaged in the business of conveying passengers or property for hire, who shall employ in the conduct of such business, as an engineer, fireman, conductor, switch-tender, train dispatcher, telegrapher, commander, pilot, mate, fireman or in other like capacity, so that by his neglect of duty, the safety and security of life, person or property so conveyed might be imperiled, any person who habitually indulges in the intemperate use of liquors, after notice that such person has been intoxicated, while in the active service of such person, association or corporation, shall be guilty of a misdemeanor.

§ 1984. **Intoxication or other misconduct of railroad or steamboat employees.**— 1. Any person who, being employed upon any railway as engineer, conductor, baggagemaster, brakeman, switch-tender, fireman, bridge-tender, flagman, signal man, or having charge of stations, starting, regulating or running trains upon a railroad, or, being employed as captain, engineer or other officer of a vessel propelled by steam, is intoxicated while engaged in the discharge of any such duties; or,

2. An engineer, conductor, brakeman, switch-tender, or other officer, agent or employee of any railroad corporation, who wilfully violates or omits his duty as such officer, agent or employee, by which human life or safety is endangered, the punishment of which is not otherwise prescribed,

Is guilty of a misdemeanor.

See also §§ 322–323 of the Highway Law (ch. 25 of the Consolidated Laws) forbidding the employment of persons addicted to drunkenness by owners of public carriages.

MISCONDUCT OF OFFICIALS OR EMPLOYEES ON ELEVATED RAILROADS.

PENAL LAW, CHAPTER 40 OF THE CONSOLIDATED LAWS.

§ 1983. **Misconduct of officials or employees on elevated railroads.**— Any conductor, brakeman, or other agent or employee of an elevated railroad, who:

1. Starts any train or car of such railroad, or gives any signal or order to any engineer or other person to start any such train or car, before every passenger therein who manifests an intention to depart therefrom by arising, or moving toward the exit thereof, has departed therefrom; or before every passenger on the platform or station at which the train has stopped, who manifests a desire to enter the train, has actually boarded or entered the same, unless due notice is given by an authorized employee of such railroad that the train is full, and that no more passengers can then be received; or,

2. Obstructs the lawful ingress or egress of a passenger to or from any such car; or,

3. Opens a platform gate of any such car while the train is in motion, or starts such train before such gate is firmly closed,

Is guilty of a misdemeanor.

Formerly Penal Code, § 419.

WEARING OF UNIFORMS AND BADGES.

PENAL LAW, CHAPTER 40 OF THE CONSOLIDATED LAWS.

§ 1989. Inciting railroad employees not to wear uniform; unauthorized wearing of uniform.— A person who:

1. Advises or induces any one, being an officer, agent or employee of a railway company, to leave the service of such company, because it requires a uniform to be worn by such officer, agent or employee, or to refuse to wear such uniform, or any part thereof; or,

2. Uses any inducement with a person employed by a railway company to go into the service or employment of any other railway company, because a uniform is required to be worn; or,

3. Wears the uniform designated by a railway company without authority,

Is guilty of a misdemeanor.

RAILROAD LAW, CHAPTER 49 OF THE CONSOLIDATED LAWS.

§ 65. Conductors and employees must wear badges.— Every conductor and employee of a railroad corporation employed on a passenger train, or at stations for passengers, shall wear upon his hat or cap a badge, which shall indicate his office or employment, and the initial letters of the corporation employing him. No conductor or collector without such badge shall demand or receive from any passenger any fare or ticket or exercise any of the powers of his employment. No officer or employee without such badge shall meddle or interfere with any passenger, his baggage or property.

CONDUCTORS AND TRAINMEN AS POLICEMEN.

RAILROAD LAW, CHAPTER 49 OF THE CONSOLIDATED LAWS.

§ 88. When conductors and brakemen may be policemen.— The governor may appoint any conductor or brakeman on any train conveying passengers on any steam railroad in this state, a policeman, with all the powers of a policeman in cities and villages, for the preservation of order and of the public peace, and the arrest of all persons committing offenses upon the land or property of the corporation owning or operating such railroad; and he may also appoint, on the application of any such corporation, or of any steamboat company, such additional policemen, designated by it, as he may deem proper, who shall have the same powers. Every such policeman shall within fifteen days after receiving his commission, and before entering upon the duties of his office, take and subscribe the constitutional oath of office, and file it with his commission in the office of the secretary of state. The post-office address of the person appointed shall appear in the commission, and whenever such address is changed the person appointed shall file with the governor a statement of the new address. Every such policeman shall when on duty wear a metallic shield with the words "railroad police" or "steamboat police," as the case may be, and the name of the corporation for which appointed inscribed thereon, which shall always be worn in plain view, except when employed as a detective. The compensation of every

such policeman shall be such as may be agreed upon between him and the corporation for which he is appointed, and shall be paid by the corporation. When any corporation shall no longer require the services of any such policeman it may file notice to that effect in the office in which notice of his appointment was originally filed, and thereupon such appointment shall cease and be at an end. The governor may also at pleasure revoke the appointment of any such policeman by filing a revocation thereof in the office of the secretary of state and mailing a notice of such filing to the corporation for which he was appointed, and also to the person whose appointment is revoked, at his last post-office address as the same appears in the commission or the latest statement thereof on file. If such person thereafter, knowing of such revocation or having in any manner received notice thereof, exercises or attempts to exercise any of the powers of a policeman, under this section, he shall be guilty of a misdemeanor; and the filing and mailing of such notice, as above provided, shall be presumptive evidence that such person knew of the revocation. [*As am'd by L.* 1911, *ch.* 817.]

PROVIDING FOR BAIL OF RAILWAY EMPLOYEES IN CASES OF ACCIDENT.

CODE OF CRIMINAL PROCEDURE.

§ 554-a. **Bail of certain railroad employees.**— Whenever a person employed as an engineer, fireman, motorman, conductor, trainman or otherwise, on a train or car of a steam, elevated or street surface railroad, is arrested in any city on a criminal charge, arising from an accident in connection with the operation of such train or car, resulting in an injury or death to a person or injury to property, such engineer, fireman, motorman, conductor, trainman or other employee, shall be immediately taken before a magistrate, if one is accessible, and otherwise, before a captain or sergeant of police, or acting sergeant of police, or lieutenant of police, in charge of a police station in such city, and be given an opportunity to be admitted to bail. Such bail shall be taken in the same manner, so far as practicable, as is provided by section five hundred and fifty-four of this code, for the taking of bail in case of misdemeanors by a captain or sergeant of police, or acting sergeant of police, or lieutenant of police, in a city or village, except that the amount of bail shall be fixed by such officer at not exceeding one thousand dollars, and except that the undertaking shall provide for the appearance of the defendant before the magistrate, coroner, or other officer, who, except for this section, would be authorized to take such bail. Such officer may, however, in his discretion, instead of exacting bail, release such employee on his own recognizance, conditional for his appearance as above provided in case an undertaking is required. [*Added by L.* 1903, *ch.* 614; *am'd by L.* 1912, *ch.* 99.]

UNCLAIMED ARTICLES FOUND IN PUBLIC VEHICLES TO BE SOLD FOR BENEFIT OF EMPLOYEES' ASSOCIATION.

RAILROAD LAW, CHAPTER 49 OF THE CONSOLIDATED LAWS.

§ 199. **Sale of unclaimed property.**— It shall be the duty of every street surface railroad corporation doing business in this state, and of every corporation engaged in this state in the business of carrying passengers for hire in cabs, coaches, or other similar vehicles or of letting such vehicles for

hire, or in the business of operating a line of stages or omnibuses, which shall have unclaimed property left in its cars, cabs, coaches, stages or other similar vehicles, to ascertain if possible, the owner or owners of such property, and to notify such owner or owners of the fact by mail as soon as possible, after such property comes into its possession. Every such corporation which shall have such property not perishable, in its possession for the period of three months, may sell the same at public auction, after giving notice to that effect, by one publication, at least ten days prior to the sale, in a daily newspaper published in the city or village in which such sale is to take place, of the time and place at which such sale will be held, and such sale may be adjourned from time to time until all the articles offered for sale are sold. All perishable property so left, may be sold by any such corporation without notice, as soon as it can be, upon the best terms that can be obtained.

§ 200. **Disposition of proceeds.**—All moneys arising from the sale of any such unclaimed property, after deducting charges for storage and expenses of sale, shall be paid by any such corporation to the treasurer of any association, composed of the employees of such corporation, having for its object the pecuniary assistance of its members in case of disability caused by sickness or accident, for the use and benefit of such association and its members; and where no such association of the employees of any such corporation is in existence at the time of any such sale, such moneys shall be paid over to the county treasurer of the county or if in a city, to the chief fiscal officer thereof, in which such sale took place for the benefit of such city or county.

Cf. Railroad Law, § 68, relating to sale of "Unclaimed freight and baggage."

COMPLAINTS TO PUBLIC SERVICE COMMISSIONS.

PUBLIC SERVICE COMMISSIONS LAW, CHAPTER 48 OF THE CONSOLIDATED LAWS.

§ 45. **General powers and duties of commissions in respect to common carriers, railroads and street railroads.**— * * * 2. Each commission shall have the general supervision of all common carriers, railroads, street railroads, railroad corporations and street railroad corporations within its jurisdiction as hereinbefore defined, and shall have power to and shall examine the same and keep informed as to their general condition, their capitalization, their franchises and the manner in which their lines and property, owned, leased, controlled or operated, are managed, conducted and operated, not only with respect to the adequacy, security and accommodation afforded by their service, but also with respect to their compliance with all provisions of law, orders of the commission and charter requirements. Each commission shall have power, either through its members or responsible engineers or inspectors duly authorized by it, to enter in or upon and to inspect the property, equipment, buildings, plants, factories, power-houses and offices of any of such corporations or persons, including the right for such inspection purpose to ride upon any freight locomotive or train or any passenger locomotive or train while in service; and to have upon reasonable notice the use of an inspection locomotive or special locomotive and inspection car for a physical inspection once annually of all the lines and stations of each common carrier under its supervision; and to the extent that such facilities for inspection involve transpor-

tation each commissioner and each such employee shall pay the published one-way fare established by the common carrier for the transportation of persons by regular passenger trains over the distance covered by such inspection. The cost of such transportation, if the commission so elects, may be paid upon bill rendered to the commission after the transportation has been furnished and the amount thereof ascertained.

3. Each commission and each commissioner shall have power to examine all books, contracts, records, documents and papers of any person or corporation subject to its supervision, and by subpœna duces tecum to compel production thereof. In lieu of requiring production of originals by subpœna duces tecum, the commission or any commissioner may require sworn copies of any such books, records, contracts, documents and papers or parts thereof to be filed with it.

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§ 48. **Investigations by commission.**— 1. Each commission may, of its own motion, investigate or make inquiry, in a manner to be determined by it, as to any act or thing done or omitted to be done by any common carrier, railroad corporation or street railroad corporation, subject to its supervision, and the commission must make such inquiry in regard to any act or thing done or omitted to be done by any such common carrier, railroad corporation or street railroad corporation in violation of any provision of law or in violation of any order of the commission.

2. Complaints may be made to the proper commission by any person or corporation aggrieved, by petition or complaint in writing setting forth any thing or act done or omitted to be done by any common carrier, railroad corporation or street railroad corporation in violation, or claimed to be in violation, of any provision of law or of the terms and conditions of its franchise or charter or of any order of the commission. Upon the presentation of such a complaint the commission shall cause a copy thereof to be forwarded to the person or corporation complained of, which may be accompanied by an order, directed to such person or corporation, requiring that the matters complained of be satisfied, or that the charges be answered in writing within a time to be specified by the commission. If the person or corporation complained of shall make reparation for any injury alleged and shall cease to commit, or to permit, the violation of law, franchise or order charged in the complaint, and shall notify the commission of that fact before the time allowed for answer, the commission need take no further action upon the charges. If, however, the charges contained in such petition be not thus satisfied, and it shall appear to the commission that there are reasonable grounds therefor, it shall investigate such charges in such manner and by such means as it shall deem proper, and take such action within its powers as the facts justify.

3. Whenever either commission shall investigate any matter complained of by any person or corporation aggrieved by any act or omission of a common carrier, railroad corporation or street railroad corporation under this section it shall be its duty to make and file an order either dismissing the petition or complaint or directing the common carrier, railroad corporation or street railroad corporation complained of to satisfy the cause of complaint in whole or to the extent which the commission may specify and require.

INDUSTRIAL EDUCATION.

THE APPRENTICE SYSTEM.

[Apprenticeship is regulated by Article VIII of the Domestic Relations Law (printed below), which is to be enforced by the commissioner of labor (see § 22 of the Labor Law, *ante*). The Penal Law makes it a misdemeanor to take an apprentice without the consent of the parent or guardian (§ 1275, *ante*), and the Code of Criminal Procedure (Title IX of Part VI) prescribes the proceedings respecting masters, apprentices and servants.]

DOMESTIC RELATIONS LAW, CHAPTER 14 OF THE CONSOLIDATED LAWS.

ARTICLE 8.

Apprentices and Servants.

§ 120. **Definitions; effect of article.**— The instrument whereby a minor is bound out to serve as a clerk or servant in any trade, profession or employment, or is apprenticed to learn the art or mystery of any trade or craft, is an indenture.

Every indenture made in pursuance of the laws repealed by this chapter shall be valid hereunder, but hereafter a minor shall not be bound out or apprenticed except in pursuance of this article.

§ 121. **Contents of indenture.**— Every indenture must contain:

1. The names of the parties;

2. The age of the minor as nearly as can be ascertained, which age on the filing of the indenture shall be taken prima facie to be the true age;

3. A statement of the nature of the service or employment to which the minor is bound or apprenticed;

4. The term of service or apprenticeship, stating the beginning and end thereof;

5. An agreement that the minor will not leave his master or employer during the term for which he is indentured;

6. An agreement that suitable and proper board, lodging and medical attendance for the minor during the continuance of the term shall be provided, either by the master or employer, or by the parent or guardian of the apprentice;

7. A statement of every sum of money paid or agreed to be paid in relation to the service;

8. If such minor is bound as an apprentice to learn the art or mystery of any trade or craft, an agreement on the part of the employer to teach, or cause to be carefully and skillfully taught, to such apprentice, every branch

of the business to which such apprentice is indentured, and that at the expiration of such apprenticeship he will give to such apprentice a certificate, in writing, that such apprentice has served at such trade or craft a full term of apprenticeship specified in such indenture;

9. If a minor is indentured by the poor officers of a county, city or town, or by the authorities of an orphan asylum, penal or charitable institution, an agreement that the master or employer will cause such child to be instructed in reading, writing and the general rules of arithmetic, and that at the expiration of the term of service he will give to such minor a new bible.

Every such indenture shall be filed in the office of the county clerk of the county where the master or employer resides.

§ 122. **Indenture by minor; by whom signed.**—Any minor may, by the execution of the indenture provided by this article, bind himself or herself:

1. As an apprentice to learn the art or mystery of any trade or craft for a term of not less than three nor more than five years;

2. As a servant or clerk in any profession, trade or employment for a term of service not longer than the minority of such minor, unless such indenture be made by a minor coming from a foreign country, for the purpose of paying his passage, when such indenture may be made for a term of one year although such term may extend beyond the time when such person will be of full age.

An indenture made in pursuance of this section must be signed,

1. By the minor;

2. By the father of the minor unless he is legally incapable of giving consent or has abandoned his family;

3. By the mother of the minor unless she is legally incapable of giving consent;

4. By the guardian of the person of the minor, if any;

5. If there be neither parents nor guardian of the minor legally capable of giving consent, by the county judge of the county, or a justice of the supreme court of the district, in which the minor resides; whose consent shall be necessary to the binding out or apprenticing in pursuance of this section of a minor coming from a foreign country or of the child of an Indian woman, in addition to the other consents herein provided;

6. By the master or employer.

§ 123. **Indenture by poor officers; by whom signed.**— The poor officers of a municipal corporation may, by an execution of the indenture provided by this article, bind out or apprentice any minor whose support shall become chargeable to such municipal corporation.

In such case the indenture shall be signed,

1. By the officer or officers binding out or apprenticing the minor;

2. By the master or employer;

3. By the county judge of the county, if the support of such child was chargeable to the county, by two justices of the peace, if chargeable to the town, or by the mayor and aldermen or any two of them, if chargeable to the city.

The poor officers by whom a child is indentured and their successors in office shall be guardians of every such child and shall inquire into the treatment thereof, and redress any grievance as provided by law.

§ 124. **Binding out children by charitable corporation; indenture; by whom signed.**— An orphan asylum or charitable institution, incorporated for the care of orphans, friendless or destitute children, may bind out as an apprentice, clerk or servant, an indigent or poor child by an indenture in writing. Such child must have been absolutely surrendered to the care and custody of such asylum or institution in pursuance of this chapter, or have been placed therein as a poor person, as provided in section fifty-six of the poor law, or have been left to the care of such asylum or institution with no provision by the parent, relative or legal guardian of such child, for its support, for a period of one year then next preceding. Such indenture shall bind such child, if a male, for a period which shall not extend beyond his twenty-first year, and if a female, for a period which shall not extend beyond her eighteenth year. Every such child shall, when practicable, be bound out or apprenticed to persons of the same religious faith as the parents of such child. The indenture shall in such case be signed:

1. In the corporate name of such institution by the officer or officers thereof authorized by the directors to sign the corporate name to such instrument, and shall be sealed with the corporate seal;

2. By the master or employer.

Such indenture may also be signed by the child, if over twelve years of age.

