

Legislative Council Note, 1967: Sub. (1) based on s. 40.654 (1). Sub. (2) based on s. 40.905 (4). [Bill 353-S]

In proceedings to compel a district school board to admit plaintiff's child to the district's elementary school, an order which assumed that the plaintiff and her child might be nonresidents of the district, but nevertheless commanded the defendant to accept the child as a pupil without precedent written agreement by the parent to pay nonresident tuition at the legal rate, as required by 40.654, Stats. 1953, and leaving compensation to the discretion of the court instead of as established by 40.65 (3), was in excess of the jurisdiction of the court, since the court had neither discretion nor jurisdiction to compel the district to accept pupils on other than statutory terms. *Smuda v. Jefferson Dist. School Board*, 267 W 84, 64 NW (2d) 249.

Failure of a school board to enter into a contract does not defeat the right of a district to institute action on an implied contract for tuition. 13 Atty. Gen. 556.

121.82 History: 1967 c. 92, 313; 1967 s. 121.82.

Editor's Note: The changes made by ch. 313, Laws 1967, are based on the substantially altered method of computing tuition enacted by ch. 45, Laws 1967.

Legislative Council Note, 1967: Sub. (1) (a) based on s. 40.65 (2). Sub. (1) (b) based on s. 40.65 (3) (intro.) to (c).

Sub. (2) based on s. 40.91 (4) (a). Section 40.91 (4) (b) and (c) and (5) deleted, because the provisions were made obsolete by the requirement that all territory be in a high school district.

Sub. (3) restates s. 40.71 (11) as it applies to tuition. [Bill 353-S]

121.83 History: 1967 c. 92; Stats. 1967 s. 121.83.

Legislative Council Note, 1967: Based on s. 40.99 (4). A single method of computing tuition payments for both elementary and high school grades is set forth. Although substantially revised and consolidated, the new language employs the same procedure contained in present s. 40.99 (4). [Bill 353-S]

121.84 History: 1967 c. 92; Stats. 1967 s. 121.84; 1969 c. 154 s. 377; 1969 c. 276 s. 589 (1) (a).

Legislative Council Note, 1967: Sub. (1) (a) restates s. 40.905 (1). Sub. (1) (b) restates s. 40.905 (2). Sub. (1) (c) like s. 40.905 (3) (last sentence). Section 40.905 (3) (1st sentence) was deleted, because only those pupils enrolled on the 3rd Friday of September are counted in computing state aid payments.

Sub. (2) revises s. 40.91 (3).

Sub. (3) based on s. 40.70 (8), the provisions of which were substantially consolidated and shortened. [Bill 353-S]

CHAPTER 126.

Grain Warehouses.

Revisor's Note, 1945: Section 1 of ch. 443, Laws of 1945, reads; "The revision of ch. 126

of the statutes does not change the law. It changes the language but does not change the meaning." [Bill 321-S]

126.01 History: 1905 c. 19 s. 1; Supl. 1906 s. 1747—1; 1923 c. 291 s. 3; Stats. 1923 s. 126.01; 1945 c. 443; 1969 c. 111, 276.

Revisor's Note, 1945: "The city of Superior" recurs very often. To save words there is added the clause: "Superior" means "the city of Superior." The last sentence is from 126.10. "Flaxseed" comes from old section 126.54. [Bill 321-S]

A company which conducts a private warehouse not in Superior may not be declared a public warehouse by the grain and warehouse commission because it issued warehouse receipts to itself for convenience in dealing with its parent corporation. 19 Atty. Gen. 544.

126.025 History: 1969 c. 111; Stats. 1969 s. 126.025.

126.035 History: 1969 c. 111; Stats. 1969 s. 126.035.

On exercises of police power see notes to sec. 1, art. I; and on delegation of power see notes to sec. 1, art. IV.

Sec. 1747-b, Stats. 1923, providing for the supervision of weighing and inspection of grain, applies to the loading and unloading of grain in Superior, irrespective of the fact that it is shipped in from points outside the city or is to be shipped out of the city. 12 Atty. Gen. 303.

