

REVISED LAWS OF
MINNESOTA 94

SUPPLEMENT 1909

CONTAINING

THE AMENDMENTS TO THE REVISED LAWS,
AND OTHER LAWS OF A GENERAL AND
PERMANENT NATURE, ENACTED
BY THE LEGISLATURE IN
1905, 1907, AND 1909

WITH HISTORICAL AND EXPLANATORY NOTES TO PRIOR STATUTES
AND FULL AND COMPLETE NOTES OF ALL
APPLICABLE DECISIONS

COMPILED AND ANNOTATED BY
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CHAPTER 101.

CRIMES AGAINST PROPERTY.

BURGLARY.

5041. First degree.

See section [5041—] 1.

[5041—]1. Same.—A person who, with intent to commit some crime therein, breaks and enters, in the night-time, the dwelling house of another, in which there is at that time a human being; first, being armed with a dangerous weapon; or, second, arming himself therein with such weapon; or, third, being assisted by a confederate actually present; or, fourth, who, while engaged in the night-time in effecting such entrance, or in committing any crime in such a building, or in escaping therefrom, assaults any person; or, who, with intent to commit some crime therein breaks or enters any building, or a room or any part of a building, and while therein, has in his possession or makes use of, any dangerous explosive, or burglars' tools, is guilty of burglary in the first degree. (G. S. 1894, § 6677, as amended by Laws 1905, c. 210, § 1.)

Historical.—“An act to amend section 6677 of the General Statutes of Minnesota for the year 1894, relating to the crime of burglary in the first degree.” Approved April 17, 1905.

G. S. 1894, § 6677, was Pen. Code, § 383, the provisions of which were incorporated in R. L. § 5041. As to the construction of Laws 1905, c. 210, see note under section [4799—] 1.

5042. Second degree.—Every person who, with intent to commit some crime therein, shall break and enter the dwelling house of another, in which there is a human being, under circumstances not amounting to burglary in the first degree, or, any person who, with intent to commit some crime therein, shall break and enter any room or building, whether occupied by a human being at the time or not, wherein a general banking business is carried on, or any structure wherein a business of receiving public or private funds on deposit is done, shall be guilty of burglary in the second degree, and punished by imprisonment in the state prison for not more than ten years. (R. L. § 5042, as amended by Laws 1907, c. 227, § 1.)

Section 2 repeals inconsistent acts.

5046. Making or having burglars' tools—Evidence.—Every person who shall make or mend, or cause to be made or mended, or have in possession in the day or night time, any engine, machine, tool, false key, picklock, bit, nippers, implement, or explosive adapted, designed, or commonly used for the commission of burglary, larceny, or other crime, under circumstances evincing an intent to use or employ, or allow the same to be used or employed, in the commission of a crime, or knowing that the same is intended to be so used, shall be guilty of a felony. The having in possession any such engine, machine, tool, false key, picklock, bit, nippers, implement or explosive shall be prima facie evidence of an intent to so use or employ the same in the commission of a crime. (R. L. § 5046, as amended by Laws 1909, c. 157, § 1.)

COUNTERFEITING—FRAUDULENT PRACTICES.

[5077—]1. False stamping of articles of gold or silver.—Any person, firm, corporation or association, who or which make for

sale, any article of merchandise made in whole or in part of gold or any alloy of gold, having stamped, branded, engraved or printed thereon, or upon any card, tag or label attached thereto, or upon any box, package or wrapper, in which said article is encased or enclosed any mark, indicating or designed or intended to indicate, that the gold or alloy of gold, of such article is of a greater degree of fineness than the actual fineness or quality of such gold or alloy, unless the actual fineness of such gold or alloy, in the case of flat ware and watch cases be not less by more than three one-thousandths parts, and in the case of all other articles be not less by more than one-half karat than the fineness indicated by the marks stamped, branded, engraved or imprinted upon any part of such article or upon any cards, tags or labels attached thereto, or upon any box, package or wrapper in which such article is encased or enclosed according to the standards and subject to the qualifications hereinafter set forth, is guilty of a misdemeanor; provided, that in any test for the ascertainment of the fineness of the gold or its alloy in any such article, according to the foregoing standards, the part of the gold or its alloy taken for the test analysis or assay shall be such part or portion as does not contain or have attached thereto any solder or alloy of inferior fineness used for brazing or uniting the parts of said article; provided further, and in addition to the foregoing tests and standards, that the actual fineness of the entire quantity of gold and of its alloys contained in any article mentioned in this section (except watch cases and flat ware), including all solder or alloy of inferior metal used for brazing or uniting the parts of the article (all such gold, alloy and solders being assayed as one piece) shall not be less by more than one karat than the fineness indicated by the mark stamped, branded, engraved or imprinted upon such article, or upon any tag, card or label attached thereto, or upon any box, package, cover or wrapper, in which said article is encased or enclosed. ('07 c. 467 § 1)

Historical.—"An act to prohibit the improper stamping of any merchandise made in gold or silver, and providing a penalty." Approved April 26, 1907.