§ 125. **Penalty for failure of master or employer to perform provisions of indenture.**— If a master or employer to whom a minor has been indentured shall fail, during the term of service, to perform any provision of such indenture on his part, such minor or any person in his behalf may bring an action against the master or employer to recover damages for such failure; and if satisfied that there is sufficient cause, the court shall direct such indenture to be canceled, and may render judgment against such master or employer for not to exceed one thousand nor less than one hundred dollars, to be collected and paid over for the use and benefit of such minor to the corporation or officers indenturing such minor, if so indentured, and otherwise, to the parents or guardian of the child.

§ 126. **Assignment of indenture on death of master or employer.**— On the death of a master or employer to whom a person is indentured by the poor officers of a municipal corporation, the personal representatives of the master or employer may, with the written and acknowledged consent of such person, assign such indenture and the assignee shall become vested with all the rights and subject to all the liabilities of his assignor, or if such consent be refused, the assignment may be made with like effect by the county judge of the county, on proof that fourteen days' notice of the application therefor has been given to the person indentured, to the officers by whom indentured, and to his parent or guardian, if in the country.

§ 127. **Contract with apprentice in restraint of trade void.**— No person shall accept from any apprentice any agreement or cause him to be bound by oath, that after his term of service expires he will not exercise his trade, profession or employment in any particular place; nor shall any person exact from any apprentice, after his term of service expires, any money or other thing, for exercising his trade, profession or employment in any place. Any security given in violation of this section shall be void; and any money paid, or valuable thing delivered, for the consideration, in whole or in part, of any

such agreement or exaction, may be recovered by the person paying the same with interest; and every person accepting such agreement, causing such obligation to be entered into, or exacting money or other thing, is also liable to the apprentice in the penalty of one hundred dollars, which may be recovered in a civil suit.

INDUSTRIAL TRAINING IN THE PUBLIC SCHOOLS.

EDUCATION LAW, CHAPTER 16 OF THE CONSOLIDATED LAWS (AS AMENDED BY L. 1910, CH. 140).

ARTICLE 22.

General Industrial Schools, Trade Schools, and Schools of Agriculture, Mechanic Arts and Home Making.

§ 600. **General industrial schools, trade schools and schools of agriculture, mechanic arts and home making, may be established in cities.**—The board of education of any city, and in a city not having a board of education the officer having the management and supervision of the public school system, may establish, acquire, conduct and maintain as a part of the public school system of such city the following:

1. General industrial schools open to pupils who have completed the elementary school course or who have attained the age of fourteen years, and

2. Trade schools open to pupils who have attained the age of sixteen years and have completed either the elementary school course or a course in the above mentioned general industrial school or who have met such other requirements as the local school authorities may have prescribed; and

3. Schools of agriculture, mechanic arts and home making, open to pupils who have completed the elementary school course or who have attained the age of fourteen, or who have met such other requirements as the local school authorities may have prescribed; and

4. Part time or continuation schools in which instruction shall be given in the trades and in industrial, agricultural and home making subjects, and which shall be open to pupils over fourteen years of age who are regularly and lawfully employed during a part of the day in any useful employment or service, which subjects shall be supplementary to the practical work carried on in such employment or service.

5. Evening vocational schools in which instruction shall be given in the trades and in industrial, agricultural and home making subjects, and which shall be open to pupils over sixteen years of age, who are regularly and lawfully employed during the day and which provide instruction in subjects

related to the practical work carried on in such employment; but such evening vocational schools providing instruction in home making shall be open to all women over sixteen years of age who are employed in any capacity during the day.

The word "school," as used in this article, shall include any department or course of instruction established and maintained in a public school for any of the purposes specified in this section. [*As am'd by L.* 1913, *ch.* 747.]

§ 601. **Such schools may be established in union free school districts.**— The board of education of any union free school district shall also establish, acquire and maintain such schools for like purposes whenever such schools shall be authorized by a district meeting. The trustee or board of trustees of a common school district may establish a school or a course in agriculture, mechanic arts and home making, when authorized by a district meeting. [*As am'd by L.* 1913, *ch.* 747.]

§ 602. **Appointment of an advisory board.**— 1. The board of education in a city and the officer having the management and supervision of the public school system in a city not having a board of education shall appoint an advisory board of five members representing the local trades, industries, and occupations. In the first instance two of such members shall be appointed for a term of one year and three of such members shall be appointed for a term of two years. Thereafter as the terms of such members shall expire the vacancies caused thereby shall be filled for a full term of two years. Any other vacancy occurring on such board shall be filled by the appointing power named in this section for the remainder of the unexpired term.

2. It shall be the duty of such advisory board to counsel with and advise the board of education or the officer having the management and supervision of the public school system in a city not having a board of education in relation to the powers and duties vested in such board or officer by section six hundred and three of this chapter.

§ 603. **Authority of the board of education over such schools.**— The board of education in a city and the officer having the management and supervision of the public school system in a city not having a board of education and the board of education in a union free school district in which city or district a general industrial school, a trade school, a school of agriculture, mechanic arts and home making, or a part time or continuation school, or an evening vocational school is established as provided in this article, is vested with the same power and authority over the management, supervision and control of such school and the teachers or instructors employed therein as such board or officer now has over the schools and teachers under their charge. Such boards of education or such officer shall also have full power and authority:

1. To employ competent teachers or instructors.

2. To provide proper courses of study.

3. To purchase or acquire sites and grounds and to purchase, acquire, lease or construct and to repair suitable shops or buildings and to properly equip the same.

4. To purchase necessary machinery, tools, apparatus and supplies. [*As am'd by L.* 1913, *ch.* 747.]

§ 604. State aid for general industrial schools, trade schools, and schools of agriculture, mechanic arts and home making.

1. The commissioner of education in the annual apportionment of the state school moneys shall apportion therefrom to each city and union free school district for each general industrial school, trade school, part time or continuation school or evening vocational school, maintained therein for thirty-six weeks during the school year and employing one teacher whose work is devoted exclusively to such school, and having an enrollment of at least fifteen pupils and maintaining an organization and a course of study, and conducted in a manner approved by him, a sum equal to two-thirds of the salary paid to such teacher, but not exceeding one thousand dollars.

2. He shall also apportion in like manner to each city, union free school district or common school district for each school of agriculture, mechanic arts and home making, maintained therein for thirty-six weeks during the school year, and employing one teacher whose work is devoted exclusively to such school, and having an enrollment of at least fifteen pupils and maintaining an organization and course of study and conducted in a manner approved by him, a sum equal to two-thirds of the salary paid to such teacher. Such teacher may be employed for the entire year, and during the time that the said school is not open shall be engaged in performing such educational services as may be required by the board of education or trustees, under regulations adopted by the commissioner of education. Where a contract is made with a teacher for the entire year and such teacher is employed for such period, as herein provided, the commissioner of education shall make an additional apportionment to such city or district of the sum of two hundred dollars. But the total amount apportioned in each year on account of such teacher shall not exceed one thousand dollars.

3. The commissioner of education shall also make an additional apportionment to each city and union free school district for each additional teacher employed exclusively in the schools mentioned in the preceding subdivisions of this section for thirty-six weeks during the school year, a sum equal to one-third of the salary paid to each such additional teacher, but not exceeding one thousand dollars for each teacher.

4. The commissioner of education, in his discretion, may apportion to a district or city maintaining such schools or employing such teachers for a shorter time than thirty-six weeks, or for a less time than a regular school day, an amount prorata to the time such schools are maintained or such teachers are employed. This section shall not be construed to entitle manual training high schools or other secondary schools maintaining manual training departments, to an apportionment of funds herein provided for.

Any person employed as teacher as provided herein may serve as principal of the school in which the said industrial or trade school or course, or school or course of agriculture, mechanic arts and home making, is maintained. [*As am'd by L.* 1913, *ch.* 747.]

§ 605. Application of such moneys.— All moneys apportioned by the commissioner of education for schools under this article shall be used exclusively for the payment of the salaries of teachers employed in such schools in the city or district to which such moneys are apportioned. [*As am'd by L.* 1913, *ch.* 747.]

§ 606. **Annual estimate by board of education and appropriations by municipal and school districts.**

1. The board of education of each city or the officer having the management and supervision of the public school system in a city not having a board of education shall file with the common council of such city, within thirty days after the commencement of the fiscal year of such city, a written itemized estimate of the expenditures necessary for the maintenance of its general industrial schools, trade schools, schools of agriculture, mechanic arts and home making, part time or continuation schools or evening vocational schools, and the estimated amount which the city will receive from the state school moneys applicable to the support of such schools. The common council shall give a public hearing to such persons as wish to be heard in reference thereto. The common council shall adopt such estimate and, after deducting therefrom the amount of state moneys applicable to the support of such schools, shall include the balance in the annual tax budget of such city. Such amount shall be levied, assessed and raised by tax upon the real and personal property liable to taxation in the city at the time and in the manner that other taxes for school purposes are raised. The common council shall have power by a two-thirds vote to reduce or reject any item included in such estimate.

2. The board of education in a union free school district which maintains a general industrial school, trade school, a school of agriculture, mechanic arts and home making, part time or continuation schools or evening vocational schools, shall include in its estimate of expenses pursuant to the provisions of sections three hundred and twenty-three and three hundred and twenty-seven of this chapter the amount that will be required to maintain such schools after applying toward the maintenance thereof the amount apportioned therefor by the commissioner of education. Such amount shall thereafter be levied, assessed and raised by tax upon the taxable property of the district at the time and in the manner that other taxes for school purposes are raised in such district. [*As am'd by L.* 1913, *ch.* 747.]

§ 607. **Courses in schools of agriculture for training of teachers.—** The state schools of agriculture at Saint Lawrence University, at Alfred University and at Morrisville may give courses for the training of teachers in agriculture, mechanic arts, domestic science or home making, approved by the commissioner of education. Such schools shall be entitled to an apportionment of money as provided in section six hundred and four of this chapter for schools established in union free school districts. Graduates from such approved courses may receive licenses to teach agriculture, mechanic arts and home making in the public schools of the state, subject to such rules and regulations as the commissioner of education may prescribe.

SCHOOLS IN LABOR CAMPS.

EDUCATION LAW, CHAPTER 16 OF THE CONSOLIDATED LAWS (AS AMENDED BY L. 1910, CH. 140).

ARTICLE 6-A.

[*Added by L.* 1913, *ch.* 176.]

Temporary School Districts.

§ 175. **Establishment of temporary school districts.**— Temporary school districts may be established outside of cities and union free school districts and public schools shall be maintained therein as hereinafter provided. Such districts may be established whenever any considerable number of persons shall have been congregated in camps or other places of temporary habitation, who are engaged in the construction of public works by, or under contract with, the state, or in the construction of public works or improvements by or under contract with any municipality. Such temporary districts shall be established by order of the district superintendent of schools of the supervisory district within which such camps or other places of temporary habitation are located, subject to the approval of the commissioner of education. Such order shall be filed in the state education department and if the public works or improvements are being constructed by a municipality, a copy thereof shall be filed in the office of the officer or board of the city under whose direction they are being constructed. When so established such districts shall be entitled to share in the apportionment of public money as in the case of other school districts, except that each district quota shall be one hundred and twenty-five dollars. The money so apportioned shall be paid to the treasurer of the district and be applied in the payment of teachers' salaries.

§ 176. **Organization of districts; officers.**— Each of such districts shall have a trustee who shall be appointed by the district superintendent of schools, and a district clerk and treasurer to be appointed by the trustee. Each of such officers shall serve during the continuance of the camp or other place of temporary habitation, unless sooner removed by the district superintendent. The treasurer shall give a bond to the people of the state, in an amount to be determined by the district superintendent, and with sureties approved by him, conditioned for the proper disbursement and accounting of all moneys received by him in behalf of such district.

§ 177. **Maintenance of schools; teachers.**— Such schools shall be under the supervision of the district superintendent and shall be maintained pursuant to regulations adopted by the commissioner of education. They shall be free to all children of school age residing in such camps and other places of temporary habitation, and also to all adults residing therein. They shall be open at such hours as may be prescribed by the district superintendent, subject to the approval of the commissioner of education. The trustee of each such district shall employ qualified teachers for the school therein, for such term and at such rate of compensation as may be determined upon by

the district superintendent, with the approval of the commissioner of education. The said trustees shall provide suitable building or rooms for such school and shall require the same to be kept in proper condition for the maintenance thereof, and shall cause the same to be equipped and supplied with all necessary books, furniture, apparatus and appliances.

§ 178. **Payment of expenses; gifts and contributions.**— The costs and expenses of maintaining such schools in temporary districts, exclusive of the amount apportioned thereto out of the public moneys, shall be paid in such districts where the public works are being constructed by the state, out of moneys appropriated for such purpose. In districts where public works or improvements are being constructed for a municipality, such costs and expenses shall be a charge upon such municipality, and shall be paid out of funds available for the payment of the cost of construction of such works or improvements.

The trustee of such district shall prepare an estimate of the amount of probable expenditures for the maintenance of the public schools in such district, which shall include a statement of the amount in the hands of the treasurer available for such maintenance, the amount received by such treasurer from gifts, contributions and other sources, and the amount to be received from the public school moneys, as herein provided, and shall also state the amount required to be raised for such school, specifying the items thereof, for the ensuing school year. The form of such estimate shall be prescribed by the district superintendent. In the districts where the public works are being constructed by a municipality the said estimate shall be executed in duplicate, one of which shall be filed with the state education department, and the other shall be filed in the office of the department or officer of the municipality under whose supervision such public works are being constructed. Upon the approval of such estimates by the state education department notice thereof shall be given to the said department or officer of the municipality, and payment of the amount specified in such estimate shall be made to the treasurer of such district. The treasurer shall preserve vouchers of all payments made by him on account of the school in his district and shall make no payments for purposes not provided for in the estimate, nor without the order of the trustee of the district accompanied with the necessary vouchers.

§ 179. **Regulations of commissioner of education.**— The commissioner of education shall make regulations, not inconsistent herewith, for the purpose of providing for the establishment and maintenance of schools as herein provided, and for the purpose of carrying into effect the full intent of this article.

FREE LECTURES FOR WORKINGPEOPLE.

LAWS OF 1888, CHAPTER 545.

AN ACT to provide for lectures for workingmen and workingwomen [in New York City].

§ 1. The board of education of the city of New York is hereby authorized and empowered to provide for the employment of competent lecturers to deliver lectures on the natural sciences and kindred subjects in the public schools of said city in the evenings for the benefit of workingmen and workingwomen.

§ 2. The said board of education shall have power to purchase the books, stationery, charts and other things necessary and expedient to successfully conduct said lectures which it shall have power to direct.

§ 3. No admission fee shall be charged, and at least one school in each ward of said city or such hall or halls therein, if there is not suitable accommodation in the school buildings for persons attending said lectures, where in the judgment of the said board of education it is practicable or expedient, shall be selected and designated by said board for the purpose of carrying out the provisions of this act, and one or more lectures, in the discretion of said board, shall be delivered in each school or other building so selected and designated in each week, between the first day of October in each year and the thirty-first day of March in each succeeding year, excepting the two weeks preceding and the week following the first day of January in each year; and such lecture or lectures may be advertised in a newspaper or newspapers published in said city, or otherwise, as the said board of education in its discretion shall determine. The board of estimate and apportionment of the city and county of New York is hereby authorized to appropriate annually sufficient money to carry out the provisions of this act. [*As am'd by L.* 1889, *ch.* 383; *L.* 1890, *ch.* 305; *L.* 1891, *ch.* 71.]

LICENSING OF TRADES.

[State examination boards grant certificates or licenses to nurses, pharmacists, physicians and other professions, and also to marine engineers and chauffeurs; but the regulation of other licensed *trades* is delegated to municipalities. Of the various local laws only those applying to New York City are here reprinted.]

LICENSING OF ENGINEERS AND PILOTS OF VESSELS.

THE NAVIGATION LAW, CHAPTER 37 OF THE CONSOLIDATED LAWS.

§ 17. **Licenses.**— Every person employed as master, pilot or engineer on board of a steam vessel or a vessel propelled by machinery, carrying passengers or freight for hire, or towing for hire, shall be examined by the inspectors as to his qualifications, and if satisfied therewith they shall grant him a license for the term of one year for such boat, boats or class of boats as said inspectors may specify in such license. In a proper case, the license may permit and specify that the master may act as pilot, and in case of small vessels also as engineer and pilot. The license shall be framed under glass, and posted in some conspicuous place on the vessel on which he may act. Whoever acts as master, pilot or engineer, without having first received such license, or upon a boat or class of boats not specified in his license, shall be liable to a penalty of fifty dollars for each day that he so acts, except as in this article otherwise specified, and such license may be revoked by the inspectors for intemperance, incompetency or willful violation of duty. An applicant for license as master, pilot or engineer, to act as such on steam vessels, must be a citizen of the United States, at least twenty-one years of age, and to act as such on motor boats he shall be not less than eighteen years old. [*As am'd by L.* 1913, *ch.* 765.]