The grain and warehouse commission is authorized by 126.05 (1) Stats. 1939, to weigh all grain received in Superior for milling or storage, or milled or stored in Superior, or bought or sold in Superior, regardless of whether it is kept in a public warehouse, and also to weigh grain shipped from public warehouses. 29 Atty. Gen. 111.

126.045 History: 1969 c. 111; Stats. 1969 s. 126.045.

126.06 History: 1969 c. 111; Stats. 1969 s. 126.06.

126.07 History: 1905 c. 19 s. 7; Supl. 1906 s. 1747—7; 1911 c. 663 s. 315; 1923 c. 114 s. 2; 1923 c. 291 s. 3; Stats. 1923 s. 126.07; 1945 c. 443; 1969 c. 111.

126.08 History: 1905 c. 19 s. 8; Supl. 1906 s. 1747—8; 1923 c. 291 s. 3; Stats. 1923 s. 126.08; 1945 c. 443; 1969 c. 111 s. 25.

126.09 History: 1905 c. 19 s. 9; Supl. 1906 s. 1747—9; 1923 c. 114 s. 2; 1923 c. 291 s. 3; Stats. 1923 s. 126.09; 1945 c. 443; 1969 c. 111 s. 25.

126.10 History: 1905 c. 19 s. 10; Supl. 1906 s. 1747—10; 1911 c. 663 s. 315; 1923 c. 291 s. 3; Stats. 1923 s. 126.10; 1945 c. 443; 1969 c. 111.

126.11 History: 1905 c. 19 s. 11; Supl. 1906 s. 1747—11; 1923 c. 291 s. 3; Stats. 1923 s. 126.11; 1945 c. 443; 1969 c. 111.

126.12 History: 1905 c. 19 s. 12; Supl. 1906 s. 1747—12; 1923 c. 291 s. 3; Stats. 1923 s. 126.12; 1945 c. 443.

126.13 History: 1905 c. 19 s. 13; Supl. 1906

s. 1747—13; 1911 c. 663 s. 315; 1923 c. 114 s. 2; 1923 c. 291 s. 3; Stats. 1923 s. 126.13; 1945 c. 443.

126.14 History: 1905 c. 19 s. 14; Supl. 1906 s. 1747—14; 1911 c. 663 s. 317; 1923 c. 291 s. 3; Stats. 1923 s. 126.14; 1945 c. 443.

126.15 History: 1905 c. 19 s. 15; Supl. 1906 s. 1747—15; 1911 c. 663 s. 315, 318; 1923 c. 291 s. 3; Stats. 1923 s. 126.15; 1945 c. 443; 1969 c. 111 s. 25.

126.16 History: 1905 c. 19 s. 16; Supl. 1906 s. 1747—16; 1923 c. 114 s. 2; 1923 c. 291 s. 3; Stats. 1923 s. 126.16; 1945 c. 443; 1969 c. 111 s. 25.

The grain and warehouse commission has broad powers to effectively accomplish its functions and has authority to establish a department for the purpose of registering and canceling warehouse receipts. 22 Atty. Gen. 64.

126.18 History: 1905 c. 19 s. 18; Spl. S. 1905 c. 12 s. 1; Supl. 1906 s. 1747—18; 1911 c. 663 s. 315; 1923 c. 114 s. 2; 1923 c. 291 s. 3; Stats. 1923 s. 126.18; 1945 c. 443; 1957 c. 139; 1965 c. 252; 1969 c. 111, 130.

Revisor's Note, 1945: Next to the last sentence of old 126.18 (coercing witnesses) is a duplication of 325.12 and is omitted. [Bill 321-S]

The commission cannot authorize grain warehousemen to publish rate schedules in July where 126.18 (1), Stats. 1957, requires such publication to be made in September. 47 Atty. Gen. 129.

