

SECTION 12. The county judge of said Marquette county, Wisconsin, shall receive an annual salary of fifteen hundred dollars, for performing the duties of his office, including the duties required by this act, to be paid out of the county treasury in equal monthly installments at the end of each month.

SECTION 13. All acts and parts of acts in conflict with the provisions of this act are hereby repealed.

SECTION 14. This act shall take effect upon passage and publication.

Became law by expiration of time without governor's approval.

No. 235, S.]

[Published July 2, 1921.

CHAPTER 451.

AN ACT to amend subsection (4) of section 2394—7, subsection (8) of section 2394—9, section 2394—11, section 2394—12, section 2394—16, section 2394—18m, subsection (2) of section 2394—24, section 2394—26, and section 2394—27, to create subsection (4) of section 2394—24 and to repeal subsection (2) of section 2394—19 and re-number subsections (3) and (4) to be subsections (2) and (3), respectively, of section 2394—19, of the statutes, relating to workmen's compensation.

The people of the State of Wisconsin, represented in Senate and Assembly, do enact as follows:

SECTION 1. Subsection (4) of section 2394—7, subsection (8) of section 2394—9, section 2394—11, section 2394—12, section 2394—16, section 2394—18m, subsection (2) of section 2394—24, section 2394—26, and section 2394—27 of the statutes are amended to read: (Section 2394—7) (4) Every person in the service of another under any contract of hire, express or implied, oral or written, including aliens, all helpers and assistants of employes, whether paid by the employers or employe, if employed with the knowledge, actual or constructive, of the employer, and also including minors of permit age or over (who, for the purposes of section 2394—8, shall be considered the same and shall have the same power of contracting as adult employes), but not including any person whose employment is not in the usual course of the trade, business, profession, or occupation of his employers, *unless such employer has, by an affirmative election, in the manner provided in subsection (1) of*

section 2394—5, specifically elected to include domestic and other employes under coverage of the act.

(Section 2394—9) (8) In case of liability for the increased compensation or increased death benefits provided for by subdivision (h) of subsection (5) of this section, or included in subsection * * * (7) of this section, the liability if the employer shall be primary and the liability of the insurance carrier shall be secondary. In case proceedings are had before the commission for the recovery of such increased compensation or increased death benefits the commission shall set forth in its award the amount and order of liability as herein provided. Execution shall not be issued against the insurance carrier to satisfy any judgment covering such increased death benefits until execution has first been issued against the employer and has been returned unsatisfied as to any part thereof. Any provision in any insurance policy undertaking to guarantee primary liability or to avoid secondary liability for such increased compensation or increase death benefits shall be void.

(Section 2394—11) No claim to recover compensation under sections 2394—3 to 2394—31, inclusive, shall be maintained unless, within thirty days after the occurrence of the accident which is claimed to have caused the injury or death, notice in writing, stating the name and address of the person injured, the time and place where the accident occurred and the nature of the injury, and signed by the person injured or by some one on his behalf, or in case of his death, by a dependent or some one on his behalf, shall be served upon the employer, either by delivering to and leaving with him a copy of such notice, or by mailing to him by registered mail a copy thereof in a sealed and postpaid envelope addressed to him at his last known place of business or residence. Such mailing shall constitute complete service. Provided, however, that any payment of compensation under sections 2394—3 to 2394—31, inclusive, in whole or in part, made by the employer before the expiration of said thirty days, shall be equivalent to the notice herein required; and provided, further, that the failure to give any such notice, or any defect or inaccuracy therein, shall not be a bar to recovery under sections 2394—3 to 2394—31, inclusive, if it is found as a fact in the proceedings for collection of the claim that *within the thirty-day period actual notice of the injury was given to the employer or to any officer or manager of an employer or company or to any*

other person designated by the employer for the purpose of receiving reports of injury, or if it is found that there was no intention to mislead the employer, and that he was not in fact misled thereby; and provided, further, that if no such notice is given and no payment of compensation made, within two years from the date of the accident, the right to compensation therefor shall be wholly barred. The name of the employe or other representative designated by the employer to receive reports of injury shall be posted by the employer in one or more conspicuous places about the premises.

