utes a bill for laboratory supplies amounting to fifty-two dollars and eighty-three cents heretofore incurred.

SECTION 6. There is appropriated from the general fund to the senate a sum sufficient, not exceeding five thousand dollars, for the payment of reporters and other necessary expenses of the special committees appointed pursuant to senate resolutions No. 20 and No. 25. Such money shall be paid by the state treasurer on the warrant of the secretary of state issued upon a requisition signed by the chairman of the committee incurring such expense, accompanied by a certificate showing for what purpose the money is to be paid and that the same has been approved by a majority of such committee. No expenditures hereunder shall be incurred after the sine die adjournment of the present session of the legislature.

SECTION 7. This act shall take effect July 1, 1925. Approved June 29, 1925.

No. 529, S.]

[Published July 6, 1925.

CHAPTER 446.

- AN ACT to repeal subsections (5) and (6) of section 71.09; to amend subsection (1), paragraphs (b) and (d) of subsection (2), and paragraph (d) of subsection (3) of section 71.02; subsection (7) of section 71.03, subsection (7) of section 71.04; paragraphs (b) and (d) of subsection (1) of section 71.05; subsection (2) of section 71.08; subsections (1) and (4) of section 71.09, subsection (1) of section 71.10 and subsection (1) of section 71.11; to renumber subsection (7) of section 71.09 to be subsection (10) of said section and to amend the same as so renumbered; to renumber subsections (8), (9) and (10) of section 71.09 to be subsections (11), (12) and (13) of said section, and section 71.12 to be subsection (1) of said section, and to create paragraph (f) of subsection (3) of section 71.02, subsections (5) to (9) of section 71.09; subsection (2) of section 71.12; section 71.155; subsection (3) of section 71.17; and sections 71.25 and 71.26 of the statutes, relating to income taxes and taxation.
- The people of the State of Wisconsin, represented in Senate and Assembly, do enact as follows:

SECTION 1. Subsections (5) and (6) of section 71.09 of the statutes are repealed.

SECTION 2. Subsection (1), paragraphs (b) and (d) of subsection (2), and paragraph (d) of subsection (3) of section 71.02; subsection (7) of section 71.03, subsection (7) of section 71.04; paragraphs (b) and (d) of subsection (1) of section 71.05; subsection (2) of section 71.08; subsections (1) and (4) of section 71.09; subsection (1) of section 71.10 and subsection (1) of section 71.11 of the statutes are amended to read:

(71.02) (1) The term "person," as used in this act, shall mean and include *** *** *natural persons, fiduciaries and corporations, and the word "corporation" shall mean and include corporations, joint stock companies, associations or common law trusts* organized for profit, and having a capital stock represented by shares, or certificates, unless otherwise expressly stated.

(2) (b) All dividends derived from stocks and all interest derived from money loaned or invested in notes, mortgages, bonds or other evidence of debt of any kind whatsoever, provided, that the term "dividends" as used in this section shall be held to mean any distribution made by a corporation, joint stock company or association, out of its earnings or profits accrued since January 1, 1911, and paid to its shareholders whether in cash or in stock or property of the corporation, joint stock company or association, and shall also include any distribution of increased value in capital assets under the authority of section 182.19.

(d) All profits derived from the transaction of business or from the sale of real estate or other capital assets; provided, that for the purpose of ascertaining the gain or loss resulting from the sale or other disposition of property, real or personal, acquired prior to January 1, 1911, the fair market value of such property as of January 1, 1911, shall be the basis for determining the amount of such gain or loss; and provided further that the basis for computing the profit or loss on the sale of property acquired by gift after 1922 shall be the same as it would have been had the sale been made by the last preceding owner who did not acquire it by gift; and in case the taxing officers are unable to ascertain the cost of the property to such prior owner, if acquired after January 1, 1911, then the basis shall be the value thereof at or about the time it was acquired by him, and such value shall be determined from the best information obtainable. In computing profit or loss on the sale of property acquired by descent or

by will since January 1, 1911, the appraised value of such property in the administration of the estate of the deceased owner as of the date of his death shall be deemed to be the fair market value of said property at said date. If property exclusive of inventories (as raw materials, goods in process and finished goods), as a result of its destruction in whole or in part by fire or other casualty, is involuntarily converted into money which is within one year in good faith, under regulations prescribed by the Tax Commission, expended in the replacement of the property destroyed or in the acquisition of other property similar or related in service or use to the property so destroyed, or in the establishment of a replacement fund which, within two years from the date of the fire or other casualty is actually expended to replace the property destroyed or in the acquisition of other property similar or related in service or use to the property destroyed, no gain or loss shall be recognized, and the property so replaced or acquired, for purposes of depreciation and all other purposes of taxation, shall be deemed to take the place of the property so destroyed. If any part of the money is not so expended, the gain, if any, shall be recognized, but in an amount not in excess of the money which is not so expended.

