

Hennepin and upon compliance with the provisions of Minnesota Statutes 1961, Section 645.021.

Approved May 23, 1963.

CHAPTER 849—S. F. No. 1562

[Coded in Part]

An act relating to the issuance and execution of search warrants; amending Minnesota Statutes 1961, Sections 80.24, 340.65 and 626.04; repealing Minnesota Statutes 1961, Sections 31.06, 340.67, 626.01, 626.02 and 626.03.

Be it enacted by the Legislature of the State of Minnesota:

Section 1. Minnesota Statutes 1961, Section 80.24, is amended to read:

80.24 Searches and seizures. Subject to the limitations in the Constitution of the State of Minnesota, ~~Articles 7 and 10 Article 1, Sections 7 and 10,~~ and in Articles IV and V of the amendments to the Constitution of the United States, a search warrant may be issued at any time and without notice in any proceeding, civil or criminal, under sections 80.05 to 80.27 ~~wherein a complaint, information, or indictment has been filed,~~ which search warrant may be used for the purpose of obtaining and holding until after trial and decision of the case any books, records, documents, writings, or papers deemed pertinent or material in such proceeding. ~~Any complaint so filed, if duly verified and sufficiently specific, or any affidavit filed in such proceeding, may be taken by the court as authority for the issuance of such search warrant; and all~~ *All* proceedings thereunder shall be substantially the same as like proceedings under ~~sections 626.01 to 626.04~~ *this act*. The court, by order made at or subsequent to the issuance of any such search warrant, may provide for the custody, care, and control of anything seized pursuant thereto; but, if no such order be made, anything so seized shall be delivered by the officer executing the warrant to the court, (or the clerk thereof) from which such warrant issued and shall be there retained until after trial and decision of the case.

Sec. 2. Minnesota Statutes 1961, Section 340.65, is amended to read:

340.65 Search, seizure. When complaint is made, on oath, to any magistrate authorized to issue warrants in criminal

Changes or additions indicated by italics, deletions by strikeout.

eases; that any person, naming him, if his name is known, has in his possession for the purpose of selling, bartering, delivering, transferring, or otherwise disposing of any intoxicating liquor, without first having obtained license therefor, or of having unlawfully in possession any still, apparatus, implement, machine, device, or contrivance of any kind designed, used, or intended for use in the unlawful manufacture of intoxicating liquor; or having in possession for the purpose of selling, bartering, delivering, transferring, or otherwise disposing of any intoxicating liquor without first having paid the lawful tax thereon; and describing the premises or place where the law is alleged to be violated with reasonable certainty, such magistrate, if he is satisfied that there is reasonable cause for such relief, shall issue a search warrant to search the premises or place for and seize any such intoxicating liquors; or any such still, apparatus, implement, machine, device, or contrivance of any kind designed, used, or intended for use in the unlawful manufacture of intoxicating liquor; commanding the officer to bring the same, when found, before such magistrate to be used as evidence at the preliminary hearing and trial of such person as may be accused of having the same in his possession. *Search warrants may be issued in connection with violation of the Minnesota liquor control act or other acts relating to sale, taxation, transportation, manufacture or possession of liquor in accordance with this act.*

Sec. 3. [626.05] **Definitions.** *Subdivision 1. A search warrant is an order in writing, in the name of the state, signed by a court of record or by a justice of the peace in any county having no municipal court other than a probate court, directed to a peace officer, commanding him to make such search as may be authorized by law and to hold any item seized, subject to the order of a court.*

Subd. 2. The term "peace officer" as used in sections 1 to 16 means a sheriff, deputy sheriff, policeman, or constable.

Sec. 4. [626.06] **Jurisdiction to issue.** *Search warrants may be issued by any court of record or by a justice of the peace in any county having no municipal court other than a probate court having jurisdiction in the area wherein the place to be searched is located.*

Sec. 5. [626.07] **Grounds for issuance.** *A search warrant may be issued upon any of the following grounds:*

- (1) *The property or things were stolen or embezzled;*
- (2) *The property or things were used as the means of committing a crime;*

Changes or additions indicated by italics, deletions by strikeout.

(3) *The possession of the property or things constitutes a crime;*

(4) *The property or things are in the possession of any person with the intent to use them as a means of committing a crime, or the property or things so intended to be used are in the possession of another to whom they have been delivered for the purpose of concealing them or preventing their being discovered;*

(5) *The property or things to be seized consist of any item or constitute any evidence which tends to show a crime has been committed, or tends to show that a particular person has committed a crime.*

The property or things described in this section may be taken pursuant to the warrant from any place, or from any person in whose possession they may be.