126.19 History: 1905 c. 19 s. 19; Spl. S. 1905 c. 12 s. 1; Supl. 1906 s. 1747—19; 1911 c. 663 s. 315; 1923 c. 114 s. 2; 1923 c. 291 s. 3; Stats. 1923 s. 126.19; 1945 c. 443; 1965 c. 252; 1969 c. 111 s. 25.

126.20 History: 1905 c. 19 s. 20; Supl. 1906 s. 1747—20; 1923 c. 291 s. 3; Stats. 1923 s. 126.20; 1945 c. 443.

126.30 History: 1905 c. 19 s. 30; Supl. 1906 s. 1747—30; 1923 c. 291 s. 3; Stats. 1923 s. 126.30; 1945 c. 443; 1969 c. 111.

126.31 History: 1905 c. 19 s. 31; 1905 c. 317 s. 2; Spl. S. 1905 c. 12 s. 2; Supl. 1906 s. 1747—31; 1911 c. 663 s. 315; 1923 c. 114 s. 2; 1923 c. 291 s. 3; Stats. 1923 s. 126.31; 1945 c. 443; 1969 c. 111 s. 25; 1969 c. 392.

126.32 History: 1905 c. 19 s. 32; Supl. 1906 s. 1747—32; 1923 c. 291 s. 3; Stats. 1923 s. 126.32; 1945 c. 443.

126.33 History: 1905 c. 19 s. 33; Supl. 1906 s. 1747—33; 1911 c. 663 s. 315; 1923 c. 291 s. 3; Stats. 1923 s. 126.33; 1945 c. 443.

126.34 History: 1905 c. 19 s. 34; Supl. 1906 s. 1747—34; 1923 c. 291 s. 3; Stats. 1923 s. 126.34; 1945 c. 443; 1969 c. 111.

126.36 History: 1905 c. 19 s. 36; Supl. 1906 s. 1747—36; 1923 c. 291 s. 3; Stats. 1923 s. 126.36; 1945 c. 443.

126.37 History: 1905 c. 19 s. 37; Supl. 1906

s. 1747—37; 1923 c. 291 s. 3; Stats. 1923 s. 126.37; 1945 c. 443.

126.38 History: 1905 c. 19 s. 38; Supl. 1906 s. 1747—38; 1923 c. 114 s. 2; 1923 c. 291 s. 3; Stats. 1923 s. 126.38; 1945 c. 443; 1957 c. 139.

126.39 History: 1905 c. 19 s. 39; Supl. 1906 s. 1747—39; 1923 c. 114 s. 2; 1923 c. 291 s. 3; Stats. 1923 s. 126.39; 1945 c. 443; 1969 c. 111 s. 25.

126.40 History: 1905 c. 19 s. 40; Supl. 1906 s. 1747—40; 1911 c. 458; 1923 c. 114 s. 2; 1923 c. 291 s. 3; Stats. 1923 s. 126.40; 1945 c. 443; 1969 c. 111.

126.47 History: 1905 c. 19 s. 47; Supl. 1906 s. 1747—47; 1911 c. 663 s. 315; 1923 c. 291 s. 3; Stats. 1923 s. 126.47; 1925 c. 160 s. 3; 1945 c. 443.

126.48 History: 1925 c. 160 s. 3; Stats. 1925 s. 126.48; 1945 c. 443; 1959 c. 591; 1969 c. 111.

126.49 History: 1905 c. 19 s. 49; Supl. 1906 s. 1747—49; 1923 c. 114 s. 2; 1923 c. 291 s. 3; Stats. 1923 s. 126.49; 1945 c. 443.

Revisor's Note, 1945: 192.47 gives the railroad authority to maintain a police force. [Bill 321-S]

126.50 History: 1905 c. 19 s. 50; Supl. 1906 s. 1747—50; 1923 c. 291 s. 3; Stats. 1923 s. 126.50; 1945 c. 443.

126.51 History: 1905 c. 19 s. 51; Supl. 1906 s. 1747—51; 1923 c. 291 s. 3; Stats. 1923 s. 126.51; 1945 c. 443; 1957 c. 139; 1969 c. 111.