(3) (d) Persons engaged in business within and without the state shall be taxed only on such income as is derived from business transacted and property located within the state. The amount of such income apportionable to Wisconsin may be determined by an allocation and separate accounting thereof, when, in the judgment of the tax commission, that method will reasonably reflect the income properly assignable to this state, but otherwise in the following manner: There shall first be deducted from the total net income of the taxpayer such part thereof (less related expenses, if any) as follows the situs of the property or the residence of the recipient, provided that in the case of income which follows the residence of the recipient, the amount of interest and dividends deductible under this provision shall be limited to the total interest and dividends received which are in excess of the total interest paid and allowable as a deduction under section 71.03 (2) during the income year. The remaining net income shall be apportioned to Wisconsin * * * on the basis of the ratio obtained by taking the arithmetical average of the following three ratios:

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1. The ratio of the tangible property, real, personal, and mixed, owned and used by the taxpayer in Wisconsin in connection with his trade or business during the income year to the total of such property of the taxpayer owned and used by him in connection with his trade or business everywhere. Cash on hand or in bank, shares of stock, notes, bonds, accounts receivable, or other evidence of indebtedness, special privileges, franchises, good will, or property the income of which is not taxable or is separately allocated, shall not be considered tangible property nor included in the apportionment.

2. In the case of persons engaged in manufacturing or in any form of collecting, assembling, or processing goods and materials within this state, the ratio of the total cost of manufacturing, collecting, assembling, or processing within this state to the total cost of manufacturing, assembling, or processing everywhere. The term "cost of manufacturing, collecting, assembling, or processing within this state and everywhere" as used herein, shall be interpreted in a manner to conform as nearly as may be to the best accounting practice in the trade or business. Unless in the opinion of the tax commission the peculiar circumstances in any case justifies a different treatment, this term shall be generally interpreted to include as elements of cost within this state the following:

a. The total cost of all goods, materials, and supplies used in manufacturing, assembling, or processing within this state regardless of where purchased.

b. The total wages and salaries paid or incurred during the income year in this state in such manufacturing, assembling, or processing activities.

c. The total overhead or manufacturing burden properly assignable according to good accounting practice to such manufacturing, assembling or processing activities within this state.

3. In the case of trading, mercantile, or manufacturing concerns the ratio of the total sales made through or by offices, agencies, or branches located in Wisconsin during the income year to the total net sales made everywhere during said income year.

4. Where, in the case of any person engaged in business within and without the state of Wisconsin and entitled to an apportionment of his income as herein provided, it shall be shown, to the satisfaction of the tax commission, that the use of any one of the

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three ratios above provided for gives an unreasonable or inequitable final average ratio because of the fact that such person does not employ, to any appreciable extent in his trade or business in producing the income taxed, the factors made use of in obtaining such ratio, this ratio may, with the approval of the tax commission, be omitted in obtaining the final average ratio which is to be applied to the remaining net income.

5. As used in this section the word "sales" shall extend to and include exchange, and the word "manufacturing" shall extend to and include mining and all processes of fabricating or of curing raw materials. If the income of any such * * *person* properly assignable to the state of Wisconsin can not be ascertained with reasonable certainty by either of the foregoing methods, then the same shall be apportioned and allocated under such rules and regulations as the tax commission may prescribe.

(6) Whenever in the opinion of the commission the use of inventories is necessary in order clearly to reflect the income of any person subject to income taxation, inventories shall be taken by such person upon such basis as the commission may prescribe, conforming as nearly as may be to the best accounting practice in the trade or business, and most clearly reflecting the income.