§ 34. * * Each person licensed shall pay five dollars for each original license and three dollars for each renewal thereof. * *

For the act regulating the pilotage of the port of New York see Navigation Law, § 56.

LICENSING OF CHAUFFEURS.

THE HIGHWAY LAW, CHAPTER 25 OF THE CONSOLIDATED LAWS.

§ 281. Definitions.— * * * The term "chauffeur" shall mean any person operating or driving a motor vehicle, as an employee or for hire. * * * [*As am'd by L.* 1910, *ch.* 374 *and L.* 1911, *ch.* 491.]

§ 289. **License of chauffeurs; renewals.**— 1. License of chauffeurs. Application for license to operate motor vehicles, as a chauffeur, may be made, by mail or otherwise, to the secretary of state or his duly authorized agent upon blanks prepared under his authority. The secretary of state shall appoint examiners and cause examinations to be held at convenient points throughout the state as often as may be necessary. Such application shall be accompanied by a photograph of the applicant in such numbers and forms as the secretary of state shall prescribe, said photograph to be taken within thirty days prior to the filing of said application and to be accompanied by the fee provided herein. Before such a license is granted the applicant

shall pass such examination as to his qualifications as the secretary of state shall require. No chauffeur's license shall be issued to any person under eighteen years of age. To each person shall be assigned some distinguishing number or mark, and the license issued shall be in such form as the secretary of state shall determine; it may contain special restrictions and limitations concerning the type of motor power, horse power, design and other features of the motor vehicles which the licensee may operate; it shall contain the distinguishing number or mark assigned to the licensee, his name, place of residence and address, a brief description of the licensee for the purpose of identification and the photograph of the licensee. Such distinctive number or mark shall be of a distinctly different color each year and in any year shall be of the same color as that of the number plates issued for that year. The secretary of state shall furnish to every chauffeur so licensed a suitable metal badge with the distinguishing number or mark assigned to him thereon without extra charge therefor. This badge shall thereafter be worn by such chauffeur affixed to his clothing in a conspicuous place, at all times while he is operating or driving a motor vehicle upon the public highway. Said badge shall be valid only during the term of the license of the chauffeur to whom it is issued as aforesaid. Every person licensed to operate motor vehicles as aforesaid shall indorse his usual signature on the margin of the license, in the space provided for the purpose, immediately upon receipt of said license, and such license shall not be valid until so indorsed. Every application for license filed under the provisions of this section shall be sworn to and shall be accompanied by a fee of five dollars, two dollars of which shall be for his examination aforesaid and three dollars for license fee. The license hereunder granted on or before August first, nineteen hundred and ten, shall take effect on that date, and licenses issued prior to January thirty-first, nineteen hundred and eleven, shall expire on that date. The fees for such licenses shall be one-half of the annual fees provided herein.

2. Chauffeur's licensed registration book. Upon the receipt of such an application, the secretary of state shall thereupon file the same in his office, and register the applicant in a book or index which shall be kept in the same manner as the book or index for the registration of motor vehicles, and when the applicant shall have passed the examination provided for in the preceding section, the number or mark assigned to such applicant together with the fact that such applicant has passed such examination shall be noted in said book or index.

3. Unauthorized possession or use of license or badge. No chauffeur having been licensed as herein provided shall voluntarily permit any other person to possess or use his license or badge, nor shall any person while operating or driving a motor vehicle use or possess any license or badge belonging to another person, or a fictitious license or badge.

4. Unlicensed chauffeurs cannot drive motor vehicle. No person shall operate or drive a motor vehicle as a chauffeur upon a public highway of this state after the first day of August, nineteen hundred and ten, unless such person shall have complied in all respects with the requirements of this section; provided, however, that a nonresident chauffeur, who has registered under provisions of law of the foreign country, state, territory or federal district of his residence substantially equivalent to the provisions of this

section, shall be exempt from license under this section; and provided, further, he shall wear the badge assigned to him in the foreign country, state, territory or federal district of his residence in the manner provided in this section.

5. Renewal. Such license shall be renewed annually upon the payment of the same fee as provided in this section for the original license, such renewal to take effect on the first day of February of each year. The secretary of state may refuse to issue or renew a license if he deems the applicant not qualified to receive such license, but the refusal of the secretary of state may be reviewed by writ of certiorari. For renewals to take effect on and after February first, nineteen hundred and twelve, the fee shall be two dollars. [*As am'd by L.* 1910, *ch.* 374 *and L.* 1911, *ch.* 491.]

LICENSING OF MOVING-PICTURE MACHINE OPERATORS.

The General City Law, Chapter 21 of the Consolidated Laws.

§ 18. License to operate moving picture apparatus.— It shall not be lawful for any person or persons to operate any moving picture apparatus and its connections in a city of the first class unless such person or persons so operating such apparatus is duly licensed as hereinafter provided. Any person desiring to act as such operator shall make application for a license to so act to the mayor or licensing authority designated by the mayor, unless the charter of said city so designates, which officer shall furnish to each applicant blank forms of application which the applicant shall fill out. Such officer shall make rules and regulations governing the examination of applicants and the issuance of licenses and certificates. A license shall not be granted to an applicant unless he shall have served as an apprentice under a licensed operator, for a period of not less than six months prior to the date of the application; the application must be made in writing, and contain a verified statement to that effect; it must be accompanied by the affidavit of the licensed operator to the same effect; before entering upon the period of apprenticeship the applicant must register his name and address with the officer issuing such license. The applicant shall be given a practical examination under the direction of the officer required to issue such license and if found competent as to his ability to operate moving picture apparatus and its connections shall receive within six days after such examination a license as herein provided. Such license may be revoked or suspended at any time by the officer issuing the same. Every license shall continue in force for one year from the date of issue unless sooner revoked or suspended. Every license, unless revoked or suspended, as herein provided, may at the end of one year from the date of issue thereof be renewed by the officer issuing it in his discretion upon application and with or without further examination as he may direct. Every application for renewal of license must be made within the thirty days previous to the expiration of such license. With every license granted there shall be issued to every person obtaining such license a certificate, certifying that the person named therein is duly authorized to operate moving picture apparatus and its connections. Such certificate shall be displayed in a conspicuous place in the room where the person to whom it is issued operates moving picture apparatus and its connections. No person shall be eligible to procure a license unless he shall be of full age. Any per-

son offending against the provisions of this section, as well as any person who employs or permits a person not licensed as herein provided to operate moving picture apparatus and its connections, shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not exceeding the sum of one hundred dollars, or imprisonment for a period not exceeding three months, or both. [*Added by L.* 1911, *ch.* 252.]

LAWS OF 1901, CHAPTER 466, BEING THE REVISED CHARTER OF GREATER NEW YORK.

§ 529-a. **No person to operate moving picture apparatus and its connections without a license.**— It shall not be lawful for any person or persons to operate any moving picture apparatus and its connections in the city of New York unless such person or persons so operating such apparatus is duly licensed as hereinafter provided. Any person desiring to act as such operator shall make application for a license to so act to the commissioner of water supply, gas and electricity of the city of New York who shall furnish to each applicant blank forms of application which the applicant shall fill out.

The commissioner of water supply, gas and electricity shall make rules and regulations governing the examination of applicants and the issuance of licenses and certificates.

The applicant shall be given a practical examination under the direction of the commissioner of water supply, gas and electricity and if found competent as to his ability to operate moving picture apparatus and its connections shall receive within six days after such examination a license as herein provided. Such license may be revoked or suspended at any time by the commissioner of water supply, gas and electricity. Every license shall continue in force for one year from the date of issue unless sooner revoked or suspended. Every license, unless revoked or suspended, as herein provided, may at the end of one year from the date of issue thereof be renewed by the commissioner of water supply, gas and electricity in his discretion upon application and with or without further examination as said commissioner may direct. Every application for renewal of license must be made within the thirty days previous to the expiration of such license. With every license granted there shall be issued to every person obtaining such license a certificate, made by the commissioner of water supply, gas and electricity or such other officer as such commissioner may designate, certifying that the person named therein is duly authorized to operate moving picture apparatus and its connections. Such certificate shall be displayed in a conspicuous place in the room where the person to whom it is issued operates moving picture apparatus and its connections. No person shall be eligible to procure a license unless he shall be a citizen of the United States and of full age. Any person offending against the provisions of this section, as well as any person who employs or permits a person not licensed as herein provided to operate moving picture apparatus and its connections, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not exceeding the sum of one hundred dollars or imprisonment for a period not exceeding three months, or both, in the discretion of the court. [*Added by L.* 1910, *ch.* 654.]

INSPECTION OF STEAM BOILERS AND LICENSING OF STEAM ENGINEERS IN NEW YORK CITY.*

Laws of 1901, Chapter 466, Being the Revised Charter of Greater New York.

§ 342. **Steam boilers; inspection of; not to be operated without certificate.** — Every owner, agent or lessee of a steam boiler or boilers in use in The City of New York shall annually, and at such convenient times and in such manner and in such form as may by rules and regulations to be made therefor by the police commissioner be provided, report to the said department the location of each steam boiler or boilers, and thereupon, and as soon thereafter as practicable, the sanitary company or such member or members thereof as may be competent for the duty herein described, and may be detailed for such duty by the police commissioner shall proceed to inspect such steam boilers, and all apparatus and appliances connected therewith; but no person shall be detailed for such duty except he be a practical engineer, and the strength and security of each boiler shall be tested by atmospheric and hydrostatic pressure and the strength and security of each boiler or boilers so tested shall have, under the control of said sanitary company, such attachments, apparatus and appliances as may be necessary for the limitation of pressure, locked and secured in like manner as may be from time to time adopted by the United States inspectors of steam boilers or the secretary of the treasury, according to act of Congress, passed July twenty-fifth, eighteen hundred and sixty-six; and they shall limit the pressure of steam to be applied to or upon such boiler, certifying each inspection and such limit of pressure to the owner of the boiler inspected, and also to the engineer in charge of same, and no greater amount of steam or pressure than that certified in the case of any boiler shall be applied thereto. In limiting the amount of pressure, wherever the boiler under test will bear the same, the limit desired by the owner of the boiler shall be the one certified. Every owner, agent or lessee of a steam boiler or boilers in use in The City of New York shall, for the inspection and testing of such or each of such boilers, as provided for in this act, and upon receiving from the police department a certificate setting forth the location of the boiler inspected, the date of such inspection, the persons by whom the inspection was made, and the limit of steam pressure which shall be applied to or upon such boiler or each of such boilers pay annually to the police commissioner for each boiler, for the use of the police pension fund, the sum of two dollars, such certificate to continue in force for one year from the granting thereof when it shall expire, unless sooner revoked or suspended. Such certificate may be renewed upon the payment of a like sum and like conditions, to be applied to a like purpose. It shall not be lawful for any person or persons, corporation or corporations, to have used or operated within The City of New York any steam boiler or boilers except for heating purposes and for railway locomotives, without having first had such boiler or boilers inspected or tested and procured for

* For statute regulating examination of stationary engineers in Buffalo, see the charter (L. 1891, ch. 105, as am'd by L. 1899, ch. 557). As to general responsibility of persons in charge of steam boilers, see §§ 1052, 1893 of the Penal Law, given in part, under "Criminal liability for negligence," under Duties and Liabilities of Employers and Employees, *ante*.

such boiler or each of such boilers so used or operated the certificate herein provided for. The superintendent and inspectors of boilers, in the employ of the police department, in the city of Brooklyn, and the boiler inspectors in Long Island City, shall continue to discharge the duties heretofore devolved upon them, subject, however, to removal for cause, or when they are no longer needed.

§ 343. **No person to use, or act as engineer for, without certificate.**—It shall not be lawful for any person or persons to operate or use any steam boiler to generate steam except for railway locomotive engines, and for heating purposes in private dwellings, and boilers carrying not over ten pounds of steam and not over ten horse-power, or to act as engineer for such purposes in The City of New York without having a certificate of qualification therefor from practical engineers detailed as such by the police department, such certificate to be countersigned by the officer in command of the sanitary company of the police department of The City of New York and to continue in force one year, unless sooner revoked or suspended. Such certificate may be revoked or suspended at any time by the police commissioner upon the report of any two practical engineers, detailed as provided in this section, stating the grounds upon which such certificate should be revoked or suspended. Where such certificate shall have been revoked, as provided in this section, a like certificate shall not in any case be issued to the same person within six months from the date of the revocation of the former certificate held by such person.

LAWS OF 1897, CHAPTER 635, AMENDING SECTION 312 OF THE NEW YORK CITY CONSOLIDATION ACT (LAWS OF 1882, CHAPTER 410).

* * * * * * * * * * * *

* * And no owner, or agent of such owner, or lessee of any steam boiler to generate steam, shall employ any person as engineer or to operate such boiler unless such person shall first obtain a certificate as to qualification therefor from a board of practical engineers detailed as such by the police department, such certificate to be countersigned by the officer in command of the sanitary company of the police department of the city of New York. In order to be qualified to be examined for and to receive such certificate of qualification as an engineer, a person must comply, to the satisfaction of said board, with the following requirements:

1. He must be a citizen of the United States and over twenty-one years of age.

2. He must, on his first application for examination, fill out, in his own handwriting, a blank application to be prepared and supplied by the said board of examiners, and which shall contain the name, age, and place of residence of the applicant, the place or places where employed and the nature of his employment for five years prior to the date of his application, and a statement that he is a citizen of the United States. The application shall be verified by him, and shall, after the verification, contain a certificate signed by three engineers, employed in New York city, and registered on the books of said board of examiners as engineers working at their trade, certify-

ing that the statements contained in such application are true. Such applition shall be filed with said board.

3. The following persons, who have first complied with the provisions of subdivisions one and two of this section, and no other persons may make application to be examined for a license to act as engineer.

a. Any person who has been employed as a fireman, as an oiler, or as a general assistant under the instructions of a licensed engineer in any building or buildings in the city of New York, for a period of not less than five years.

b. Any person who has served as a fireman, oiler or general assistant to the engineer on any steamship or steamboat, for a period of five years, and shall have been employed for two years under a licensed engineer in a building in the city of New York, or any person who has served as a marine or locomotive engineer or fireman to a locomotive engineer for a period of five years and shall have been a resident of the state of New York for a period of two years. [*As am'd by L.* 1900, *ch.* 461.]

c. Any person who has learned the trade of machinist, or boiler maker or steamfitter and worked at such trade for three years exclusive of time served as apprentice, or while learning such trade, and also any person who has graduated as a mechanical engineer from a duly established school of technology, after such person has had two years' experience in the engineering department in any building or buildings in charge of a licensed engineer in the city of New York.

d. Any person who holds a certificate as engineer issued to him by any duly qualified board of examining engineers existing pursuant to law in any state or territory of the United States and who shall file with his application a copy of such certificate and an affidavit that he is the identical person to whom said certificate was issued. If the board of examiners of engineers shall determine that the applicant has complied with the requirements of this section he shall be examined as to his qualifications to take charge of, and operate steam boilers and steam engines in the city of New York, and if found qualified said board shall issue to him a certificate of the third class. After the applicant has worked for a period of two years under his certificate of the third class, he may be again examined by said board for a certificate of the second class and if found worthy the said board may issue to him such certificate of the second class, and after he has worked for a period of one year under said certificate of the second class he may be examined for a certificate of the first class; and when it shall be made to appear to the satisfaction of said board of examiners that the applicant for either of said grades lacks mechanical skill, is a person of bad habits or is addicted to the use of intoxicating beverages he shall not be entitled to receive such grade of license and shall not be re-examined for the same until after the expiration of one year. Every owner or lessee, or the agent of the owner or lessee, of any steam boiler, steam generator, or steam engine aforesaid, and every person acting for such owner or agent is hereby forbidden to delegate or transfer to any person or persons other than the licensed engineer the responsibility and liability of keeping and maintaining in good order and condition any such steam boiler, steam generator or steam engine, nor shall any such owner, lessee or agent, enter into a contract for the operation or management

of a steam boiler, steam generator or steam engine, whereby said owner, lessee or agent shall be relieved of the responsibility or liability for injury which may be caused to person or property by such steam boiler, steam generator or steam engine. Every engineer holding a certificate of qualification from said board of examiners shall be responsible to the owner, lessee, or agent employing him for the good care, repair, good order and management of the steam boiler, steam generator or steam engine in charge of, or run or operated by such engineer.

e. Any person or persons violating any provision of this section or of any of its subdivisions shall be guilty of a misdemeanor. [*Added by L.* 1900, *ch.* 709.]

LICENSING OF STATIONARY FIREMEN IN NEW YORK CITY.

LAWS OF 1901, CHAPTER 733.

AN ACT to provide for the licensing of firemen operating steam stationary boiler or boilers in the city of New York.

Section 1. It shall be unlawful for any fireman or firemen to operate steam stationary boiler or boilers in the city of New York, unless the fireman or firemen so operating such boiler or boilers are duly licensed as hereinafter provided. Such fireman or firemen to be under the supervision and direction of a duly licensed engineer or engineers.