126.53 History: 1905 c. 19 s. 53; Supl. 1906 s. 1747—53; 1911 c. 663 s. 315; 1923 c. 291 s. 3; Stats. 1923 s. 126.53; 1925 c. 160 s. 3; Stats. 1925 s. 126.53, 126.535; 1945 c. 443; Stats. 1945 s. 126.53; 1969 c. 111 s. 25.

The grain and warehouse commission has power to inspect and weigh all grain shipped into or out of elevators located in Superior and to initiate prosecutions. Common carriers cannot collect inspection fees for Minnesota inspection officials who may inspect grain passing through Minnesota to Wisconsin elevators as condition to delivery of such grain into Wisconsin elevators. Prosecutions can be had against all persons violating provisions of the statutes and fines and penalties can be imposed; where no specific provision is made, such prosecutions can be made under general provisions of the statute. 16 Atty. Gen. 320.

126.57 History: Spl. S. 1905 c. 12 s. 1; Supl. 1906 s. 1747—59; 1923 c. 291 s. 3; Stats. 1923 s. 126.57; 1945 c. 443; 1969 c. 111.

126.58 History: Spl. S. 1905 c. 12 s. 1; Supl. 1906 s. 1747—60; 1923 c. 291 s. 3; Stats. 1923 s. 126.58; 1945 c. 443; 1969 c. 111.

126.62 History: Spl. S. 1905 c. 12 s. 1; Supl. 1906 s. 1747—64; 1923 c. 291 s. 3; Stats. 1923 s. 126.62; 1945 c. 443.

126.63 History: Spl. S. 1905 c. 12 s. 1; Supl. 1906 s. 1747—65; 1923 c. 291 s. 3; Stats. 1923 s. 126.63; 1945 c. 443; 1967 c. 276 s. 39; 1969 c. 87; 1969 c. 111 s. 25.

126.66 History: Spl. S. 1905 c. 12 s. 1; Supl. 1906 s. 1747—68; 1923 c. 291 s. 3; Stats. 1923 s. 126.66; 1945 c. 443.

126.67 History: Spl. S. 1905 c. 12 s. 1; Supl. 1906 s. 1747—69; 1923 c. 291 s. 3; Stats. 1923 s. 126.67; 1945 c. 443; 1969 c. 111 s. 25.

126.68 History: Spl. S. 1905 c. 12 s. 1; Supl. 1906 s. 1747—70; 1923 c. 291 s. 3; Stats. 1923 s. 126.68; 1945 c. 443.

126.71 History: Spl. S. 1905 c. 12 s. 1; Supl. 1906 s. 1747—73; 1923 c. 291 s. 3; Stats. 1923 s. s. 126.71; 1945 c. 443.

126.72 History: Spl. S. 1905 c. 12 s. 1; Supl. 1906 s. 1747—79; 1923 c. 291 s. 3; Stats. 1923 s. 126.72; 1945 c. 443.

CHAPTER 128.

Creditor's Actions.

128.01 History: 1937 c. 431; Stats. 1937 s. 128.01; 1969 c. 392.

On limitations imposed by the supremacy clause see notes to sec. 1, art. IV.

The insolvency laws of the state (128.01 to 128.29, Stats. 1925) are completely superseded by the federal bankruptcy act as to all matters comprehended within that legislation. During the existence of the federal bankruptcy act, state statutes afford the courts no power or authority to discharge debtors from their debts. While the discharge of a bankrupt from his debts constitutes the very essence of a bankruptcy law and the distribution of the property of the bankrupt pro rata among his creditors a necessary incident, the discharge of a debtor is no part of an assignment law, and the provisions of the statutes relating to voluntary assignments do not contravene the federal bankruptcy act. *In re Voluntary Assignment of Tarnowski*, 191 W 279, 210 NW 836.

The provisions of ch. 128, Stats. 1931, relating to assignments for the benefit of creditors are separate and distinct and therefore severed from those relating to the discharge of insolvent debtors. *Pobreslo v. Joseph M. Boyd Co.* 210 W20, 242 NW 725, affirmed *Pobreslo v. Joseph M. Boyd Co.* 287 US 518.