(71.03) (7) Contributions or gifts * * * made within the year to the state or any political subdivision thereof for exclusively public purposes, or to any corporations, community chest fund, foundation, or associations operating within * * this state, organized and operated exclusively for religious, charitable, scientific, or educational purposes, * * * or, for the prevention of cruelty to children or animals, no part of the net income of which inures to the benefit of any private stockholder or individual, to an amount not in excess of ten per centum of the taxpayer's taxable * * income as computed without the benefit of this subsection.

(71.04) (7) Contributions or gifts * * made within the year to the state or any political subdivision thereof for exclusively public purposes, or to any corporation * * , community chest fund, foundation, or association * * operating within * * this state, organized and operated exclusively for religious, charitable, scientific, or educational purposes, * * or for the prevention of cruelty to children or animals, no part of the net income of which inures to the benefit of any private stockholder or individual, to an amount not in excess of ten per centum of the taxpayer's taxable * * * income as computed without the benefit of this subsection.

(71.05) (1) (b) To husband and wife, or head of a family, * * * sixteen hundred dollars.

(d) For each additional person, who is actually supported by and entirely dependent upon the taxpayer for his support, * * three hundred dollars. In computing said exemptions and the amounts of taxes payable by persons residing together as members of a family, the income of the wife and the income of each child under eighteen years of age shall be added to that of the husband or father, or if he be not living, to that of the head of the family and assessed to him *except as hereinafter provided*. The taxes levied thereon shall be payable by such husband or head of the family, but if not paid by him may be enforced against any person whose income is included in the assessment.

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(71.08) (2) The county board of each county * shall * provide at the expense of the county when requested to do so a suitable room or rooms in the courthouse or other convenient building at the county seat, for the use of such assessor, together with all furniture, fixtures, * * * office equipment, and office supplies necessary to properly conduct the duties of his office. If any county shall fail or refuse to furnish such quarters, equipment and supplies for the use of the assessor of incomes as herein provided, the tax commission may procure the same at the expense of the county responsible therefor. The rent of such office and the cost of such equipment and supplies, if procured by the * * commission, shall in the first instance, be paid out of the state treasury as other claims against the state are audited and paid, and shall be included in the next apportionment and certification of state taxes and charges and collected from such county as other special charges are certified and collected.

(71.09) (1) The state tax commission and the assessors of incomes shall annually on the first day of January, or as soon thereafter as practicable, proceed to assess as hereinafter provided, every income received during the preceding calendar year or corresponding fiscal year liable to taxation under the provisions of this chapter. Liability to taxation for income which follows the residence of the recipient in the case of persons, other than corporations, joint stock companies, * * * associations, and common law trusts * * * who move into or out of the state

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within the year shall be determined for such year by the ratio of time which the residence of such taxpayer in the state bears to the entire calendar or fiscal year. The exemptions provided for in section 71.05 shall be prorated on the basis of the time of residence within and without the state. The assessment * * * shall be made by the state tax comof corporations, mission, and the assessment of persons other than corporations, joint stock companies. * * associations. and common law trusts shall be made by the county assessors of incomes. The provisions of section 71.15 relating to the review of an assessment and the prepayment of the tax assessed as a condition precedent to contesting the validity of any assessment shall apply to the review of corporation assessments under the provisions of this chapter.

(4) (a) Whenever in the judgment of the assessor of incomes any person other than a corporation, joint stock company or association shall be subject to income tax in his district under the provisions of this chapter, he shall notify such person to make report to him on or before March fifteenth of each year in such manner and form as the tax commission shall prescribe, specifying in detail the amounts of income received by him from all sources, together with the amount of income received by his wife and each child under eighteen years of age residing together with him as members of the family, and such other information as the commission shall deem necessary to enforce the provisions of this chapter. In case any person shall fail, neglect or refuse to make return when notified by the assessor of incomes so to do, such assessor shall estimate and assess his taxable income according to his best judgment and give notice thereof by mail. Any person who receives a taxable income during the year must report the same in the manner and form herein provided to the assessor of incomes, whether notified to do so or not, and shall be subject to the same penalties for failure to report as those who receive notice

(b) Married persons living together as husband and wife may make separate returns or join in a single joint return. In either case the tax shall be computed on the aggregate income after the respective deductions and credits have been allowed. The exemptions provided for in subsection (2) of section 71.05 shall only be counted once and divided equally and the amount of tax due shall be paid by each in the proportion that the net income of each bears to the aggregate income.