§ 2. Should any boiler or boilers be found at any time operated by any person who is not a duly licensed fireman or engineer as provided by this act, the owner or lessee thereof shall be notified, and if after one week from such notification the same boiler or boilers is again found to be operated by a person or persons not duly licensed under this act, it shall be deemed prima facie evidence of a violation of this act.

§ 3. Any person desiring to act as a fireman shall make application for a license to so act, to the steam boiler bureau of the police department as now exists for licensing engineers, who shall furnish to each applicant blank forms of application, which application when filled out, shall be signed by a licensed engineer engaged in working as an engineer in the city of New York, who shall therein certify that the applicant is of good character, and has been employed as oiler, coalpasser or general assistant under the instructions of a licensed engineer on a building or buildings in the city of New York, or on any steamboat, steamship or locomotive for a period of not less than two years. The applicant shall be given a practical examination by the board of examiners detailed as such by the police commissioner and if found competent as to his ability to operate a steam boiler or boilers as specified in section one of this act shall receive within six days after such examination a license as provided by this act. Such license may be revoked or suspended at any time by the police commissioner upon the proof of deficiency. Every license issued under this act shall continue in force for one year from the date of issue unless sooner revoked as above provided. Every license issued under this act unless revoked as herein provided shall at the end of one year from date of issue thereof, be renewed by the board of examiners upon application and without further examination. Every application for renewal of license must be made within thirty days of the expiration of such license. With every license granted under this act there shall be issued to every person

obtaining such license a certificate, certified by the officers in charge of the boiler inspection bureau. Such certificate shall be placed in the boiler room of the plant operated by the holder of such license, so as to be easily read.

§ 4. No person shall be eligible to procure a license under this act unless the said person be a citizen of the United States.

§ 5. All persons operating boilers in use upon locomotives or in government buildings, and those used for heating purposes carrying a pressure not exceeding ten pounds to the square inch, shall be exempt from the provisions of this act. Such license will not permit any person other than a duly licensed engineer to take charge of any boiler or boilers in the city of New York.

TRADE UNIONS.

[No special provision is made by the statutes of New York for incorporation of trade unions as business organizations. An association of workingmen for the purpose of undertaking co-operative insurance may incorporate under the Insurance Law; but nothing in this law or any of the laws relating to stock corporations provides for the actual business of trade unions in contracting with employers as the agents of the employees. This primary object of trade unions finds no recognition, of course, in the non-stock corporation laws; although the unions that have incorporated in New York have done so under the Membership Corporations Law, which applies to benevolent, charitable, scientific and missionary societies.

Trade unions do not in fact find incorporation necessary in order to obtain legal standing in the courts, since the law of this state has provided since 1851 that an unincorporated association consisting of seven or more persons may sue and be sued in the name of its president and treasurer (§§ 1919–1921 of the Code of Civil Procedure, as below).

Disobedience of an injunction addressed to an unincorporated association and "its each and every member" constitutes a criminal contempt even if the violators were not personally served with the order: People *ex rel.* Stearns v. Marr, 181 N. Y. 403 (1905).

As to union labels, see §§ 15 and 16 of the Labor Law, *ante.*]

A union member deprived of membership without a fair trial may seek redress in the civil courts: Schouten v. Alpine, 77 Misc. 19.

ACTION BY OR AGAINST AN UNINCORPORATED ASSOCIATION.

CODE OF CIVIL PROCEDURE, ARTICLE I OF TITLE V OF CHAPTER XV.

§ 1919. An action or special proceeding may be maintained, by the president or treasurer of an unincorporated association, consisting of seven or more persons, to recover any property, or upon any cause of action, for or upon which all the associates may maintain such an action or special proceeding, by reason of their interest or ownership therein, either jointly or in common. An action may likewise be maintained by such president or treasurer to recover from one or more members of such association his or their proportionate share of any moneys lawfully expended by such association for the benefit of such associates, or to enforce any lawful claim of such association against such member or members. An action or special proceeding may be maintained, against the president or treasurer of such an association, to recover any property, or upon any cause of action, for or upon which the plaintiff may maintain such an action or special proceeding, against all the associates, by reason of their interest or ownership, or claim of ownership therein, either jointly or in common, or their liability therefor, either jointly or severally. Any partnership, or other company of persons, which has a president or treasurer, is deemed an association within the meaning of this section. [*As am'd by L.* 1900, *ch.* 184.]

The action, though in form against such officer, is in substance and reality against the association (Mason v. Holmes, 30 Misc. 719).

§ 1921. In such an action the officer against whom it is brought cannot be arrested; and a judgment against him does not authorize an execution to be issued against his property, or his person; nor does the docketing thereof bind his real property, or chattels real. Where such a judgment is for a sum

of money, an execution issued thereupon must require the sheriff to satisfy the same, out of any personal or real property belonging to the association, or owned, jointly or in common, by all the members thereof. [*As am'd by L.* 1898, *ch.* 293.]

An action for damages held to lie against an unincorporated trade union, Curran v. Galen, 152 N. Y. 33 (1897); see also Connell v. Stalker, 20 Misc. 423 (1897); Coons v. Chrystie, 24 Misc. 296 (1898); Matthews v. Shankland, 25 Misc. 604 (1898); Beattie v. Callanan, 67 App. Div. 14 (1901).

AUTHORIZING THE INCORPORATION OF LABOR ORGANIZATIONS FOR BENEVOLENT PURPOSES.

THE MEMBERSHIP CORPORATIONS LAW, CHAPTER 35 OF THE CONSOLIDATED LAWS.

§ 40. **Purposes for which corporations may be formed under this article.**— A membership corporation may be created under this article for any lawful purpose, except a purpose for which a corporation may be created under any other article of this chapter, or any other general law than this chapter.

Reviser's Note.— "This section is intended to make one complete general statement, including every object for which membership corporations ought to be permitted under a general law, instead of a long enumeration of particular purposes, requiring new legislation whenever incorporation is desired for a new purpose. The definition of a membership corporation in section 2 will prevent the formation of a stock corporation or of a mutual benefit insurance corporation under this article. See Matter of Lampson, 35 App. Div. 49, aff'd in 161 N. Y. 511; People v. Johnson, 22 Misc. 150."

§ 41. **Certificates of incorporation.**— Five or more persons may become a membership corporation for any one of the purposes for which a corporation may be formed under this article or for any two or more of such purposes of a kindred nature, by making, acknowledging and filing a certificate, stating the particular objects for which the corporation is to be formed, each of which must be such as is authorized by this article; the name of the proposed corporation; the territory in which its operations are to be principally conducted; the town, village or city in which its principal office is to be located, if it be then practicable to fix such location; the number of its directors, not less than three nor more than thirty; and the names and places of residence of the persons to be its directors until its first annual meeting. Such certificate shall not be filed without the written approval, indorsed thereupon or annexed thereto, of a justice of the supreme court. * * * On filing such certificate, in pursuance of law, the signers thereof, their associates and successors, shall be a corporation in accordance with the provisions of such certificate. * * *

AUTHORIZING LABOR ORGANIZATIONS TO MAINTAIN OR CONSTRUCT BUILDINGS, HALLS OR LIBRARIES FOR THEIR USE.

THE BENEVOLENT ORDERS LAW, CHAPTER 3 OF THE CONSOLIDATED LAWS.

§ 7. **Joint corporations.**— * * * any number of trades unions, trades assemblies, trades associations or labor organizations, * * * may unite in forming a corporation for the purpose of acquiring, constructing, maintaining and managing a hall, temple or other building, or a home for the aged and indigent members of such order and their dependent widows and

orphans, and of creating, collecting and maintaining a library for the use of the bodies uniting to form such corporation. Each body hereafter uniting to form such corporation shall annually at a regular meeting thereof, held in accordance with its constitution and general rules and regulations or by-laws, elect a member thereof to represent it in such corporation. * * * The trustees so elected shall make, acknowledge and file with the secretary of state, a certificate stating the name of the corporation to be formed, its purposes and objects, the names and places of residence of the trustees, the names of the bodies which they respectively represent, the names of the bodies uniting to form the corporation and their location, and the name of the town, village or city and the county where such building is, or is to be located; and thereupon the several bodies so uniting shall be a corporation for the purposes specified in such certificate.

§ 9. **Powers of joint corporations.**—Such corporation may acquire real property in the town, village or city in which such hall, home, temple or building is or is to be located, and erect such building or buildings thereupon for the uses and purposes of the corporation, as the trustees may deem necessary, or repair, rebuild or reconstruct any building or buildings that may be thereupon and furnish and complete such rooms therein as may appear necessary for the use of such bodies or for any other purpose for which the corporation is formed; and may rent to other persons any portion of such building or real property for business or other purposes. Until such real property shall be acquired or such building erected or made ready for use, the corporation may rent and sublet such rooms or apartments in such town, village or city as may be suitable or convenient for the use of the bodies mentioned in such certificate, or of such other bodies as may desire to use them, and the board of trustees may determine the terms and conditions on which rooms and apartments in such building or buildings, when erected, or which may be leased, shall be used and occupied. Before such corporation composed of not more than thirty bodies shall purchase or sell any real property, or erect or repair any building or buildings thereupon, and before it shall purchase any building or part of a building for the use of a corporation, it shall submit to the bodies constituting the corporation, the proposition to make such sale or purchase, or to erect or repair any such building or buildings, or to rent any building or part thereof, for the use of the corporation; and unless such proposition receives the approval of two-thirds of the bodies constituting the corporation, such proposition shall not be carried into effect. The evidence of the approval of such proposition by any such body shall be a certificate to that effect signed by the presiding officer and secretary of the body, or the officers discharging duties corresponding to those of the presiding officer and secretary, under the seal of such body. But where land is purchased for the purpose of erecting a hall, home or temple thereon, the buildings upon such land at the time of such purchase may be sold by the trustees without such consent. The powers of the board of trustees of every corporation created hereunder and composed of more than thirty bodies, respecting sales, purchases and repairs, shall be fixed by the by-laws adopted by the representatives of the various bodies composing such corporation, or shall be determined by such representatives when assembled in annual session. Every corporation created hereunder shall have power to enforce, at law

or in equity, any legal contract which it may make with any of the bodies composing it respecting the care and maintenance of members or other dependents of such body, the same as if such body or bodies were not members of the corporation. Any corporation created hereunder shall have power to take and hold real and personal estate by purchase, gift, devise or bequest subject to the provisions of law relating to devises and bequests by last will and testament or otherwise. [*As am'd by L.* 1913, *ch.* 11.]

FORBIDDING LABOR ORGANIZATIONS TO DISCRIMINATE AGAINST MEMBERS OF THE NATIONAL GUARD.

Penal Law, Chapter 40 of the Consolidated Laws.

§ 481. **Discrimination against members of the national guard.**— No association or corporation, constituted or organized for the purpose of promoting the success of the trade, employment, or business of the members thereof, shall by any constitution, rule, by-law, resolution, vote, or regulation, discriminate against any member of the national guard of the state of New York, because of such membership in respect of the eligibility of such member of the said national guard to membership in such association or corporation, or in respect of his right to retain said last mentioned membership; it being the purpose of this section and the section immediately preceding to protect a member of the said national guard from disadvantage in his means of livelihood and liberty therein but not to give him any preference or advantage on account of his membership of said national guard. A person who aids in enforcing any such provisions against a member of the said national guard with the intent to discriminate against him because of such membership, is guilty of a misdemeanor.

PREVENTING FRAUDULENT REPRESENTATION IN LABOR ORGANIZATIONS.

Penal Law, Chapter 40 of the Consolidated Laws.

§ 1278. **Fraudulent representation in labor organizations.**— Any person who represents himself or herself to be a member of, or who claims to represent a labor organization which does not exist within the state, at the time of such representation, or who has in his or her possession a credential, certificate or letter of introduction bearing a fraudulent seal, or bearing the seal of a labor organization which has ceased to exist, and does not exist at the time of such representation, and attempts to gain admission by the use of said credential, certificate or letter of introduction, as a member of any convention, or meeting of representatives of labor organizations of the state, shall be guilty of a misdemeanor and upon conviction thereof shall be punishable by a fine of not less than twenty dollars nor more than fifty dollars, and imprisonment for not less than ten days nor more than thirty days in the jail of the county wherein such conviction is had, or by both such fine and imprisonment.

UNAUTHORIZED USE OF BADGES, TITLES, ETC.

Penal Law, Chapter 40 of the Consolidated Laws.

§ 2240. **Unauthorized wearing or use of badge, name, title of officers, insignia, ritual or ceremony of certain orders and societies.**— 1. Any person who wilfully wears the badge or the button of the Grand Army of the Republic, the insignia, badge or rosette of the Military Order of the Loyal

Legion of the United States, or the Military Order of Foreign Wars of the United States, or the badge or button of the Spanish war veterans, or the Order of Patrons of Husbandry, or the Benevolent and Protective Order of Elks of the United States of America, or of any society, order or organization, of ten years' standing in the state of New York, or uses the same to obtain aid or assistance within this state, or wilfully uses the name of such society, order or organization, the titles of its officers, or its insignia, ritual or ceremonies, unless entitled to use or wear the same under the constitution and by-laws, rules and regulations of such order or of such society, order or organization, is guilty of a misdemeanor.

UNLAWFUL TO COMPEL EMPLOYEES TO AGREE NOT TO JOIN LABOR ORGANIZATIONS.

PENAL LAW, CHAPTER 40 OF THE CONSOLIDATED LAWS.

§ 531. **Coercion by employers.**—Any person or employer of labor, and any person of any corporation on behalf of such corporation, who shall hereafter coerce or compel any person, employee, laborer or mechanic, to enter into an agreement, either written or verbal, from such person, employee, laborer or mechanic, not to join or become a member of any labor organization, as a condition of such person securing employment, or continuing in the employment of any such person, employer or corporation, shall be deemed guilty of a misdemeanor. The penalty for such misdemeanor shall be imprisonment in a penal institution for not more than six months, or by a fine of not more than two hundred dollars, or by both such fine and imprisonment.

This statute imposes an unauthorized restraint upon the freedom to contract in relation to the purchase and sale of labor, and is unconstitutional: People v. Marcus, 185 N. Y. 257 (1906).

UNLAWFUL TO BRIBE REPRESENTATIVES OF LABOR ORGANIZATIONS.

PENAL LAW, CHAPTER 40 OF THE CONSOLIDATED LAWS.

§ 380. **Bribery of labor representatives.**—A person who gives or offers to give any money or other things of value to any duly appointed representative of a labor organization with intent to influence him in respect to any of his acts, decisions, or other duties as such representative, or to induce him to prevent or cause a strike by the employees of any person or corporation, is guilty of a misdemeanor; and no person shall be excused from attending and testifying, or producing any books, papers or other documents before any court or magistrate, upon any investigation, proceeding or trial, for a violation of this section, upon the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to convict him of a crime or subject him to a penalty or forfeiture; but no person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he may so testify or produce evidence, documentary or otherwise, and no testimony so given or produced shall be received against him upon any criminal investigation or proceeding.

Cf. "Corrupt influencing of employees," (Penal Law, § 439), under DUTIES AND LIABILITIES OF EMPLOYERS AND EMPLOYEES, *ante*.

INDUSTRIAL DISPUTES.

[The "right to strike," i. e., to quit work in concert, is controlled by the statutes and judicial decisions respecting combinations. Sections 580 and 582 of the Penal Law define conspiracies, or unlawful combinations. The latter section expressly legalizes a combination (strike) for the purpose of maintaining or advancing the rate of wages, and the courts have broadened this authorization to include any peaceable and orderly strike of wage workers, *not to harm others but to improve their own condition,* within which lawful purpose may be a strike by a trade union to procure the discharge of an outsider and the employment of its own members: Nat'l Protective Assn. v. Cumming, 170 N. Y. 315; Wunch v. Shankland, 179 N. Y. 545, Mem. But concerning strikes for the "closed shop," see that topic below. Similarly, a lockout is legal if no malice is shown (City Trust, Safe Deposit & Surety Co. v. Waldhauer, 47 Misc. 7).

INTIMIDATION.—A strike that has a lawful purpose becomes unlawful if conducted by unlawful means. Thus it is contrary to law to use or threaten to use violence, force or intimidation in the prosecution of a strike (§ 530 of the Penal Law, defining coercion); or to endanger life by refusal to labor (§ 1910); or interfere with passengers in public conveyances (§ 720), etc.

Violation of an injunction order against illegal interference with new employees on the part of strikers constitutes criminal contempt and is punishable as such even though the individual members of the union were not personally served with the order: People *ex rel.* Stearns v. Marr, 181 N. Y. 463 (1905).