By section 7 this act took effect January 1, 1908.

[5077—]2. **Same—Standards defined—Improper stamping—Penalties.**—(a) Any person, firm, corporation or association, who or which makes for sale, any article of merchandise made in whole or in part of silver or any alloy of silver, and having marked, stamped, branded, engraved or printed thereon, or upon any card, tag or label attached thereto, or upon any box, package, cover or wrapper in which said article is encased or enclosed, the words "sterling silver" or "sterling," or any colorable imitation thereof, unless 925-1,000ths of the component parts of the metal appearing or purporting to be silver, of which such article is manufactured are pure silver, subject to the qualifications hereinafter set forth is guilty of a misdemeanor; provided, that in case of all such articles there shall be allowed divergence of fineness of 4-1,000ths parts from the foregoing standard.

(b) Any person, firm, corporation or association, who or which makes for sale, any article of merchandise made in whole or in part of silver, or of any alloy of silver, and having marked, stamped, branded, engraved or imprinted thereon, or upon any card, tag or label attached thereto, or upon any box, package, cover or wrapper in which such article is encased or enclosed the words "coin" or "coin silver," or any colorable imitation thereof, unless 900-1,000ths of the component parts of the metal appearing or purporting to be silver, of which such article is manufactured are pure silver, subject to the qualifications hereinafter set forth, is guilty of a misdemeanor; provided, that in the case of all such articles there shall be al-

lowed a divergence in fineness of 4-1,000ths parts from the (following) standards.

(c) Any person, firm, corporation or association, who or which makes for sale any article of merchandise made in whole or in part of silver, or of any alloy of silver, and having stamped, branded, engraved or imprinted thereon, or upon any tag, card or label attached thereto, or upon any box, package, cover or wrapper, in which said article is encased or enclosed any mark or word (other than the word "sterling" or the word "coin"), indicating or designed or intended to indicate that the silver or alloy of silver, in said article, is of greater degree of fineness or quality of such silver or alloy, unless the actual fineness of silver or alloy of silver of which said article is composed be not less than 4-1,000th parts than the actual fineness indicated by the said mark or word (other than the word "sterling" or "coin") stamped, branded, engraved or imprinted upon any part of said article, or upon any tag, card or label attached thereto, or upon any box, package, cover or wrapper in which said article is encased or enclosed, subject to the qualifications hereinafter set forth, is guilty of a misdemeanor.

(d) Provided, that in any test for the ascertainment of the fineness of any such article mentioned in this section, according to the foregoing standards, the part of the article taken for the test, analysis or assay, shall be such part or portion as does not contain or have attached thereto any solder or alloy of inferior metal used for brazing or uniting the parts of such article; and, provided further, and in addition to the foregoing test and standards that the actual fineness of the entire quantity of metal purporting to the silver contained in any article mentioned in this section, including all solder or alloy of inferior fineness used for brazing or uniting the parts of any such article (all such silver alloy or solder being assayed as one piece) shall not be less by more than ten 10-1,000ths parts than the fineness indicated according to the foregoing standards by the mark stamped, branded, engraved or imprinted upon such article, or upon any card, tag or label attached thereto, or upon any box, package, cover or wrapper in which said article is encased or enclosed. ('07 c. 467 § 2)

[5077—]3. Same—Gold plate—False stamping—Penalty.—Any person, firm, corporation or association, who or which makes for sale any article of merchandise made in whole or in part of inferior metal having deposited or plated thereon or brazed or otherwise affixed thereto a plate, plating, covering or sheet of gold or of any alloy of gold, and which article is known in the market as "rolled gold plate," "gold plate," "gold filled" or "gold electro plate," or by any similar designation, and having stamped, branded, engraved or printed thereon, or upon any tag, card or label attached thereto, or upon any box, package, cover or wrapper in which said article is encased or enclosed, any word or mark usually employed to indicate the fineness of gold, unless said word be accompanied by other words plainly indicating that such article or some part thereof, is made of rolled gold plate, or gold plate, or gold electro plate, or is gold filled, as the case may be, is guilty of a misdemeanor. ('07 c. 467 § 3)

[5077—]4. Same—Silver plate—False stamping—Penalty.—Any person, firm, corporation or association, who or which makes for sale any article of merchandise made in whole or in part of inferior metal having deposited or plated thereon or brazed or otherwise affixed thereto, a plate, plating, covering or sheet of silver, or of any alloy of silver, and which article is known in the market as "silver plate" or "silver electro plate," or by any similar designation, and having stamped, branded, engraved or imprinted thereon,

or upon any tag, card or label attached thereto, or upon box, package, cover or wrapper in which said article is encased or enclosed the word "sterling," or the word "coin," either alone or in conjunction with any other words or marks, is guilty of a misdemeanor. ('07 c. 467 § 4)

[5077—]5. **Same—Violations of act—Punishment.**—Every person, firm, corporation or association guilty of a violation of any of the preceding sections of this act, and every officer, manager, director or managing agent of any such person, firm, corporation or association directly participating in such violation or consenting thereto, shall be punished by a fine of not more than \$500, or imprisonment for not more than three months, or both, at the discretion of the court; provided, that if the person charged with violation of this act shall prove that the article concerning which the charge is made was manufactured prior to the first day of July, 1907, then the charge shall be dismissed. ('07 c. 467 § 5)

[5077—]6. **Same—Selling falsely stamped articles—Penalty.**—Every person, firm, corporation or association, who with intent to deceive, shall sell any article, falsely branded or marked, contrary to any of the foregoing provisions of this act, knowing the same to be so falsely marked or branded, shall be guilty of a misdemeanor. ('07 c. 467 § 6)

LARCENY.