Sec. 6. [626.08] Probable cause. *A search warrant cannot be issued but upon probable cause, supported by affidavit, naming or describing the person, and particularly describing the property or thing to be seized, and particularly describing the place to be searched.*

Sec. 7. [626.09] Examination of parties making request. *The court or justice of the peace may, before issuing the warrant, examine on oath the person seeking the warrant and any witnesses he may produce, and must take his affidavit or their affidavits in writing, and cause same to be subscribed by the party or parties making same.*

Sec. 8. [626.10] Affidavit, content. *The affidavit or affidavits must set forth the facts tending to establish the grounds of the application, or probable cause for believing that they exist.*

Sec. 9. [626.11] Issuance of warrant. *If the court or justice of the peace is thereupon satisfied of the existence of the grounds of the application, or that there is probable cause to believe their existence, he must issue a search warrant, signed by him with his name of office, to a peace officer in his county, commanding him forthwith to search the person or place named, for the property or things specified, and to retain such property or things in his custody subject to order of the court or justice of the peace issuing the warrant.*

Sec. 10. [626.12] Applicants, names on warrant. *The warrant, in addition, shall contain the names of the persons presenting affidavits in support of the application, and the grounds for its issuance.*

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Sec. 11. **[626.13] Service, persons making.** *A search warrant may in all cases be served by any of the officers mentioned in its directions, but by no other person, except in aid of the officer on his requiring it, he being present and acting in its execution.*

Sec. 12. **[626.14] Time of service.** *A search warrant may be served only in the daytime unless the court or justice of the peace determines on the basis of facts stated in the affidavits that a nighttime search is necessary to prevent the loss, destruction, or removal of the objects of the search. The search warrant shall state that it may be served only in the daytime unless a nighttime search is so authorized.*

Sec. 13. **[626.15] Execution and return of warrant, time.** *A search warrant must be executed and returned to the court or justice of the peace who issued it within ten days after its date; after the expiration of this time the warrant, unless executed, is void.*

Sec. 14. **[626.16] Delivery of copy of warrant and receipt.** *When the officer conducts the search he must give a copy of the warrant and, when property or things are taken, a receipt therefor (specifying it in detail) to the person in whose possession the premises or the property or things taken were found; or, in the absence of any person, he must leave such copy of the warrant and receipt in the place where the property or things were found. Such delivery of a copy of the warrant shall constitute service.*

Sec. 15. **[626.17] Return and inventory.** *The officer must forthwith return the warrant to the court or justice of the peace, and deliver to him a written inventory of the property or things taken, verified by the certificate of the officer at the foot of the inventory.*

Sec. 16. Minnesota Statutes 1961, Section 626.04, is amended to read:

626.04 Property; seizure, keeping, and disposal. *When any officer; in the execution of a search warrant; shall find any stolen property; or seize, with or without warrant, any other things for which search is allowed by law; property or thing, the same shall be safely kept by direction of the court or magistrate, so long as may be necessary for the purpose of being produced as evidence on any trial, and then the stolen property or things shall, unless otherwise subject to lawful detention, be returned to the owner thereof, or to such other person as may be entitled to the possession of the same and the other things so seized may be destroyed or otherwise disposed of under the direction of the court or magistrate court or justice of the peace. Any money found in gambling devices when seized shall be paid into the county treasury, or, if such gambling devices are seized by a*

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police officer of a municipality, such money shall be paid into the treasury of such municipality.

Sec. 17. *Minnesota Statutes 1961, Sections 31.06, 340.67, 626.01, 626.02 and 626.03 are hereby repealed.*

Approved May 23, 1963.

CHAPTER 850—S. F. No. 1719

[Coded]

An act relating to unlawful searches and seizures, providing for the return of illegally seized property and suppression of its use as evidence.

Be it enacted by the Legislature of the State of Minnesota:

Section 1. **[626.21] Unlawful searches and seizures; return of property and suppression of evidence.** A person aggrieved by an unlawful search and seizure may move the district court for the district in which the property was seized or the municipal court having jurisdiction of the substantive offense for the return of the property and to suppress the use, as evidence, of anything so obtained on the ground that (1) the property was illegally seized, or (2) the property was illegally seized without warrant, or (3) the warrant is insufficient on its face, or (4) the property seized is not that described in the warrant, or (5) there was not probable cause for believing the existence of the grounds on which the warrant was issued, or (6) the warrant was illegally executed, or (7) the warrant was improvidently issued. The judge shall receive evidence on any issue of fact necessary to the decision of the motion. If the motion is granted the property shall be restored unless otherwise subject to lawful detention, and it shall not be admissible in evidence at any hearing or trial. *The motion to suppress evidence may also be made in the district where the trial is to be had. The motion shall be made before trial or hearing unless opportunity therefor did not exist or the defendant was not aware of the grounds for the motion, but the court in its discretion may entertain the motion at the trial or hearing.*

Approved May 23, 1963.

Changes or additions indicated by italics, deletions by ~~strikeout~~.