(71.10) (1) Whenever it shall appear probable that a corporation has been over or underassessed, or that no assessment has been made when one should have been made in any of the years following January 1, * * * 1916, the tax commission may require such corporation to furnish such information with reference to its capital, surplus and business transacted as it may deem necessary to enable it to ascertain the amount of taxable income such corporation received during the year or years in question. Upon such information and such other information as it may be able to discover the commission shall determine the true amount of taxable income received during the year or years under investigation. Any part of the income so ascertained and not previously assessed, shall be assessed and entered upon the next assessment rolls *. If it shall be found that the prior assessment was in excess of the actual taxable income received in any of such previous years, the tax commission * * * shall credit such corporation with such excess and apply the same as a payment upon any tax or taxes assessed in the current year or the next succeeding assessment, provided, however, that after January 1, 1927, assessments and corrections in assessments may be made only for the six years immediately preceding the current assessment. No additional assessment shall be made under this section without giving at least ten days' notice in writing of the proposed assessment to the corporation to be subjected thereto. Such notice shall be served as a circuit court summons is served, or by registered mail.

(71.11) (1) Whenever it shall appear probable to the assessor of incomes or the county board of review that any person other than a corporation, joint stock company or association has been over or under assessed, or that no assessment had been made when one should have been made in any of the years following Jan-1916, such income tax assessor or county board uary 1. * * of review may require such person to furnish such information as may be deemed necessary to enable them to ascertain the amount of taxable income received by such person during the year or years in question. Upon such information and such other information as they may be able to discover, they shall determine the true amount of taxable income received during the year or years under investigation. Any part of the income so ascertained and not previously assessed, shall be assessed and entered upon the next assessment rolls * * * . If it shall be found that the prior assessment was in excess of the actual amount of income

received in any of such previous years, allowance therefor may be made as far as possible in the current assessment, or in the next succeeding assessment, provided, however, that after January 1, 1927, assessments and corrections in assessments may be made only for the six years immediately preceding the current assessment. No additional assessment shall be made under this subsection without giving at least ten days' notice in writing of the proposed assessment to the person to be subjected thereto. Such notice may be served by mail.

SECTION 3. Subsection (7) of section 71.09 of the statutes is renumbered subsection (10) of said section and amended to read : (71.09) (10) An executor, administrator, guardian, or trustee applying to a court having jurisdiction for a discharge from his trust and a final settlement of his accounts, before his application shall be granted, shall file with the assessor of incomes of his county a return of all income received in his representative capacity during the time between the last preceding January first and the date of his application for discharge and also similar returns of income received during each of the three next preceding calendar years while acting as a fiduciary ۰. * * that have not theretofore been filed. Upon the receipt of such returns, the income tax assessor shall immediately determine the amount of to become due * * taxes 🍍 * * ٠ and shall certify such amount * to the court and the court shall thereupon enter an order directing the executor, administrator, trustee or guardian, as the case may be,

• to set aside and reserve, before the final distribution of the estate is made, a sufficient amount to pay the taxes on the income so ascertained when they become due and payable, whether the same is assessable to the fiduciary or beneficiary. When said taxes are due and payable the fiduciary shall pay the same out of said reserve fund in the districts in which the same are payable, or if paid by the beneficiary, in any case, the fiduciary shall reimburse such beneficiary for such payment out of said reserve fund and take his receipt therefor. Receipts for such payments shall be filed in the court in which the estate is being administered and when so filed the fiduciary shall be relieved of all obligations in respect to said taxes without any further action on the part of the court.

SECTION 4. Subsections (8), (9) and (10) of section 71.09 of the statutes are renumbered to be subsections (11), (12) and (13)

of said section respectively, and section 71.12 is renumbered to be subsection (1) of said section.

SECTION 5. A new paragraph is added to subsection (3) of section 71.02, five new subsections are added to section 71.09; a new subsection is added to section 71.12; a new section is added to the statutes, a new subsection is added to section 71.17, and two new sections are added to the statutes to read:

71.02 (3) (f) Whenever in the opinion of the commission the use of inventories is necessary in order to clearly determine the income of any person, inventory shall be taken by such person - upon such basis as the commission may prescribe, conforming as nearly as may be to the best accounting practice in the trade or business and most clearly reflecting the income.