PICKETING is not defined by statute, but by the interpretation placed by the courts on the above-mentioned laws relating to coercion. One of the most authoritative discussions of "picketing" by Federal courts is in Union Pacific Ry. Co. v. Ruef (120 Fed. Rep. 102), and by the New York courts in a unanimous decision of the Second Appellate Division, December, 1904, which is, in part, as follows:

"'Picketing' may simply mean the stationing of men for observation. If in the doing of this act, solely for such purpose, there be no molestation or physical annoyance, or let or hindrance of any person then it can not be said that such an act is, *per se,* unlawful. But 'picketing' may also mean the stationing of a man or men to coerce or to threaten, or to intimidate or to halt or to turn aside against their will those who would go to and from the picketed place to do business, or to work, or to seek work therein, or in some other way to hamper, hinder, or harass the free dispatch of business by the employer. In that case, picketing may well be said to be unlawful. * * * I may add that I am not prepared to say that all picketing which goes no further than 'persuasion and entreaty' of those who are about to work or to seek work or to do business in the picketed place is absolutely lawful. A wayfarer upon the public street should be free for peaceful travel. No man against my will has the legal right to occupy the public street to arrest my course or to join me on my way, be he ever so polite or gentle in his insistence. There may be no intimidation, and yet an interruption of peaceful travel. There may be annoyance without danger."—Mills v. U. S. Printing Co., 99 App. Div. 605

BOYCOTTING.—The ruling of the Court of Appeals in the Cumming case, cited above, modified the law regarding boycotts, so that the courts do not find in a boycott *per se* the malicious purpose, or an attempt to injure, that constitutes conspiracy (Foster v. Retail Clerks' Protective Association, 39 Misc. 48 [1902]; Butterick Pub. Co v. Typographical Union No. 6, 50 Misc. 1 [1906]). The injury inflicted may be only an incident of the act whereby the ultimate end is gained (Mills v. U. S. Print. Co., 99 App. Div. 605). In this case the court unanimously indorsed Bouvier's statement, "A boycott is not unlawful unless attended with some act which in itself is illegal," and continued: "I think that the verb 'to boycott' does not necessarily signify that the doers employ violence, intimidation or other unlawful coercive means, but that it may be correctly used in the sense of the act of a combination in refusing to have business dealings with another until he removes or ameliorates conditions which are deemed inimical to the welfare of the members of the combination, or some of them, or grants concessions

which are deemed to make for that purpose. And as such a combination may be formed and held together by argument, persuasion, entreaty or by the 'touch of nature,' and may accomplish its purpose without violence or other unlawful means, i. e., simply by abstention, I think it cannot be said that 'to boycott' is to offend the law." In agreement with this view, see the opinion of the Supreme Court of Missouri (1901) in Marx & Hass Jeans Clothing Co. v. Watson (67 S. W. Rep. 391). On the other hand, the earlier rule is maintained in the cases of Davis Machine Co. v. Robinson (41 Misc. 329) and People v. McFarlin (43 Misc. 599). A boycott which affects inter-state commerce is illegal under the Federal anti-trust law: Loewe v. Lawlor, 208 U. S. 274 (the hatters' case).

BLACKLISTING.— The blacklist is in principle a form of the boycott, but is carried on in such secrecy that it has seldom come before the courts.

THE "CLOSED SHOP."— It has been held that an agreement providing for the closed shop (i. e., exclusive employment of members of a trade union) is not in violation of law and will be enforced by the courts: Jacobs v. Cohen, 183 N. Y. 207 (1905); Nat'l Fire Proofing Co. v. Mason Builders' Assn., 145 Fed. Rep. 260, (June, 1906); Kissam v. U. S. Printing Co., 199 N. Y. 76, affirming 128 App. Div. 889. But no agreement whatever makes it lawful for members of a union to coerce or maliciously interfere with non-union men (Curran v. Galen, 52 N. Y. 33, decided in 1897 and reaffirmed in Jacobs case just cited. *Cf.* also Beattie v. Callanan, 82 App. Div. 7). Further, a strike for a closed shop throughout an entire trade in a locality has been held illegal as constituting conspiracy to deprive men of the exercise of the right to work (Schwartz v. Int'l Ladies' Garment Workers' Union, 68 Misc. 528). Similarly a requirement by employers generally in a community that employees must be members of a particular union is illegal (McCord v. Thompson-Starrett Co., 129 App. Div. 130, aff'd in 198 N. Y. 587). A strike to prevent use by a union firm of materials manufactured by a non-union firm has been held both illegal on the ground of unlawful interference with an employer's freedom (Irving v. Joint District Council, 180 Fed. Rep. 896; Newton Co. v. Erickson, 70 Misc. 291), and legal as within the rights of workingmen (Bossert v. United Brotherhood of Carpenters and Joiners, 77 Misc. 592); also a strike to prevent manufacture of goods for a non-union firm (Schlang v. Ladies' Waist Makers' Union, 67 Misc. 222); both these being regarded as unlawful interference with an employer's freedom. An agreement binding workmen to work only for members of an employers association has been held illegal (People v. Miller in Magistrate's Court, New York City, August 20, 1904).

CONSPIRACY, INTIMIDATION, EXTORTION, ETC.

PENAL LAW, CHAPTER 40 OF THE CONSOLIDATED LAWS.

§ 580. **Definition and punishment of conspiracy.**— If two or more persons conspire:

1. To commit a crime; or

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5. To prevent another from exercising a lawful trade or calling, or doing any other lawful act, by force, threats, intimidation, or by interfering or threatening to interfere with tools, implements or property belonging to or used by another, or with the use or employment thereof; or

6. To commit any act injurious to the public health, to public morals, or to trade or commerce, or for the perversion or obstruction of justice, or of the due administration of the laws;

Each of them is guilty of a misdemeanor.

§ 581. **Conspiracies against peace of the state.**— If two or more persons, being out of this state, conspire to commit any act against the peace of this state, the commission or attempted commission of which, within this state, would be treason against the state, they are punishable by imprisonment in a state prison not exceeding ten years.

§ 582. **Punishable conspiracies.**— No conspiracy is punishable criminally unless it is one of those enumerated in the last two sections, and the orderly and peaceable assembling or co-operation of persons employed in any calling, trade or handicraft for the purpose of obtaining an advance in the rate of wages or compensation, or of maintaining such rate, is not a conspiracy.

§ 1910. **Endangering life by refusal to labor.**— A person who wilfully and maliciously, either alone or in combination with others, breaks a contract of service or hiring, knowing, or having reasonable cause to believe, that the probable consequence of his so doing will be to endanger human life, or to cause grievous bodily injury, or to expose valuable property to destruction or serious injury, is guilty of a misdemeanor.

§ 1480. **Depriving members of national guard of employment.**— A person who, either by himself or with another, wilfully deprives a member of the national guard of his employment, or prevents his being employed by himself or another, or obstructs or annoys said member of said national guard, or his employer, in respect of his trade, business, or employment, because said member of said national guard is such member, or dissuades any person from enlistment in the said national guard by threat of injury to him in case he shall so enlist, in respect of his employment, trade, or business, is guilty of a misdemeanor.

§ 530. **Coercing another person a misdemeanor.**— A person, who with a view to compel another person to do or to abstain from doing an act which such other has a legal right to do or to abstain from doing, wrongfully and unlawfully,

1. Uses violence or inflicts injury upon such other person or his family, or a member thereof, or upon his property, or threatens such violence or injury; or

2. Deprives any such person of any tool, implement, or clothing, or hinders him in the use thereof; or

3. Uses or attempts the intimidation of such person by threats or force;

Is guilty of a misdemeanor.

One who advises or induces another to commit assault or attempt other intimidation is also guilty of violating this prohibition, thus:

§ 2. *Definition of principal.*—A person concerned in the commission of a crime, whether he directly commits the act constituting the offense or aids and abets in its commission, and whether present or absent, and a person who directly or indirectly counsels, commands, induces or procures another to commit a crime, is a principal.

§ 850. **Extortion defined.**— Extortion is the obtaining of property from another, with his consent, induced by a wrongful use of force or fear, or under cover of official right.

§ 851. **What threats may constitute extortion.**— Fear, such as will constitute extortion, may be induced by an oral or written threat:

1. To do an unlawful injury to the person or property of the individual threatened, or to any relative of his or to any member of his family; or,

2. To accuse him, or any relative of his or any member of his family, of any crime; or,

3. To expose, or impute to him, or any of them, any deformity or disgrace; or,

4. To expose any secret affecting him or any of them; or,

5. To kidnap him or any relative of his or member of his family; or

6. To injure his person or property or that of any relative of his or member of his family by the use of weapons or explosives. [*As am'd by L.* 1911, *chs.* 121 *and* 602.]

§ 852. **Punishment of extortion.**— A person who extorts any money or other property from another, under circumstances not amounting to robbery, is punishable by imprisonment not exceeding fifteen years, if the same is done by means of force or a threat mentioned in section eight hundred and fifty or in either of the first four subdivisions of section eight hundred and fifty-one, and by imprisonment for not less than five years nor more than twenty years if the same is done by means of a threat mentioned in subdivisions five or six of the latter section. [*As am'd by L.* 1909, *ch.* 368 *and L.* 1911, *ch.* 602.]

Obtaining money by threats or by the continuance of a boycott as described constitutes the crime of extortion under the above sections. Those present and abetting when the money is paid or uniting in the acts that lead to the payment or the agreement to pay, though not present when the money is received, are each liable as principals. Whether the money is shared personally or placed in a fund to pay the expenses of the boycott is of no consequence as affecting the crime. People v. Wilzig, N. Y. Cr. 403 (1886). A labor leader was convicted of extortion for having accepted a sum of money from an employer to pay for "waiting time," as alleged, of the striking employees. People v. Barondess, 41 N. Y. 659 (1891). Defendant, the head of a labor organization, was properly charged with extortion when evidence showed that he had demanded and received money as the price of abandoning a boycott undertaken to coerce plaintiffs into obedience to his commands as to the number of apprentices they should employ. People v. Hughes, 137 N. Y. 29 (1893). Defendant, president of a labor union, was convicted of extortion because he had obtained money from a contractor under threat of continuing a strike. People v. Weinsheimer, 117 App. Div. 603 (Feb., 1907).

§ 720. **Relating to disorderly conduct on public conveyances.**— Any person who shall by any offensive or disorderly act or language, annoy or interfere with any person in any place or with the passengers of any public stage, railroad car, ferry boat, or other public conveyance, or who shall disturb or offend the occupants of such stage, car, boat or conveyance, by any disorderly act, language or display, although such act, conduct or display may not amount to an assault or battery, shall be deemed guilty of a misdemeanor.

§ 43. **Penalty for acts for which no punishment is expressly prescribed.**— A person who wilfully and wrongfully commits any act which seriously injures the person or property of another, or which seriously disturbs or endangers the public peace or health, or which openly outrages public decency, for which no other punishment is expressly prescribed by this chapter, is guilty of a misdemeanor; but nothing in this chapter contained shall be so construed as to prevent any person from demanding an increase of wages, or from assembling and using all lawful means to induce employers to pay such wages to all persons employed by them, as shall be a just and fair compensation for services rendered.

THE "ANTI-PINKERTON" ACT: PROHIBITING THE APPOINTMENT OF NON-RESIDENTS AS SPECIAL OFFICERS TO PRESERVE THE PUBLIC PEACE.

PENAL LAW, CHAPTER 40 OF THE CONSOLIDATED LAWS.

§ 1845. **Special peace officers to be citizens.**— No sheriff of a county, mayor of a city, or officials, or other person authorized by law to appoint special deputy sheriffs, special constables, marshals, policemen, or other peace officers in this state, to preserve the public peace or quell public disturbance, shall hereafter, at the instance of any agent, society, association or corporation, or otherwise, appoint as such special deputy, special constable, marshal, policeman, or other peace officer, any person who shall not be a citizen of the United States and a resident of the state of New York, and entitled to vote therein at the time of his appointment, and a resident of the same county as the mayor or sheriff or other official making such appointment; and no person shall assume or exercise the functions, powers, duties or privileges incident and belonging to the office of special deputy sheriff, special constables, marshal or policeman, or other peace officer, without having first received his appointment in writing from the authority lawfully appointing him.

A violation of the provisions of this section is a misdemeanor.

§ 1846. **Making arrest without lawful authority.**— Any person who shall, in this state, without due authority, exercise, or attempt to exercise the functions of, or hold himself out to any one as a deputy sheriff, marshal, or policeman, constable or peace officer, or any public officer, or person pretending to be a public officer, who, unlawfully, under the pretense or color of any process, arrests any person or detains him against his will, or seizes or levies upon any property, or dispossesses any one of any lands or tenements without a regular process therefor, is guilty of a misdemeanor. But nothing herein contained shall be deemed to affect, repeal or abridge the powers authorized to be exercised under sections one hundred and two, one hundred and four, one hundred and sixty-nine, one hundred and eighty-three, eight hundred and ninety-five, eight hundred and ninety-six and eight hundred and ninety-seven of the code of criminal procedure; or under section ninety of the railroad law; or under section eleven hundred and forty-seven of this chapter. All places kept for summer resorts and the grounds of racing associations in the counties of New York, Kings and Westchester, are hereby exempted from the provisions of this section.

Cf. the Railroad Law, § 88, under "Conductors and Trainmen as Policemen" under RAILWAY LABOR, *ante*.

REGULATION OF EMPLOYMENT AGENCIES, BOARDING HOUSES, ETC.*

EMPLOYMENT OFFICES IN CITIES.

[The original act (L. 1904, ch. 432, afterwards amended by L. 1906, ch. 327) from which the following sections were derived, was held to be a constitutional exercise of the police power: People *ex rel.* Armstrong v. Warden of the City Prison, 183 N. Y. 223 (1905).

The amendment of 1910 provides that said amendment "shall not affect the licenses issued pursuant to such article prior to the taking effect of this act until the expiration of such licenses or unless such licenses are terminated as provided herein. Such amendment shall not affect the tenure of office of the commissioner of licenses, the deputy commissioner of licenses or of inspectors, or of the employees to whom the enforcement of such law relative to employment agencies is now entrusted, or any action, or cause of action, arising from the provisions of article eleven of the general business law."]

GENERAL BUSINESS LAW, CHAPTER 20 OF THE CONSOLIDATED LAWS.

ARTICLE 11.

[*As am'd by L.* 1910, *ch.* 700.]

Employment Agencies.

§ 170. **Application of article.**— 1. This article shall apply to all cities of the state, except that the provisions hereof relating to domestic and commercial employment agencies shall not apply to cities of the third class. This article does not apply to employment agencies which procure employment for persons as teachers exclusively, or employment for persons in technical or executive positions in recognized educational institutions; to regis-

Cf. § 156 of the Labor Law, *ante*, regulating immigrant lodging places.

tries conducted by duly incorporated associations of registered nurses; and employment bureaus conducted by registered medical institutions or duly incorporated hospitals. Nor does such article apply to departments or bureaus maintained by persons for the purpose of securing help or employees, where no fee is charged.

§ 171. Definitions.— 1. When used in this article the following terms are defined as herein specified. The term "person" means and includes any individual, company, society, association, corporation, manager, contractor, subcontractor or their agents or employees.

2. The term "employment agency" means and includes the business of conducting, as owner, agent, manager, contractor, subcontractor or in any other capacity an intelligence office, domestic and commercial employment agency, theatrical employment agency, general employment bureau, shipping agency, nurses' registry, or any other agency or office for the purpose of procuring or attempting to procure help or employment or engagements for persons seeking employment or engagements, or for the registration of persons seeking such help, employment or engagement, or for giving information as to where and of whom such help, employment or engagement may be procured, where a fee or other valuable consideration is exacted, or attempted to be collected for such services, whether such business is conducted in a building or on the street or elsewhere.

3. The term "theatrical employment agency" means and includes the business of conducting an agency, bureau, office or any other place for the purpose of procuring or offering, promising or attempting to provide engagements for circus, vaudeville, theatrical and other entertainments or exhibitions or performances, or of giving information as to where such engagements may be procured or provided, whether such business is conducted in a building, on the street or elsewhere.

4. The term "theatrical engagement" means and includes any engagement or employment of a person as an actor, performer or entertainer in a circus, vaudeville, theatrical and other entertainment, exhibition or performance.

5. The term "emergency engagement" means and includes an engagement which has to be performed within twenty-four hours from the time when the contract for such engagement is made.

6. The term "fee" means and includes any money or other valuable consideration paid or promised to be paid for services rendered or to be rendered by any person conducting an employment agency of any kind under the provisions of this article. Such term includes any excess of money received by any such person over what has been paid out by him for the transportation, transfer of baggage, or board and lodging for any applicant for employment; such term also includes the difference between the amount of money received by any such person who furnishes employees, performers or entertainers for circus, vaudeville, theatrical and other entertainments, exhibitions or performances, and the amount paid by him to the said employees, performers or entertainers whom he hires or provides for such entertainments, exhibitions or performances.

7. The term "privilege" means and includes the furnishing of food, supplies, tools or shelter to contract laborers, commonly known as commissary privileges.

§ 172. **License required.**— A person shall not open, keep, maintain or carry on any employment agency, as defined in the preceding section, unless he shall have first procured a license therefor as provided in this article from the mayor or the commissioner of licenses of the city in which such person intends to conduct such agency. Such license shall be posted in a conspicuous place in said agency. Any person who shall open or conduct such an employment agency without first procuring said license shall be guilty of a misdemeanor and shall be punishable by a fine of not less than twenty-five dollars and not more than two hundred and fifty dollars, or by imprisonment for a period of not more than one year, or both, at the discretion of the court.

See requirement of registration with state commissioner of labor under § 155 of the Labor Law, *ante*.