(Section 2394—12) (1) Wherever in case of injury the right to compensation under sections 2394—3 to 2394—31, inclusive, would exist in favor of any employe, he shall, upon the written request of his employer, submit from time to time to examination by a regular practicing physician, who shall be provided and paid for by the employer, and shall likewise submit to examination from time to time by any regular physician selected by said industrial commission, or a member or examiner thereof. The employe shall be entitled to have a physician, provided and paid for by himself, present at any such examination. So long as the employe, after such written request of the employer, shall refuse to submit to such examination, or shall in any way obstruct the same, his right to begin or maintain any proceeding for the collection of compensation shall be suspended; and if he shall refuse to submit to such examination after direction by the commission, or any member or examiner thereof, or shall in any way obstruct the same, his right to the weekly indemnity which shall accrue and become payable during the period of such refusal or obstruction, shall be barred. Any physician who shall make or be present at any such examination may be required to testify as to the results thereof. Any physician having attended an employe in a professional capacity may be required to testify before the commission when it shall so direct.

(2) *The commission may refuse to receive testimony as to conditions determined from an autopsy if it appears (a) that the party offering the testimony is chargeable with the wilful misconduct by failure to make reasonable effort to notify at least one party in adverse interest or the industrial commission in the matter of the autopsy, said notice to be given at least twelve hours before said autopsy, (b) that the autopsy was performed by or at the direction of the coroner for purposes other than those*

authorized by chapter 200 of the statutes. The commission may in its discretion withhold findings until an autopsy is held in accordance with its directions.

(Section 2394—16) (1) Upon the filing with the commission by any party in interest of any application in writing stating the general nature of any claim as to which any dispute or controversy may have arisen, it shall mail a copy of such application to all other parties in interest and the insurance carrier shall be deemed a party in interest. The commission may bring in additional parties by service of a copy of the application. The commission shall fix a time for the hearing on such application which shall not be more than forty days after the filing of such application. The commission shall cause notice of such hearing, to be given to each party interested, by service of such notice on him personally or by mailing a copy thereof to him at his last known post-office address at least ten days before such hearing. Such hearing may be adjourned from time to time in the discretion of the commission, and hearings may be held at such places as the commission shall designate. Either party shall have the right to be present at any hearing, in person or by attorney, or any other agent, and to present such testimony as may be pertinent to the controversy before the commission; but the commission may, with or without notice to either party, cause testimony to be taken, or an inspection of the premises where the injury occurred to be had, or the time books and pay roll of the employer to be examined by any member of the commission or any examiner appointed by it, and may from time to time direct any employe claiming compensation to be examined by a regular physician; the testimony so taken, and the results of any such inspection or examination, to be reported to the commission for its consideration upon final hearing. All ex parte testimony taken by the commission shall be reduced to writing and either party shall have opportunity to rebut the same on final hearing.

(2) *If the commission shall have reason to believe that the liability of any party for the payment of the compensation provided by sections 2394—3 to 2394—31, inclusive, shall not have been discharged, it may on its own motion give notice in writing to the parties, in the manner provided for the service of an application, of a time and place when formal inquiry will be had for the purpose of determining the facts. Such notice shall contain a concise statement of the matter to be considered. There-*

after all other provisions governing proceedings on application shall attach in so far as the same may be applicable. The commission shall make findings and award as provided in section 2394—17 and to the same effect as it might have done in proceedings upon application of a party.

(3) The commission, or any member thereof, or any examiner appointed thereby, shall have power and authority to issue subpoenas, to compel the attendance of witnesses or parties, and the production of books, papers or records, and to administer oaths, hold hearings and take testimony.

Any person who shall wilfully fail or neglect to appear and testify or to produce books, papers and records as required by such subpoena duly served upon him, shall be guilty of a misdemeanor and upon conviction thereof shall be fined not less than twenty-five dollars nor more than one hundred dollars, or imprisoned in the county jail not longer than thirty days for each such offense. Each day such person shall so refuse or neglect shall constitute a separate offense.