Where a receivership of a corporation is carried out under ch. 128, even though instituted by voluntary assignment rather than by a judgment creditor whose execution has been returned unsatisfied, the scope of the proceeding is broad enough so that stockholders can properly be made parties and their liabilities for unpaid wages, under 180.40 (6), Stats. 1953, determined and adjudicated therein. *In re Supreme T. & M. Co.* 3 W (2d) 554, 89 NW (2d) 292.

The circuit court will in most cases have jurisdiction to determine the validity of the assignments for the benefit of creditors, to determine whether or not certain property is exempt from the claim of title by the receiver or assignee and whether claimed liens are valid. *Premke v. Pan American Motel, Inc.* 35 W (2d) 258, 151 NW (2d) 122.

The involuntary provisions of ch. 128, Stats. 1951, are suspended by the national bankruptcy act, but the voluntary provisions are not so suspended. (*In re Wisconsin Builders Supply Co.* 136 F Supp. 439, reversed.) *In re Wisconsin Builders Supply Co.* 239 F (2d) 649.

A debtor who executed an assignment and had a receiver appointed under the Wisconsin statute committed an act of bankruptcy, but after the passage of 4 months the district court had no jurisdiction to entertain a petition in bankruptcy. *In re Supreme T. & M. Co.* 147 F Supp. 158.

A challenge to the validity of certain sections of chapter 128. *Bertz*, 45 MLR 403.

Colorable transfers, fraudulent conveyances and preferences in state and federal liquidation proceedings. *Heller*, 1939 WLR 360.

Wisconsin insolvency law declared suspended as tantamount to bankruptcy. 1956 WLR 682.

128.02 History: 1937 c. 431; Stats. 1937 s. 128.02; 1939 c. 308.

128.03 History: 1937 c. 431; Stats. 1937 s. 128.03.

128.04 History: 1937 c. 431; Stats. 1937 s. 128.04.

128.05 History: 1937 c. 431; Stats. 1937 s. 128.05; 1939 c. 308; 1957 c. 274, 672.

128.06 History: 1937 c. 431; Stats. 1937 s. 128.06; 1939 c. 308; 1957 c. 274.

128.07 History: 1937 c. 431; Stats. 1937 s. 128.07; 1969 c. 289.

Legislative Council Note, 1969: These subsections [(3) and (4)] give s. 128.07 a modern definition of the word "transfer" and correct the point at issue noted in *In re Bossell* (1966) 30 Wis. 2d 20, 139 N.W.2d 639. Sub. (4) enables the assignee to invalidate secret liens and better insure equal treatment of creditors. (Bill 8-A)

128.08 History: 1957 c. 274; Stats. 1957 s. 128.08.

Any judgment creditor, including one whose judgment was obtained in a federal court in this state, who has exhausted his remedy at law against an insolvent corporation by the return of an execution wholly unsatisfied, may bring an action to sequester all of the property and assets of such corporation, restrain all other creditors from pursuing their own remedies, and compel them to come into the action and submit to an equal distribution among all the creditors. *Ballin v. Loeb*, 78 W 404, 47 NW 516; *Garden C. B. & T. Co. v. Geilfuss*, 86 W 612, 624, 57 NW 349.

If a sheriff has money in his hands realized upon executions against an insolvent corporation, the executions having been issued because of fraudulent conduct on the part of the plaintiff therein and the directors of the defendant for the purpose of giving the creditor an illegal preference over other creditors, such money may be sequestered as a part of the corporate assets. *Ford v. Plankinton Bank*, 87 W 363, 58 NW 766.

The filing of a complaint in an action for the sequestration of the property of an insolvent corporation and the appointment of a receiver, followed by an order of court, regularly served, requiring defendant to show cause why a receiver should not be appointed, and forbidding interference with its property pending the motion, is equivalent to an equitable levy upon such property, and gives the