§ 173. **Application for license.**— An application for such license shall be made to the mayor or commissioner of licenses, in case such office shall have been established as herein provided. Such application shall be written and in the form prescribed by the mayor or commissioner of licenses, and shall state the name and address of the applicant; the street and number of the building or place where the business is to be conducted; whether the applicant proposes to conduct a lodging house for the unemployed separate from the agency which he proposes to conduct; the business or occupation engaged in by the applicant for at least two years immediately preceding the date of the application. Such application shall be accompanied by the affidavits of at least two reputable residents of the city to the effect that the applicant is a person of good moral character.

§ 174. **Procedure upon application; grant of license.**— Upon the receipt of an application for a license the mayor or commissioner of licenses shall cause the name and address of the applicant, and the street and number of the place where the agency is to be conducted, to be posted in a conspicuous place in his public office. The said mayor or commissioner of licenses shall investigate or cause to be investigated the character and responsibility of the applicant and shall examine or cause to be examined the premises designated in such application as the place in which it is proposed to conduct such agency. Any person may file, within one week after such application is so posted in the said office, a written protest against the issuance of such license. Such protest shall be in writing and signed by the person filing the same or his authorized agent or attorney, and shall state reasons why the said license should not be granted. Upon the filing of such protest the mayor or commissioner of licenses shall appoint a time and place for the hearing of such application, and shall give at least five days' notice of such time and place to the applicant and person filing such protest. The said mayor or commissioner of licenses may administer oaths, subpœna witnesses and take testimony in respect to the matters contained in such application and protest or complaints of any character for violations of this article, and may receive evidence in the form of affidavits pertaining to such matters. If it shall appear upon such hearing or from the inspection or examination made by the said mayor or commissioner of licenses that the said protest is sustained or that the applicant is not a person of good character, or that the place where such agency is to be conducted is not a

suitable place therefor, or that the applicant has not complied with the provisions of this article, the said application shall be denied and a license shall not be granted. Each application should be granted or refused within thirty days from the date of its filing. The license shall run to the first Tuesday of May next following the date thereof and no later, unless sooner revoked by the mayor or the commissioner of licenses. No license shall be granted to a person to conduct the business of an employment agency in rooms used for living purposes or where boarders or lodgers are kept or where meals are served or where persons sleep or in connection with a building or premises where intoxicating liquors are sold to be consumed on the premises, excepting cafes and restaurants in office buildings.

§ 175. **Form and contents of license.**— Every license shall contain the name of the person licensed, a designation of the city, street and number of the house in which the person licensed is authorized to carry on the said employment agency, and the number and date of such license. Such license shall not be valid to protect any other than the person to whom it is issued or any place other than that designated in the license and shall not be transferred or assigned to any other person unless consent is obtained from the mayor or commissioner of licenses, as hereinafter provided. If such licensed person shall conduct a lodging house for the unemployed separate and apart from such agency, it shall be so designated in the license.

§ 176. **Assignment or transfer of license; change of location.**—A license granted as provided in this article shall not be assigned or transferred without the consent of the mayor or commissioner of licenses. Applications for such consent shall be made in the same manner as an application for a license, and all the provisions of sections one hundred and seventy-three and one hundred and seventy-four relating to the granting of applications for licenses, including the procedure upon such application and the posting of the names and addresses of applicants shall apply to applications for such consent. No license fee shall be required upon such assignment or transfer. The location of an employment agency shall not be changed without the consent of the mayor or commissioner of licenses, and such change of location shall be indorsed upon the license.

§ 177. **Bonds and license fees.**— 1. Every person licensed under the provisions of this act to carry on the business of an employment agency shall pay to the mayor or the commissioner of licenses a license fee of twenty-five dollars before such license is issued. He shall also deposit before such license is issued, with the commissioner of licenses, in every city where there is a commissioner of licenses, or clerk of the city, a bond in the penal sum of one thousand dollars with two or more sureties or a duly authorized surety company, to be approved by the mayor or the commissioner of licenses.

2. The bond executed as provided in the preceding subdivision of this section shall be payable to the people of the city in which any such license is issued and shall be conditioned that the person applying for the license will comply with this article, and shall pay all damages occasioned to any person by reason of any misstatement, misrepresentation, fraud or deceit, or any unlawful act or omission of any licensed person, his agents or employees, while acting within the scope of their employment, made, com-

mitted or omitted in the business conducted under such license, or caused by any other violation of this article in carrying on the business for which such license is granted.

3. If at any time, in the opinion of the mayor, or the commissioner of licenses, the sureties or any of them shall become irresponsible the person holding such license shall, upon notice from the mayor or the commissioner of licenses, give a new bond, subject to the provisions of this section. The failure to give a new bond within ten days after such notice, in the discretion of the mayor or commissioner of licenses, shall operate as a revocation of such license and the license shall be thereupon returned to the mayor or the commissioner of licenses who shall destroy the same.

§ 178. **Action on bond; suits how brought.**— All claims or suits brought in any court against any licensed person may be brought in the name of the person damaged upon the bond deposited with city by such licensed person as provided in section one hundred and seventy-seven and may be transferred and assigned as other claims for damages in civil suits. The amount of damages claimed by plaintiff, and not the penalty named in the bond, shall determine the jurisdiction of the court in which the action is brought. Where such licensed person has departed from the state with intent to defraud his creditors or to avoid the service of a summons in an action brought under this section, service shall be made upon the surety as prescribed in the code of civil procedure. A copy of such summons shall be mailed to the last known post-office address of the residence of the licensed person and the place where he conducted such employment agency, as shown by the records of the mayor or commissioner of licenses. Such service thereof shall be deemed to be made when not less than the number of days shall have intervened between the dates of service and the return of the same as provided by the civil procedure for the particular court in which suit has been brought.

§ 179. **Registers to be kept.**— It shall be the duty of every licensed person to keep a register, approved by the mayor or the commissioner of licenses, in which shall be entered, in the English language, the date of the application for employment; the name and address of the applicant to whom employment is promised or offered, or to whom information or assistance is given in respect to such employment; the amount of the fee received, and whenever possible, the names and addresses of former employers or persons to whom such applicant is known. Such licensed person shall also enter in the same or in a separate register, approved by the mayor or commissioner of licenses, in the English language, the name and address of every applicant accepted for help, the date of such application, kind of help requested, the names of the persons sent, with the designation of the one employed, the amount of the fee received and the rate of wages agreed upon. No such licensed person, his agent or employees, shall make any false entry in such registers. It shall be the duty of every licensed person, whenever possible, to communicate orally or in writing with at least one of the persons mentioned as references for every applicant for work in private families, or employed in a fiduciary capacity, and the result of such investigation shall be kept on file in such agency; provided, that if

the applicant for help voluntarily waives in writing such investigation of references by the licensed person, failure on the part of the licensed person to make such investigation shall not be deemed a violation of this section.

See also requirements as to registration in § 155 of the Labor Law, *ante*.

§ 180. **Statements to be filed in theatrical employment agencies.**— Every licensed person conducting a theatrical employment agency, before making a theatrical engagement, except an emergency engagement, for any person with any applicant for services in any such engagement shall prepare and file in such agency a written statement signed and verified by such licensed person setting forth how long the applicant has been engaged in the theatrical business. Such statement shall set forth whether or not such applicant has failed to pay salaries or left stranded any companies, in which such applicant and, if a corporation any of its officers or directors, have been financially interested during the five years preceding the date of application and, further, shall set forth the names of at least two persons as references. If such applicant is a corporation, such statement shall set forth the names of the officers and directors thereof and the length of time such corporation or any of its officers has been engaged in the theatrical business and the amount of its paid-up capital stock. If any allegation in such written, verified statement is made upon information and belief, the person verifying the statement shall set forth the sources of his information and the grounds of his belief. Such statement so on file shall be kept for the benefit of any person whose services are sought by any such applicant as employer.

§ 181. **Card to be furnished to applicant for employment.**— Every such licensed person shall give to each applicant for domestic or commercial employment a card or printed paper containing the name of the applicant, the name and address of such employment agency and the written name and address of the person to whom the applicant is sent for employment; kind of services to be performed; rate of wages or compensation; the time of such services, if definite, and if indefinite, to be so stated; and the name and address of person authorized the hiring of such applicant, and the cost of transportation if the services are required outside of the city where such agency is located.

§ 182. **Employment contract.**— A licensed person shall not induce or attempt to induce any employee to leave his employment with a view to obtaining other employment through such agency. Whenever such licensed person or any other acting for him, agrees to send one or more persons to work as contract laborers in any one place outside the city in which such agency is located, the said licensed person shall file with the mayor or commissioner of licenses, within five days after the contract is made, a statement containing the following items: Name and address of the employer; name and address of the employee; nature of the work to be performed, hours of labor; wages offered, destination of the persons employed, and terms of transportation. A duplicate copy of this statement shall be given to the applicant for employment, in a language which he is able to understand, before he leaves the city.

§ 183. **Theatrical employment; contracts.**— Every licensed person who shall procure for or offer to an applicant a theatrical engagement shall have

executed in duplicate a contract containing the name and address of the applicant; the name and address of the employer of the applicant and of the person acting for such employer in employing such applicant; the time and duration of such engagement; the amount to be paid to such applicant; the character of entertainment to be given or services to be rendered; the number of performances per day or per week that are to be given by said applicant; if a vaudeville engagement, the name of the person by whom the transportation is to be paid, and if by the applicant, either the cost of the transportation between the places where said entertainment or services are to be given or rendered, or the average cost of transportation between the places where such services are to be given or rendered; and if a dramatic engagement the cost of transportation to the place where the services begin if paid by the applicant; and the gross commission or fees to be paid by said applicant and to whom. Such contracts shall contain no other conditions and provisions except such as are equitable between the parties thereto and do not constitute an unreasonable restriction of business. The form of such contract shall be first approved by the mayor or commissioner of licenses and his determination shall be reviewable by certiorari. One of such duplicate contracts shall be delivered to the person engaging the applicant and the other shall be retained by the applicant. The licensed person procuring such engagement for such applicant shall keep on file or enter in a book provided for that purpose a copy of such contract.

§ 184. **Inspection of registers, books and records.**— All registers, books, records and other papers required to be kept pursuant to this article in any employment agency shall be open at all reasonable hours to the inspection of the mayor or commissioner of licenses, and to any duly authorized agent or inspector of such mayor or commissioner.

See also power of state commissioner of labor to inspect in §§ 153 and 155 of Labor Law, *ante.*

§ 185. **Fees charged by persons conducting employment agencies.**—1. The gross fees of licensed persons charged to applicants for employment as lumbermen, agricultural hands, coachmen, grooms, hostlers, seamstresses, cooks, waiters, waitresses, scrub-women, laundresses, maids, nurses (except professionals), and all domestics and servants, unskilled workers and general laborers, shall not in any case exceed ten per centum of the first month's wages, and for all other applicants for employment, shall not exceed the amount of the first week's wages or salary unless the period of employment is for at least one year, and at a yearly salary, and in that event the gross fee charged shall not exceed five per centum of the first year's salary, except when the employment or engagement is of a temporary nature, not to exceed in any single contract one month, then the fee shall not exceed ten per centum of the salary paid.

2. The gross fees of licensed persons charged to applicants for theatrical engagements by one or more such licensed persons, individually or collectively procuring such engagements, except vaudeville or circus engagements, shall not in any case exceed the gross amount of five per centum of the wages or salary of the engagement when the engagement is less than ten weeks; and an amount of five per centum of the salary or wages per

week for ten weeks of a season's engagement constituting ten weeks or more. The gross fees charged by such licensed persons to applicants for vaudeville or circus engagements by one or more such licensed persons, individually or collectively, procuring such engagement, shall not in any case exceed five per centum of the salary or wages paid. The gross fees for a theatrical engagement, except an emergency engagement, shall be due and payable at the end of each week of the engagement, and shall be based on the amount of compensation actually received for such engagement, except when such engagement is unfulfilled through any act within the control of the applicant for such engagement.

3. A licensed person conducting any employment agency under this article shall not receive or accept any valuable thing or gift as a fee or in lieu thereof. No such licensed person shall divide or share, either directly or indirectly, the fees herein allowed, with contractors, subcontractors, employers or their agents, foremen or any one in their employ, or if the contractors, subcontractors or employers be a corporation, any of the officers, directors or employees of the same to whom applicants for employment or theatrical engagements are sent.

4. Any person violating the provisions of this section shall be deemed guilty of a misdemeanor and upon conviction of any licensed person for any violation thereof shall be subject to a fine of not less than twenty-five dollars and not more than two hundred and fifty dollars, or imprisonment for not more than one year, or both, at the discretion of the court, and the mayor or commissioner of licenses shall forthwith cancel and revoke the license of such person.

§ 186. **Return of fees.**— 1. In case a person applying for help or employment of a domestic or commercial employment agency shall not accept help or obtain employment through such agency, then the licensed person conducting such agency shall on demand repay the full amount of the said fee, allowing three days' time to determine the fact of the applicant's failure to obtain help or employment. If an employee furnished fails to remain one week in the situation, a new employee shall be furnished to the applicant for help if he so elects, or three-fifths of the fee returned, within four days of demand; provided said applicant for help notifies said licensed person within thirty days of the failure of the applicant to accept the position or of the applicant's discharge for cause. If the employee is discharged within one week without said employee's fault another position shall be furnished, or three-fifths of the fee returned to the applicant for employment if he so elects. Failure of said applicant for help to notify said licensed person that such has been obtained through means other than said agency shall entitle said licensed person to retain or collect three-fifths of the said fee.

2. No such licensed person shall send out any applicant for employment without having obtained, either orally or in writing, a bona fide order therefor, and if it shall appear that no employment of the kind applied for existed at the place to which said applicant was directed, the said licensed person shall refund to such applicant within three days of demand any sums paid by said applicant for transportation in going to and returning from said place, and all fees paid by said applicant.

§ 187. **Receipt for fees paid.**— It shall be the duty of every such licensed person conducting an employment agency to give to every applicant for employment from whom a fee shall be received a receipt in which shall be stated, the name of said applicant, the date and amount of the fee, and the purpose for which it was paid, and to every applicant for help a receipt stating the name and address of said applicant, the date and amount of the fee, and the kind of help to be provided. Every such receipt, excepting those given by theatrical employment agencies, shall have printed on the back thereof a copy of sections one hundred and eighty-five, one hundred and eighty-six, one hundred and eighty-seven, in the English language and in any language which the person to whom the receipt is issued can understand.

§ 188. **Copies of law to be posted.**— Every licensed person shall post in a conspicuous place in each room of such agency sections one hundred and seventy-eight, one hundred and eighty, one hundred and eighty-one, one hundred and eighty-two, one hundred and eighty-three, one hundred and eighty-five, one hundred and eighty-six, one hundred and eighty-seven and one hundred and eighty-nine, of this article, which shall be printed in large type in languages in which persons commonly doing business with such office can understand. Such printed law shall also contain the name and address of the officer charged with the enforcement of this article in such city.

§ 189. **False or misleading advertisements and information.**— No licensed person conducting any employment agency shall publish or cause to be published any false or fraudulent or misleading information, representation, notice or advertisement; all advertisements of such employment agency by means of cards, circulars, or signs and in newspapers and other publications, and all letter heads, receipts and blanks shall be printed and contain the licensed name and address of such employment agent and the word agency, and no licensed person shall give any false information, or make any false promise or false representation concerning an engagement or employment to any applicant who shall register or apply for an engagement or employment or help.

§ 190. **Prohibitions as to employment agencies.**— No licensed person conducting an employment agency shall send or cause to be sent any female as a servant, employee, inmate, entertainer or performer, or any male as an employee or entertainer to any place of bad repute, house of ill-fame, or assignation house, or to any house or place of amusement kept for immoral purposes, or place resorted to for the purposes of prostitution, or gambling house, the character of which such licensed person could have ascertained upon reasonable inquiry. No licensed person shall send out any female applicant for employment, without making a reasonable effort to investigate the character of the employer. Nor shall any such licensed person send any female as an entertainer or performer to any place where such female will be required or permitted to sell, offer for sale or solicit the sale of intoxicating liquors to those present or assembled as an audience or otherwise in such place or in any rooms or buildings adjacent thereto. No licensed person shall knowingly permit any persons of bad character, prostitutes, gamblers, intoxicated persons or procurers to frequent such agency. No licensed per-

son shall accept any application for employment made by or on behalf of any child or shall place or assist in placing any such child in any employment whatever in violation of article twenty of the education law, relating to compulsory education, and in violation of the labor law. No licensed person, his agents, servants or employees shall induce or compel any person to enter such agency for any purpose, by the use of force or by taking forcible possession of said person's property. No person shall procure or offer to procure help or employment in rooms or on premises where intoxicating liquors are sold to be consumed on the premises whether or not dues or a fee or privilege are exacted, charged or received directly or indirectly, except in office buildings in which are located cafes and restaurants. For the violation of any of the foregoing provisions of this section the penalties shall be a fine of not less than twenty-five dollars, and not more than two hundred and fifty dollars, or imprisonment for a period of not more than one year, or both, at the discretion of the court.