71.09 (5) Every executor and administrator shall be assessed on the taxable income received by him from the estate of the deceased during the year, together with the income received by the decedent during that portion of the year covered by the return preceding the demise of the deceased, and shall make a return thereof to the assessor of incomes of the county in which he resides in the form and manner and within the time that the returns of income are required from persons other than corporations. An executor or administrator for the first year of the administration of the estate shall be allowed to deduct from the net income the same exemptions as the decedent would have been entitled to deduct had he survived and made the return. In subsequent years of administration the executor or administrator shall be allowed exemptions for all persons dependent on the estate for support, less the amount of income received by such dependents from other sources. The assessor of income shall certify the tax on the income assessed as other taxes are certified to the taxing districts within his county or to other taxing districts within the state entitled to the same under the provisions of this chapter.

(6) Guardians shall make returns of income to the assessor of incomes of the county in which their wards reside, which returns shall be made at the same time as returns of persons other than corporations are made, and shall show all the taxable income received by or for the respective ward whom they represent from all sources. The taxable income of a guardian shall be ascertained in the same manner as the income of other persons is ascertained and shall be subject to the same exemptions and deductions which the ward would have been entitled to had he made the return. The

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taxable income so ascertained shall be assessed to the guardian as such making the report.

(7) Trustees of trust estates created by will or contract, or by declaration of trust or implication of law, shall annually make a return of all the income received by them as such to the assessor of incomes of the county in which they reside, showing the total taxable income received by them during the year, the names and addresses of the distributees and the amounts severally distributable to them, whether distributed or not, and also the amounts to be accumulated by them for unknown or unborn or undisclosed beneficiaries or for other reasons. The distributees who receive or who are entitled to receive any part of a trust income shall return the same as income to the assessor of incomes in the district in which they respectively reside, together with all other income received by them and shall be assessed thereon as provided by this chapter. Such of the said distributees as are non-residents of this state shall be assessed on such taxable income as they receive from the trust estate as the income of non-residents is assessed. No exemption shall be allowed either resident or nonresident distributees unless they shall make a claim therefor in their income tax returns made in accordance with the terms of this act, showing the total taxable income.

(8) All non-distributable taxable income shall be assessed to the fiduciary.

(9) All income taxes levied against the income of beneficiaries shall be a lien on that portion of the trust estate or interest therein from which the income taxed is derived, and such taxes shall be paid by the fiduciary, if not paid by the distributee, before the same becomes delinquent. Every person who as a fiduciary under the provisions of this chapter pays an income tax, shall have all the rights and remedies of reimbursement for any taxes assessed against him or paid by him in such capacity provided in subsection (1) and (2) of section 70.19.

71.12 (2) for the purpose of ascertaining the correctness of any return or for the purpose of making an estimate of the taxable income of any person, the tax commission and assessor of incomes shall have power to examine or cause to be examined by any agent or representative designated by it for that purpose, any books, papers, records, or memoranda, bearing upon the matters required to be included in the return and may require the attendance of the officials of the company, or of any other person having knowledge in the premises, and may take testimony and require proof material for their information.

71.155 (1) Any assessment made, corrected, or confirmed by the commission shall be final and conclusive, unless within twenty days thereafter an action shall be commenced by the party aggrieved in the circuit court for Dane county for the review of such assessment.

(2) No person shall be allowed in any action or proceeding whatsoever, either as plaintiff or defendant, to contest the validity of any assessment of income, unless said party shall first have availed himself of the remedies provided for by sections 71.12, 71.13, 71.14, and 71.15, and shall have made full disclosure under oath of any and all his income liable to assessment, nor unless he has first paid to the court the whole amount of the tax assessed.

(3) In any action or proceeding in court to review an assessment of income, a complaint which shall state the grounds upon which a review is sought shall be served upon any member of the commission or its secretary. The commission shall answer within ten days after such service, and with such answer shall make return to said court of all documents and papers on file in the matter and all testimony, evidence, statements or exhibits which may have been filed therein, together with the assessments above mentioned. The action may thereupon be brought up for hearing upon such record by either party on ten days' notice to the other, subject, however, to the provisions of law for a change of the place of trial or the calling in of another judge.