The circuit court of the county wherein such person resides, upon application of the commission or any member thereof or any such examiner, may issue an order compelling the attendance and testimony of witnesses and the production of books, papers and records before such commission or any member thereof or any such examiner.

(Section 2394—18m) If the sum awarded or ordered by the commission to be paid shall not be paid when due, such sum shall bear interest at the rate of six per cent per annum. Where the employer or his insurer is guilty of inexcusable delay in the making of compensation payments, the payments as to which such delay is found shall be increased by ten per cent. *Where such delay is chargeable to the employer and not to the insurer, the provisions of subsection (8) of section 2394—9 shall be applicable and the relative liability of the parties shall be fixed and discharged as therein provided, and not otherwise.*

(Section 2394—24) (2) An employer liable under this act to pay compensation shall insure payment of such compensation in some company authorized to insure such liability in this state unless such employer shall be exempted from such insurance by the industrial commission. An employer desiring to be exempt from insuring his liability for compensation shall make application to the industrial commission showing his financial ability to

pay such compensation, and agreeing as a condition for the granting of the exemption to faithfully report all injuries under compensation according to law and the requirements of the commission and to comply with the provisions of sections 2394—3 to 2394—31, inclusive, and the rules of the commission pertaining to the administration thereof, whereupon the commission by written order may make such exemption. The commission may from time to time require further statement of financial ability of such employer to pay compensation and may upon ten days' notice in writing, for financial reasons or for failure of the employer to faithfully discharge his obligations according to the agreements contained in his application for exemption, revoke its order granting such exemption, in which case such employer shall immediately insure his liability. As a condition for the granting of an exemption the commission shall have authority to require the employer to furnish such security as it may consider sufficient to insure payment of all claims under compensation. Where the security is in the form of a bond or other personal guaranty, the commission may at any time either before or after the entry of an award, upon at least ten days' notice and opportunity to be heard require the sureties to pay the amount of the award, the same to be enforced in like manner as the award itself may be enforced. *Where an employer procures an exemption as herein provided and thereafter enters into any form of agreement for insurance coverage with an insurance company or inter-insurer not licensed to operate in this state, his conduct shall automatically operate as a revocation of such exemption.*

Section 2394—26 (1) Nothing in sections 2394—3 to 2394—31, inclusive, shall affect the organization of any mutual or other insurance company, or any existing contract for insurance of employers' liability, nor the right of the employer to insure in mutual or other companies, * * * against such liability, or against the liability for the compensation provided for by sections 2394—3 to 2394—31, inclusive, or to provide by mutual or other insurance, or by arrangement with his employes, or otherwise, for the payment to such employes, their families, dependents or representatives, of sick, accident or death benefits in addition to the compensation provided for by sections 2394—3 to 2394—31, inclusive. But liability for compensation under sections 2394—3 to 2394—31, inclusive, shall not be reduced or affected by any insurance, contribution or other benefit whatsoever, due to or

received by the person entitled to such compensation, and the person so entitled shall, irrespective of any insurance or other contract, have the right to recover the same directly from the employer; and in addition thereto, the right to enforce in his own name, in the manner provided in sections 2394—3 to 2394—31, inclusive, the liability of any insurance company which may * * * have insured the liability for such compensation, and the appearance, whether general or special, of any such insurance carrier by agent or attorney shall be a waiver of the service of copy of application and of notice of hearing required by section 2394—16; provided, however, that payment in whole or in part of such compensation by either the employer or the insurance company, shall, to the extent thereof, be a bar to recovery against the other of the amount so paid, and provided, further, that as between the employer and the insurance company, payment by either directly to the employe, or to the person entitled to compensation, shall be subject to the conditions of the insurance contract between them.

(2) The failure of the assured to do or refrain from doing any act required by the policy shall not be available to the insurance carrier as a defense against the claim of the injured employe or his dependents.