§ 191. Enforcement of provisions of this article.— 1. In cities of the second and third class and in cities of the first class having a population of less than three hundred thousand, this article, so far as it relates to such cities, shall be enforced by the mayor or an officer appointed by him.

2. In cities of the first class having a population of three hundred thousand or more the enforcement of this article so far as it relates to such cities shall be intrusted to a commissioner to be known as a commissioner of licenses, who shall be appointed by the mayor, and whose salary, together with those of a deputy commissioner, and inspectors to be appointed by him, shall be fixed by the board of estimate and apportionment. Said commissioner of licenses and deputy commissioner shall have no other occupation or business. The commissioner of licenses shall appoint inspectors, who shall make at least bi-monthly visits to every such agency. Said inspectors shall have suitable badges which they shall exhibit on demand of any person with whom they may have official business. Such inspectors shall see that all the provisions of this article, so far as it relates to such cities, are complied with, and shall have no other occupation or business.

3. Complaints against any such licensed person shall be made orally or in writing to the mayor or commissioner of licenses, or be sent in an affidavit form without appearing in person, and reasonable notice thereof, not less than one day, shall be given in writing to said licensed person by serving upon the licensed person either personally or by leaving the same with the person in charge of his office, a concise statement of the facts constituting the complaint, and a hearing pursuant to the powers granted to the mayor or commissioner of licenses as provided in section one hundred and seventy-four shall be had before the mayor or commissioner of licenses within one week from the date of the filing of the complaint and no adjournment shall be taken for a period longer than one week. A daily calendar of all hearings shall be kept by the mayor or commissioner of licenses and shall be posted in a conspicuous place in his public office for at least one day before the date of such hearings. The mayor or commissioner of licenses shall render his decision within eight days from the time the matter is finally submitted to him. Said mayor or commissioner of licenses shall keep a record of all

such complaints and hearings. The said mayor or commissioner of licenses may refuse to issue and shall revoke any license for any good cause shown, within the meaning and purpose of this article and when it is shown to the satisfaction of the mayor or commissioner of licenses that any licensed person is guilty of any immoral, fraudulent or illegal conduct in connection with the conduct of said business, it shall be the duty of the mayor or the commissioner of licenses to revoke the license of such person; but notice of the charges shall be presented and reasonable opportunity shall be given said licensed person to defend himself. Whenever said mayor or commissioner of licenses shall refuse to issue or shall revoke the license of an employment agency, said determination may be reviewed by certiorari. Whenever for any cause such license is revoked, said mayor or commissioner of licenses shall not within three years from the date of such revocation issue another license to said licensed person or his representative or to any person with whom he is to be associated in the business of furnishing employment, help or engagements. In the absence of the commissioner of licenses, the deputy commissioner of licenses may conduct hearings and act upon applications for licenses, and revoke such licenses. [*As am'd by L.* 1912, *ch.* 261.]

§ 192. **Penalties for violations.**— The violation of any provision of this article except as otherwise provided in this article shall be punishable by a fine not to exceed twenty-five dollars, and any city magistrate, police justice, justice of the peace, or any inferior magistrate having original jurisdiction in criminal cases, shall have power to impose said fine, and in default of payment thereof to commit the person so offending for a period not exceeding thirty days. The said mayor or commissioner of licenses or any person, his agent or attorney, aggrieved because of the violations of this article shall institute criminal proceedings for its enforcement before any court of competent jurisdiction.

PENAL LAW, CHAPTER 40 OF THE CONSOLIDATED LAWS.

§ 950. **False statements in regard to employment.**—Any person, firm, association or corporation, or any employee or agent thereof, who makes to any person furnishing or seeking employment any statement which is false, knowing the same to be false, in regard to any employment, work or situation, its nature, location, duration, wages, or salary attached thereto, or the circumstances surrounding the said employment, work, or situation, or who shall offer or hold himself out as in a position to secure or furnish employment without having an order therefor or such employment to be filled or shall misrepresent any other material matter in connection with said employment, work, or situation, and by reason of such statement, offer, holding out or misrepresentation, any person shall seek the employment, work or situation, in respect to which such statement, offer, holding out or misrepresentation was made, shall be guilty of a misdemeanor. [*Added by L.* 1911, *ch.* 575.]

REGULATING THE SALE OF TRANSPORTATION TICKETS AND THE TAKING OF DEPOSITS.

GENERAL BUSINESS LAW, CHAPTER 20 OF THE CONSOLIDATED LAWS.

ARTICLE 10.

[*As Amended by L.* 1910, *ch.* 349, *in effect Sept.* 1, 1910.]

Ticket Agents.

§ 150. **Licenses to sell transportation tickets or orders for transportat to or from foreign countries.**— No person, firm, or corporation, other than railroad companies or the agents of such railroad companies or steamship companies duly appointed in writing, shall hereafter engage within this state in the sale of steamship tickets or orders for transportation to or from foreign countries or shall advertise or hold themselves out as authorized or entitled to sell such steamship tickets or orders for transportation without having first procured a license to carry on such business from the comptroller. Such license shall be granted on an application designating the place where the business for which a license is sought is to be carried on, and shall be accompanied by satisfactory proof by affidavit of good moral character. Such license shall be granted upon the payment to the comptroller of a fee of twenty-five dollars, and shall be renewed on payment of a like fee annually. Every license shall contain the name of the licensee, a designation of the city, street and number of the house in which the licensee is authorized to carry on business, and the number and date of such license. Such license shall not be transferred or assigned, nor authorized the licensee or his agent to transact business or to advertise or hold himself or themselves out as authorized and entitled to transact such business at any place other than that designated in the license, except with the written approval of the comptroller. The license shall run to the first day of September next ensuing the date thereof, and no longer, unless sooner revoked by the comptroller. [*As am'd by L.* 1911, *ch.* 578.]

§ 151. **Bonds.**— The comptroller shall require the applicant for a license to file with the application therefor a bond, in due form, to the people of the state of New York, in the penal sum of two thousand dollars, in cities of the first class, and of one thousand dollars in all other localities, with two or more sufficient sureties, who shall be freeholders within the state of New York, conditioned that the obligor will duly account for all moneys received for steamship tickets or orders for transportation to or from foreign countries, and that the obligor will not be guilty of any fraud or misrepresentation to any purchaser of such tickets or orders. The bond of a surety company approved by the comptroller, or cash, may be accepted in lieu of surety. The comptroller shall keep a book or books wherein shall be entered in alphabetical order all licenses granted and all bonds received by him as provided

in this article, the date of the issuance of said licenses and of the filing of such bonds, the name or names of the principals, with a statement of the place of business, and the names of the sureties upon the bonds so filed, which records shall be open to public inspection. A suit to recover on the bond required to be filed under the provisions of this article may be brought by or on the relation of any party aggrieved in a court of competent jurisdiction, and in the event that the obligor on said bond has been guilty of fraud or misrepresentation, may be enforced by the comptroller in the name of the people of the state of New York to recover the full penalty thereof. The fees received for the issuance of any license provided for in this article and the money reserved as the penalty on any bond, enforced by the comptroller, shall be paid into the state treasury, to be used to defray the miscellaneous expenses of the comptroller.

§ 152. **Revocation of licenses.**— In the event that any licensee shall be guilty of any fraud or misrepresentation, or shall fail to account for any moneys paid in connection with the sale of any ticket or order for transportation by steamship, the comptroller shall be empowered, on giving such notice to the licensee as he shall deem sufficient, and an opportunity to answer any charges made against such licensee, to revoke the license under which such business shall be carried on.

§ 153. **Penalties for conducting business without license, et cetera.**—Any person, firm or corporation carrying on the business specified in this article without having obtained from the comptroller a license therefor, or who shall carry on such business after the revocation of a license to carry on such business, shall be guilty of a misdemeanor.

§ 154. **Discharge and renewal of bonds.**— The provisions of section twenty-nine-a of this chapter as to discharge and renewal of bonds shall be applicable to any bond given pursuant to this article.

Cf. § 29-a under Regulation of Private Banking below.

Ch. 348 of L. 1910 (see below) repealed old article 10 but specified that such repeal should not affect any existing or accrued right or liability.

PENAL LAW, CHAPTER 40 OF THE CONSOLIDATED LAWS.

§ 1563. **Advertising as agent, without written authorization; false or misleading information.**— No person issuing, selling or offering to sell any passage ticket or any instrument giving or purporting to give any right, either absolutely or upon any condition or contingency, to a passage or conveyance upon any vessel, or a berth or stateroom in any vessel, shall hold himself out to be or advertise himself in any way as the agent of the owner or consignees of such vessel or line, unless he has received authority in writing therefor, specifying the name of the company, line or vessel for which he is authorized to act as agent and the city, town or village, together with the street, and the street number in which his office is kept for the sale of tickets, and unless such written authorization is conspicuously displayed in such office. Provided that this section shall not apply to the sale of passage tickets on board any such vessel or to the offices of the actual owners or consignees of such vessel. No person issuing, selling or offering to sell or holding himself out as being authorized to sell any such passage ticket or instrument giving or purporting to give any such right to passage or conveyance

shall give or cause to be given any false or misleading information or shall print, publish, distribute or circulate or cause to be printed, published, distributed or circulated any false or misleading advertisement, circular, circular letter, pamphlet, card, hand-bill or other printed paper or notice in regard to said passage, ticket or instrument or the passage or voyage to which it entitles or purports to entitle its owner, purchaser or holder or line over which, or the vessel for which such passage is sold or offered or as to his agency for such line or vessel. [*As am'd by L.* 1911, *ch.* 415.]

§ 1564. **Issuance of order or other instrument securing passage by vessel from foreign port to this state; what to contain.**— No person agreeing to furnish or secure for any other person, for a consideration, passage by vessel from any foreign port to any port in this state shall issue any advice, order, certificate or other instrument purporting to entitle one or more persons to a passage ticket or other evidence of a right of passage, unless every such advice, order, certificate or instrument shall be signed or countersigned by a duly appointed agent as provided in section fifteen hundred and sixty-three, of the vessel or line over which said advice, order, certificate or other instrument is held out to be good to secure such passage ticket or other evidence of a right of passage. Every such order, advice, certificate or other instrument and every receipt for money paid for or on account of any such advice, order, certificate or other instrument, shall contain a statement of the amount paid or to be paid for such passage; the name, address and age of the person for whom intended; the name of the company or line, if any, to which the vessel on which passage is to be made belongs; the place from which such passage is to commence; the place where such passage is to terminate; the name of the person purchasing such advice, order, certificate or other instrument, and such advice, order, certificate or other instrument must be signed by the person who issues it.

§ 1565. **Punishment for violation of two preceding sections.**— Any person violating any of the provisions of section fifteen hundred and sixty-three, or fifteen hundred and sixty-four, shall be guilty of a misdemeanor and for a second or further violation shall be guilty of a felony.

As to protection of immigrants against possible extortion or ill-treatment on the part of transportation companies, see Penal Law, § 1561, which fixes a maximum rate of 1¼ cents per mile.

§ 1572. **Soliciting the surrender of tickets a misdemeanor.**—Any hotel, boarding-house, lodging-house or restaurant owner, proprietor, manager, clerk or other employee or any runner, guide, porter or solicitor who solicits in any manner any immigrant or steerage passenger inward or outward bound, having a railroad or steamship ticket, order or other instrument entitling or purporting to entitle such passenger to transportation or conveyance on any railroad or steamship, to surrender such ticket, order or other instrument to such hotel, boarding-house, lodging-house or restaurant owner, proprietor, manager or other employee or to any runner, guide, porter or solicitor or any other person for the purpose of detaining any such immigrant or steerage passenger in any such hotel, boarding-house, lodging-house, or restaurant, shall be guilty of a misdemeanor. [*Added by L.* 1911, *ch.* 540.]

REGULATING PRIVATE BANKING.

GENERAL BUSINESS LAW, CHAPTER 20 OF THE CONSOLIDATED LAWS.

ARTICLE 3-a.

[*As added by L. 1910, ch. 348, in effect September 1, 1910. Held constitutional by U. S. Supreme Court in Engel v. O'Malley, 219 U. S. 128.*]

Private Banking.

§ 25. Licenses, bonds and deposits.— Except as provided in section twenty-nine-d, no individual or partnership shall hereafter engage directly or indirectly in the business of receiving deposits of money for safe-keeping or for the purpose of transmission to another or for any other purpose in cities of the first class without having first obtained from the comptroller a license to engage in such business. Before receiving such license the applicant therefor shall file with the comptroller a written statement in the form to be prescribed by the comptroller and verified by the individual or members of the firm making the application, showing the amount of the assets and liabilities of the applicant, designating the place where the applicant proposes to engage in business, that the applicant has been, or if the applicant shall constitute a partnership, that a majority of the members thereof having a controlling interest in the business of such partnership have been continuously for a period of five years immediately preceding the date of such application resident in the United States. Such applicant shall at the same time deposit with the comptroller five thousand dollars if the applicant is engaged only in the business of receiving money for transmission to another and otherwise ten thousand dollars in money or in securities which shall consist of bonds of the United States, of this state or of any municipality thereof, or other bonds approved by the comptroller, and if a deposit of securities shall be so made in lieu of money, the comptroller shall thereafter require the applicant to maintain such deposit at all times at a value which shall equal the sum that the applicant is required by this section to deposit. In addition thereto there shall be presented to the comptroller a bond to the people of the state of New York executed by the applicant and by a surety company approved by the comptroller, conditioned upon the faithful holding of all moneys that may be deposited with the applicant, in accordance with the terms of the deposit and the repayment of such moneys so deposited and upon the faithful transmission of any money which shall be delivered to such applicant for trans-

* Different sections 25 to 28 were added by L. 1910, ch. 640.

mission to another, and in the event of the insolvency or bankruptcy of the applicant, upon the payment of the full amount of such bond to the assignee, receiver or trustee of the applicant, as the case may require, for the benefit of the persons making such deposits and of such persons as shall deliver money to the applicant for transmission to another. The penalty of the bond shall be five thousand dollars if the applicant is engaged only in the business of receiving money for transmission to another; in all other cases the amount of such penalty shall, if the deposits of the applicants do not exceed twenty-five thousand dollars, be five thousand dollars, and if in excess thereof, the penalty of such bond shall be increased five thousand dollars for each additional twenty-five thousand dollars of deposits, or fraction thereof, not exceeding, however, a maximum penalty of fifty thousand dollars. In lieu of the aforesaid bond the applicant may deposit and the comptroller shall accept money and securities of the character above described. The money and securities so deposited shall be held on the conditions specified in the aforesaid bond. If securities be deposited in lieu of the aforesaid bond, and be accepted as hereinafter provided, the comptroller shall require the applicant to maintain such deposit at a value equal to the amount fixed as the penalty of the bond in lieu of which such money and securities shall be so deposited. Upon the receipt of such application the comptroller shall cause to be posted upon a bulletin to be maintained by him in his office in a place accessible to the general public, at noon of the succeeding Friday the name of the applicant and whether individual or partnership, and the proposed business address designated in the application. After notice of the application shall have been so posted for a period of two weeks he may in his discretion approve or disapprove the application. In the event of his approval he shall accept the money, securities and bond, if there be one, and hold them for the purposes herein set forth, and shall issue a license authorizing the applicant to carry on the aforesaid business at the place designated in the application and to be specified in the license certificate. For such license the licensee shall pay a fee of fifty dollars. Such license shall not be transferred or assigned. It shall not authorize the transaction of business at any place other than that described in the license certificate, except with the written approval of the comptroller. Immediately upon the receipt of the license certificate issued by the comptroller pursuant to this article the licensee named therein shall cause such license certificate to be posted and at all times conspicuously displayed in the place of business for which it is issued, so that all persons visiting such place may readily see the same. It shall be unlawful for any person or partnership holding such license certificate to post such certificate or to permit such certificate to be posted upon premises other than those designated therein or to which it has been transferred pursuant to the provisions of this article, or knowingly to deface or destroy any such license certificate. If it shall be established to the satisfaction of the comptroller in accordance with rules and regulations by him prescribed, that an unexpired license certificate issued in accordance with the provisions of this article has been lost or destroyed without fault on the part of the holder, the comptroller shall issue a duplicate license therefor. The money and securities deposited with the comptroller as herein provided and the money which in case of default shall be paid on the aforesaid bond by any applicant or the surety thereof, shall constitute a trust fund for the benefit of the depositors of the licensee and

of such persons as shall deliver money to such licensee for transmission to another, and such beneficiaries shall be entitled to an absolute preference as to such money or securities, over all general creditors of the licensee. Such money and securities shall in the event of the insolvency or bankruptcy of the licensee be delivered by the comptroller on the order or judgment of a court of competent jurisdiction to the assignee, receiver or trustee of the licensee designated in such order or judgment. The comptroller shall keep a book or books in which the licenses granted and the bonds filed shall be entered in alphabetical order, together with a statement of the date of the issuance of the license, the name or names of the principals, the place where the business licensed is to be transacted and the name of the surety company upon the bond filed, and the amount of all moneys and a description of all securities deposited, which record shall be open to public inspection. The comptroller shall cause to be printed annually on the first day of January and distributed upon application, a list of all licenses granted and remaining unrevoked. The comptroller shall from time to time pay over to each such licensee all moneys received by him as interest upon any moneys or securities deposited in accordance with the provisions of this article. [*As am'd by L.* 1911, *ch.* 393.]