(4) Upon such hearing the court shall disregard any irregularity, informality or omission, and shall enter an order confirming such assessment, unless it shall appear that substantial injustice to the complainant has resulted therefrom; and in all actions and proceedings to contest the validity of any such assessment the proceedings of the commission shall be presumed to be regular and the determination of the commission shall not be impaired, vitiated or set aside upon any grounds not affecting the substantial justice of the tax. If the court shall find that substantial injustice results from such assessment, it shall direct the tax commission to make such corrections in the assessment as it may find that justice shall require; and in that case upon the return of the record the tax commission shall immediately proceed to reassess the income in accordance with the judgment of the court.

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(5) Either party may appeal to the supreme court within twenty days after the entry of such order or judgment, in the manner provided for other appeals from the judgment of a circuit court, and all such appeals shall be placed on the calendar of the supreme court and brought to a hearing in the same manner as state cases on such calendar. The attorney-general shall, in all cases, both in circuit and supreme court, appear for the commission. If no such appeal be taken within this period, the record shall forthwith be returned to the tax commission.

(6) After the decision and the return of the record to the commission, if such assessment is reduced, upon certificate from the commission, the court shall refund to the taxpayer the amount of the excess tax paid, if any, and the balance shall be paid to the treasurer of the taxing district to whom the tax is payable under the provisions of section 71.18.

71.17 (3) The tax of any person reporting on the fiscal year basis shall be entered on the assessment roll:

(a) Of the calendar year in which the fiscal year ends, if the last day of such fiscal year is prior to the first day of July;

(b) Of the calendar year following that in which the fiscal year ends, if the last day of such fiscal year is subsequent to the thirtieth day of June.

71.25 When any corporation liable to taxation under this act conducts its business in such a manner as either directly or indirectly to benefit the members or stockholders thereof or any person interested in such business, by selling its products or the goods or commodities in which it deals at less than the fair price which might be obtained therefor, or where a corporation, a substantial portion of whose capital stock is owned either directly or indirectly by another corporation, acquires and disposes of the products of the corporation so owning a substantial portion of its stock in such a manner as to create a loss or improper net income, the commission may determine the amount of taxable income of such corporation for the calendar or fiscal year, having due regard to the reasonable profits which but for such arrangement on understanding might or could have been obtained from dealing in such products, goods or commodities.

71.26 Any person aggrieved by the levy and collection in cash of any unlawful or excessive income tax assessed against or imposed upon him under the laws of this state may file a claim therefor against the town, city, or village, whether incorporated under

general law or special charter in which such tax was payable, in the manner prescribed by law for filing claims in other cases, whether such tax was voluntarily paid or not, and if it shall appear that the tax for which such claim was filed, or any part thereof, is unlawful or excessive the proper town board, village board, or common council in the case of cities shall allow and the proper town, city, or village treasurer shall pay such person the amount of such claim found to be illegal or excessive, provided that in case of claims for refund of illegal or excessive income taxes the conditions prescribed by subsection (6) of section 71.18 of the statutes shall have been complied with. If any town, city, or village shall fail or refuse to allow such claim, the claimant may have and maintain an action against the same for the recovery of all money so unlawfully levied and collected of him. Every such claim shall be filed within two years and every action to recover any money so paid be brought within three years from the date of such payment and not thereafter.

SECTION 6. This act and chapter 57 of the laws of 1925, shall apply to the taxable income for the year 1924 or for any fiscal year ending during the year 1925 and annually thereafter.

SECTION 7. This act shall take effect upon passage and publication.

Approved June 29, 1925.

No. 566, A.]

[Published July 6, 1925.

CHAPTER 447.

- AN ACT to amend subsection (11b) of section 20.20 of the statutes (as amended by chapter 339, laws of 1925), relating to the removal of injurious rough fish by the conservation commission and making an appropriation.
- The people of the State of Wisconsin, represented in Senate and Assembly, do enact as follows:

SECTION 1. Subsection (11b) of section 20.20 of the statutes (as amended by chapter 339, laws of 1925), is amended to read: (20.20) (11b) * * On July 1, 1925, fifteen thousand dollars to carry out the provisions of subsection (5) of section 29.62. SECTION 2. This act shall take effect July 1, 1925. Approved June 27, 1925.