(Section 2394—27) (1) Every contract for the insurance of the compensation herein provided for, or against liability therefor, shall be deemed to be made subject to the provisions of sections 2394—3 to 2394—31, inclusive, and provisions thereof inconsistent with sections 2394—3 to 2394—31, inclusive, shall be void. *Such contract shall be construed to grant full coverage of all liability of the assured under and according to the provisions of sections 2394—3 to 2394—31, inclusive, notwithstanding any agreement of the parties to the contrary unless the industrial commission has theretofore by written order specifically consented to the issuance of a contract of insurance on a part of such liability.* No company shall enter into any such contract of insurance unless such company shall have been approved by the commissioner of insurance, as provided by law. For the purposes of sections 2394—3 to 2394—31, inclusive, each employe shall constitute a separate risk within the meaning of section 1898d of the statutes; provided, that at least five employers shall join in the organization of a mutual company under subdivision (5) of section 1897 and no such company organized by

employers shall be licensed or authorized to effect such insurance unless such company shall have in force or put in force simultaneously, insurance on at least one thousand five hundred separate risks.

(2) The industrial commission, by itself or its employes, may examine from time to time the books and records of any liability insurance company insuring liability or compensation for an employer in this state. Any such company that shall refuse or fail to allow the industrial commission to examine its books and records or to file the report required by subsection 3 of section 2394—27, shall have its license to do business in the state revoked.

(3) Every company transacting the business of compensation insurance, in addition to all other reports required by law to be made, shall, on or before the first day of March in each year, on blanks furnished for such purpose, make and file with the industrial commission an annual statement of its business and accident experience covering the year ending on the preceding thirty-first day of December.

SECTION 2. A new subsection is added to section 2394—24 of the statutes to read: (Section 2394—24) (4) If it appears by the complaint or by the affidavit of any person in behalf of the state that the employer's liability continues uninsured there shall forthwith be served on the employer an order to show cause why he should not be restrained from employing any person in his business pending the proceedings or until he shall have satisfied the court in which the matter is pending that he has complied with the provisions of subsection 2 of this section. Such order to show cause shall be returnable before the court or the judge thereof at a time to be fixed in the order not less than twenty-four hours nor more than three days after its issuance. In so far as the same may be applicable and not herein otherwise provided, the provisions of chapter 126 relative to injunctions shall govern these proceedings. If the employer denies under oath that he is subject to the provisions of sections 2394—3 to 2394—31, inclusive, and furnishes bond with such sureties as the court may require to protect all his employes injured after the commencement of the action for such compensation claims as they may establish, then an injunction shall not issue. Every judgment or forfeiture against an employer, under subsection 3 of

this section, shall perpetually enjoin him from employing any person in his business at any time when he is not complying with subsection 2 of this section.

SECTION 3. Subsection (2) of section 2394—19 is hereby repealed and subsections (3) and (4) of said section 2394—19, of the statutes, shall be renumbered as subsections (2) and (3), respectively.

SECTION 4. This act shall take effect upon passage and publication.

Approved June 24, 1921.

No. 24, S.]

[Published July 2, 1921.

CHAPTER 452.

AN ACT to amend the title of chapter 43 of the statutes, and to amend, consolidate, renumber and revise sections 43.17 to 43.35, inclusive, and other sections of the statutes and session laws, and create therefrom sections 43.17 to 43.51, all relating to school libraries, municipal libraries, museums, civic and community centres and special uses of municipal buildings.

The people of the State of Wisconsin, represented in Senate and Assembly, do enact as follows:

SECTION 1. The chapter title of chapter 43 of the statutes is revised to read: Chapter 43 LIBRARIES, MUSEUMS, CIVIC AND COMMUNITY CENTRES, AND SPECIAL USES OF MUNICIPAL BUILDINGS.

SECTION 2. All that part of subsection (8) of section 20.24 ending with the first semicolon therein, is amended to read:

(Section 20.24) (8) Within ten days after such settlement each county treasurer shall set apart and withhold from such apportionment an amount equal to ten cents per capita for each person of school age residing in towns, villages and cities of the fourth class in such county, to which apportionment is made, to be expended for the purchase of library books, as provided in * * * sections 43.17 to 43.21, inclusive.

SECTION 3. Subsections (2) and (6) of section 14.57 are amended to read:

(Section 14.57) (2) To prohibit the use of sectarian books and sectarian instruction in the public schools. * * *

(6) To revise, codify and edit the school laws from time to time, as circumstances may make necessary, and by lectures, cir-