§ 26. **Books to be kept and records to be made; revocation of licenses.**—Each licensee shall keep books of account showing full and complete records of all business transacted and a full statement of all assets and liabilities, and shall four times in each year as of such days as the comptroller shall designate by a notice to be posted on the bulletin in his office and by written notice delivered at the place of business of such licensee or deposited in the post-office in a postpaid wrapper directed to him at such place of business, file in the comptroller's office within ten days after the date of such notice, a written statement under oath in such form as shall be prescribed by the comptroller, showing the amount of the assets and liabilities of the licensee, which report shall be accessible to the public at all reasonable times. The license issued shall be revocable at all times by the comptroller for cause shown, and in the event of such revocation or of a surrender of such license, no refund shall be made in respect of any license fee paid under the provisions of this article. Every license certificate shall be surrendered to the comptroller within twenty-four hours after notice in writing to the holder that such license has been revoked. In case of the revocation of such license the money and securities and the bond, if there be one, received from the licensee, shall continue to be held by the comptroller, until otherwise directed by the order or judgment of a court of competent jurisdiction.

§ 27. **Penalties for conducting business without license, et cetera.**—Any person or partnership carrying on the business specified in section twenty-five of this article without having obtained from the comptroller a license therefor, or who shall carry on such business after the revocation of a license to carry on such business, or who, without such license shall, on any sign, letter-head, advertisement or publication of any kind use the word "banking" or "banker" or any equivalent term, in any language, in connection with any business whatsoever, or who shall fail to display the license certificate as provided in section twenty-five hereof, or who shall fail to keep books of account or to make the reports as herein provided, or any person or partnership not having a license who shall advertise or publish in any manner

whatsoever, either orally or in writing, any statement intended to convey or actually conveying the idea or impression that such licensee is in any way under the supervision of this state or of any officer thereof, or that this state or any officer thereof has passed in any way whatsoever upon the responsibility, solvency or qualifications of such licensee to engage in such business, or that this state or any officer thereof has examined any accounts of said licensee or has in any way certified that such licensee is in any way a fit person to carry on such business, shall be guilty of a misdemeanor. [*As am'd by L.* 1911, *ch.* 393.]

§ 28. **Perjury.**—Any person who in any application for a license presented to the comptroller, or in any report made under this article, or on any examination or inquiry pursuant to section twenty-nine-e hereof, shall swear falsely as to the nature or value of his assets, or the amount of his liabilities or in any other particular, and any person who in any affidavit made under section twenty-nine-d of this article shall swear falsely as to any fact therein stated is guilty of perjury. [*As am'd by L.* 1911, *ch.* 393.]

§ 29. **Penalty for failure to make reports.**—Any person or partnership who shall fail to make any report required by this article within the time specified for the same, shall forfeit to the people of the state of New York the sum of one hundred dollars for every day that such report shall be delayed or withheld. The money forfeited under this section shall be recovered in an action brought in the name of the people of the state, and with all moneys received as fees for the issuance of the licenses provided for herein shall be paid into the state treasury to the credit of the general fund.

§ 29-a. **Discharge and renewal of bonds, substitution of securities, et cetera.** The surety in a bond given pursuant to this article may give notice to the comptroller in writing requesting to be released from responsibility on account of any future breach of the conditions of the bond, and that the principal in the bond be required to give a new surety, and thereupon the comptroller shall give notice in writing directed to the principal upon said bond at the place designated by him for the transaction of business requiring him within ten days from a day therein specified to file a new bond in the form required therein with a new surety, approved by the comptroller, or money or securities in lieu thereof, and upon the filing of such new bond or such money or securities in lieu thereof within the time specified, but not before, the surety upon the old bond shall be discharged from liability upon the bond given by it for any subsequent act or default of the principal. Whenever money or securities are deposited with the comptroller pursuant to this article, he may in his discretion permit the substitution of securities for money, or of money for securities, in whole or in part, or of money or securities for any bond, or of a bond for money or securities deposited (other than the money or securities which the licensee is required by section twenty-five hereof to keep at all times on deposit with the comptroller), or the withdrawal of securities deposited and the substitution of others of equal value in their place, and if the total value of securities become substantially impaired he shall require the deposit of money or additional securities sufficient to cover the impairment in value. In the event of the failure of such principal to file a new bond or such money or securities in lieu thereof, or to deposit money or

additional securities to cover any impairment of value of securities theretofore deposited, within the time specified, the comptroller shall forthwith revoke the license of such principal. In the event that the licensee shall at any time discontinue the business license or with respect to which a bond shall have been filed or money or securities shall have been deposited pursuant to this article, the comptroller on the order or judgment of a court of competent jurisdiction may cancel the bond filed by the licensee and return to the licensee all moneys and securities deposited. [*As am'd by L.* 1911, *ch.* 393.]

§ 29-b. **Burden of proof in actions against licensee.**— In an action against a licensee to recover money deposited with such licensee for transmission, the burden of proving the transmission to and receipt of the money by the person to whom such money is directed to be paid shall be upon the licensee to whom such money was delivered for transmission. Proof by a properly authenticated affidavit of such licensee or his duly authorized agent, showing the transmission of such money to the person to whom the same was to be transmitted, or to the correspondent of the licensee to whom such money may have been transmitted for payment to the person to whom such money was to be paid, together with a properly authenticated receipt signed by the consignee of such money, or in lieu of such receipt a properly authenticated affidavit of the agent of the licensee showing the fact of payment, shall be deemed sufficient evidence to shift the burden of proof to the plaintiff.

§ 29-c. **Time within which money is to be transmitted.**— All moneys received for transmission to a foreign country by any licensee shall be forwarded to the person to whom the same is directed to be transmitted within five days after the receipt thereof, and every person who shall fail to so forward the same, within the time specified, shall be guilty of a misdemeanor.

§ 29-d. **Exceptions.**— The foregoing provisions shall not apply (1) to any corporation or "individual banker" authorized to do business under the provisions of the banking law, nor to any association organized under the national banking act; nor (2) to any hotel-keeper who shall receive money for safe-keeping from a guest; nor (3) to any express company having contracts with railroad companies for the operation of an express service upon the lines of such railroad companies nor to any telegraph company receiving money for transmission; nor (4) to any individual or partnership receiving money on deposit for safe-keeping or for transmission to others, or for any other purpose, where the average amount of each sum received on deposit, or for transmission, by such individual or partnership in the ordinary course of business, during the fiscal year preceding the date of the affidavit hereinafter specified, shall not be less than five hundred dollars, proof of which fact by affidavit to the satisfaction of the comptroller shall be made by the individual or a member of the partnership seeking exemption hereunder, whenever thereunto requested by the comptroller; nor (5) to any individual or partnership who would otherwise be required to comply with section twenty-five of this article who shall file with the comptroller a bond in the sum of one hundred thousand dollars, approved by the comptroller as to form and sufficiency, for the purpose and conditioned as in said section prescribed, where the business is conducted in a city having a population of one million or over and if conducted elsewhere in the state such bond shall be in the sum of fifty thousand dollars; or in lieu thereof money or securities approved by the comptroller of the same

amount. The provisions of section twenty-nine-a shall be applicable to such bond, or deposit of money or securities. [*As am'd by L.* 1911, *ch.* 393.]

§ 29-e. **Examination by comptroller; penalty for interference therewith; proceedings by attorney-general.**— 1. Whenever the comptroller shall deem it expedient, he may, either personally or by one of his deputies, or by examiners appointed by him, examine every applicant for a license or any licensee hereunder with respect to the nature and value of his assets, the manner in which the same are invested, the amount and character of his liabilities, and the conditions under which his business is conducted. For the purpose of such examination the comptroller, his deputies and examiners, shall have free access to the vaults, safes, books, papers and securities of such applicant or licensee, and shall be permitted to examine the same to make inventories, statements of accounts and transcripts from such books and papers. The person making such examination may summon said applicant or licensee, and any other witnesses who may be deemed necessary and examine them under oath with respect to the matters aforesaid, and for that purpose may administer oaths. It shall be the duty of the person conducting such examination to file the testimony taken, together with such inventories, statements of account and transcripts, in the office of the comptroller.

2. Any person who shall willfully fail or refuse to appear and testify when so required, or who shall interfere with or obstruct such examination, or prevent access to the aforesaid vaults, safes, books, papers and securities, or fail to comply with any requirement of the person making such examination, is guilty of a misdemeanor.

3. Whenever it shall appear that any licensee hereunder is insolvent or that the condition of the business conducted by him is such as to render its continuance hazardous, or that such licensee has failed to comply with any of the provisions hereof, the comptroller shall report the facts to the attorney-general, who shall thereupon institute an action in the supreme court to wind up the business so licensed and to restrain the licensee from conducting the same, and in such action the court may appoint a temporary receiver to enforce the bond given under section twenty-five hereof, to take possession of the property and effects of the licensee, to convert them into money, and to hold the same subject to the direction of the court. [*As am'd by L.* 1911, *ch.* 393.]

§ 29-f. **Additional penal provision.**— Any licensee who shall violate any of the provisions of this article the violation of which has not hereinbefore been expressly made a misdemeanor, or a felony, shall be guilty of a misdemeanor.

§ 29-g. **Bureau of licenses.**— The comptroller shall establish a license bureau for the purpose of complying with the provisions of this article.

Section 153 of the Labor Law, *ante,* makes it the duty of the commissioner of labor to co-operate in the enforcement of this law.

MAKING FRAUD BY A NOTARY A MISDEMEANOR.

PENAL LAW, CHAPTER 40 OF THE CONSOLIDATED LAWS.

§ 1820-a. Subd. 1. Any person who holds himself out to the public as being entitled to act as a notary public or commissioner of deeds, or who assumes, uses or advertises the title of notary public or commissioner of deeds, or

equivalent terms in any language, in such a manner as to convey the impression that he is a notary public or commissioner of deeds without having first been appointed as notary public or commissioner of deeds, or

Subd. 2. A notary public or commissioner of deeds, who in the exercise of the powers, or in the performance of the duties of such office shall practice any fraud or deceit, the punishment for which is not otherwise provided for by this act, shall be guilty of a misdemeanor. [*As added by L.* 1910, *ch.* 471, *in effect September* 1, 1910.]

See provision for investigation of complaints concerning notaries by commissioner of labor in § 153 of the Labor Law, *ante.*

LICENSING OF SAILORS' BOARDING HOUSES. *

LAWS OF 1882, CHAPTER 410 (THE NEW YORK CITY CONSOLIDATION ACT).

§ 2069. It shall not be lawful for any person, except a pilot or public officer, to board, or attempt to board, a vessel arriving in the port or harbor of New York before such vessel shall have been made fast to the wharf, without first obtaining leave from the master or person having charge of such vessel, or leave in writing from her owners or agents.

§ 2070. It shall not be lawful for any person to board or attempt to board any vessel arriving in or lying or being in the harbor or port of New York, with intent to supply liquors by sale, gift or otherwise, directly or indirectly, to any member of the crew employed on board of such vessel. [*As am'd by L.* 1909, *ch.* 353.]

§ 2071. It shall not be lawful for any person having boarded any vessel in the port of New York, to neglect or refuse to leave said vessel after having been ordered so to do by the master or person having charge of such vessel. [*As am'd by L.* 1909, *ch.* 353.]

§ 2072. It shall not be lawful for any person to keep, conduct, or carry on, either as owner, proprietor, agent, or otherwise, any sailors' boarding-house or sailors' hotel in the city of New York, without having the license in this chapter provided.

§ 2073. It shall not be lawful for any person not having the license in this chapter provided, or not being the regular agent, runner, or employee of a person having such a license, to invite, ask, or solicit, in the city or harbor of New York, the boarding or lodging of any of the crew employed on any vessel.

§ 2074. There is created a board denominated a board of commissioners for licensing sailors' hotels or boarding-houses in the city of New York consisting of one person selected by each of the following corporate bodies or associations, respectively, to-wit: The Chamber of Commerce of the State of New York; the American Seamen's Friend Society in New York; the New York Board of Underwriters; the Marine Society of New York; the Society for Promoting the Gospel Among Seamen in the Port of New York; the New York Maritime Association of the Port of New York; the Seamen's Church Institute of New York; the Seamen's Christian Association of the City of New York, and St. Peter's Union for Catholic Seamen. [*As am'd by L.* 1909, *ch.* 353.]

§ 2075. Such board shall take the application of any person applying for a license to keep a sailors' boarding-house, or sailors' hotel, in the city of New

* *Cf.* § 156 of the Labor Law, *ante,* relative to licensing of immigrant lodging places.

York, and upon satisfactory evidence to them of the respectability and competency of such applicant, and of the suitableness of his accommodations, shall issue to him a license, which shall run to the first Tuesday of May next ensuing the date thereof and no longer, unless sooner revoked by said board, to keep a sailors' boarding-house in the city and to invite and solicit boarders for the same within the limitations of the state and federal laws relating thereto. [*As am'd by L.* 1909, *ch.* 353.]

§ 2076. Such board may, upon satisfactory evidence of the disorderly character of any sailors' hotel or boarding-house, licensed as hereinbefore provided, or of the keeper or proprietor of any such house, or of any force, fraud, deceit, or misrepresentation in inviting or soliciting boarders or lodgers for such house, on the part of such keeper or proprietor, or of any of his agents, runners, or employees, or of any attempt to persuade or entice or force any of the crew to desert from or to serve involuntarily on any vessel in the harbor of New York, by such keeper or proprietor, or any of his agents, runners, or employees, revoke the license for keeping such house after notice to the licensee and a hearing thereon and each member of said board is hereby authorized to administer oaths and take and receive evidence in all matters provided for herein. [*As am'd by L.* 1909, *ch.* 353.]

§ 2077. Every person receiving the license hereinbefore provided for shall pay to the board of commissioners aforesaid the sum of twenty-five dollars for each full year and a proportionate amount for a shorter period which amounts after deducting the actual expenses of said board incurred in the transaction of the business shall be by them applied for the relief of shipwrecked and destitute seamen. Said board shall file on or before the second Monday of January of each year, in the office of the clerk of the city and county of New York, a statement showing the number of licenses issued, the names of persons to whom issued, with name and number of the street or house licensed during the year preceding, the amount of money received therefor, the amount and items of their disbursements, and the amount distributed by them as hereinbefore directed. [*As am'd by L.* 1909, *ch.* 353.]

§ 2078. The said board shall appoint a president and secretary and shall keep an office in the city of New York, and make such by-laws and regulations as may be needful for the orderly conduct of its business, not inconsistent with the constitution and laws of this state.

§ 2079. The said board shall furnish to each sailors' hotel or boarding-house keeper, licensed by them as aforesaid, one or more badges or shields, on which shall be printed or engraved the name of such hotel or boarding-house keeper, and the number and street of his hotel or boarding-house; and which said badges or shields shall be surrendered to said board upon the revocation by them or expiration of any license granted by them as herein provided.

§ 2080. Every sailors' hotel or boarding-house keeper, and every agent, runner, or employee of such hotel or boarding-house keepers, when boarding any vessel, in the harbor of New York, or when inviting or soliciting the boarding or lodging of any seaman, sailor, or person employed on any vessel, shall wear conspicuously displayed the shield or badge referred to in the foregoing section

§ 2081. It shall not be lawful for any person, except those named in the preceding section, to have, wear, exhibit, or display any such shield or badge to

any of the crew employed on any vessel with the intent to invite, ask, or solicit the boarding or lodging of any of the crew employed on any vessel being in the harbor of New York.

§ 2082. Whoever shall offend against any or either of the provisions contained in sections two thousand and sixty-nine to two thousand and seventy-three, inclusive, or two thousand and eighty or two thousand and eighty-one, of this act, and any commissioner appointed under this chapter who shall directly or indirectly receive any gratuity or reward, other than as herein provided for, or on account of any license under this chapter shall be deemed guilty of a misdemeanor. [*As am'd by L.* 1909, *ch.* 353.]

§ 2083. The word "vessel," as used in this chapter shall include vessels by whatever power propelled. The word "sailor" and the word "seamen" as used in this chapter shall include any person not an officer employed on any vessel. The word "boarding-house" as used in this chapter shall include a house where both board and lodgings are given or a house where lodgings alone are given. The word "hotel" as used in this chapter shall include a house where lodgings alone are given or a house where both board and lodgings are given. [*As am'd by L.* 1909, *ch.* 353.]

§ 2084. The president of the trustees of the Seamen's fund and retreat in the city of New York shall demand and be entitled to receive, and in case of neglect or refusal to pay, shall, in the name of the people of the state of New York, sue for and recover the following sums from either the owner or owners, or from the master, or from both the owner or owners and master, of every vessel from a foreign port; for the master, one dollar and fifty cents; for each mate, sailor, or mariner, one dollar. Second, from the master of each coasting vessel, from each person on board composing the crew of such vessel, twenty-five cents; but no coasting vessel from the state of New Jersey, Connecticut, or Rhode Island shall pay for more than one voyage in each month, computing from the first voyage in each year. And the said president may sue for the penalties imposed by law on masters of coasting vessels for nonpayment of hospital money.

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* See also "Children."