5078. What constitutes.

By officer, agent, clerk, servant, or bailee.—One employed on a commission to sell the stock of a corporation, and to report all sales and forward moneys received, less commission, is an "agent." *State v. Phillips*, 105 Minn. 375, 117 N. W. 508.

— **Indictment.**—An indictment charging defendant with having unlawfully and wrongfully appropriated to his own use certain money and property in his hands and under his control as "agent, servant and bailee," sufficiently charged grand larceny by an agent. The word "bailee" may be rejected as surplusage. *State v. Fellows*, 98 Minn. 179, 108 N. W. 825.

In an indictment for larceny by a bailee, it is necessary to allege the name of the bailor, and in concise terms the purpose or use for which the property was intrusted to the defendant. *State v. Schoemperlen*, 101 Minn. 8, 111 N. W. 577.

— **Evidence.**—Under an indictment for grand larceny, the charge being that, while vice president of an insurance company, defendant feloniously appropriated to his own use a certain check, the property of the company, the history of the company and of his relations to it were proper lines of investigation for the purpose of throwing light upon the charge. *State v. Force*, 100 Minn. 396, 111 N. W. 297.

G. S. 1894, § 6709, cited in State v. Billings, 96 Minn. 533, 104 N. W. 1150.

Attempt—Indictment.—Indictment held sufficient in *State v. Miller*, 103 Minn. 24, 114 N. W. 88.

See notes under sections 4771, 5082.

5079. Commission no defence.

G. S. 1894, § 6710, cited and applied in State v. Fellows, 98 Minn. 179, 108 N. W. 825.

5082. Grand larceny in second degree, how punished.

Attempt—Indictment.—Indictment held sufficient. *State v. Miller*, 103 Minn. 24, 114 N. W. 88.

See notes under sections 4771, 5078.

5093. Receiving stolen property—Averment and proof.

Evidence.—Evidence held sufficient to sustain conviction. *State v. Hersvitz*, 121 N. W. 905.

Knowledge that the goods were stolen may be shown by circumstances. *State v. Gordon*, 105 Minn. 217, 117 N. W. 483.

Burden of proof.—To sustain a conviction for buying and receiving stolen goods, the state has the burden of showing that defendant bought the property described, that it was stolen, and that defendant knew it to be stolen when he bought it. *State v. Gordon*, 105 Minn. 217, 117 N. W. 483.

EXTORTION OR OPPRESSION.

5096. Extortion.

What constitutes.—Obtaining payment of money, induced by fear of exposure of a compromising situation, is extortion within this section. It is not necessary to prove intent as an independent fact. *State v. Coleman*, 99 Minn. 487, 110 N. W. 5, 116 Am. St. Rep. 441.

5097. Interfering with employee or membership in union.

Combination—Constitutionality.—This section, declaring it unlawful for two or more employers to combine or confer together for the purpose of preventing any person from procuring employment, is not unconstitutional. *Joyce v. Great Northern R. Co.*, 100 Minn. 225, 110 N. W. 975, 8 L. R. A. (N. S.) 756.

— **Civil liability.**—If one employer by conference with another prevents, without excuse or justification, a third person from procuring employment with such other employer, he is liable for damages to the person so interfered with. A malicious motive or purpose is essential to give rise to a cause of action, not actual malice, but such as the law implies from the fact that the act complained of was unlawful and without justification. *Joyce v. Great Northern R. Co.*, 100 Minn. 225, 110 N. W. 975, 8 L. R. A. (N. S.) 756.

FALSE PERSONATION, ETC.

[5107—]1. **False statements to obtain credit.**—Any person who, either individually or in a representative capacity,

(1) Shall knowingly make a false statement in writing to any person, firm or corporation engaged in banking or to any savings bank or trust company respecting his own financial condition, or the financial condition of any person, firm or corporation for the purpose of procuring a loan or credit in any form, or an extension of credit from such person, firm or corporation to whom such false statement is made, either for his own use, or for the use of any person, firm or corporation, or

(2) Having previously made or having knowledge that another has previously made a statement in writing to any person, firm or corporation engaged in banking or to any savings bank or trust company respecting his own financial condition, or the financial condition of any person, firm or corporation, shall afterwards, on the faith of such statement, procure from such person, firm or corporation, to whom any such previous statement has been made, either for his own use or for the use of any person, firm or corporation, a loan or credit in any form, or an extension of credit, knowing at the time of procuring the same that such previously made statement is in any material particular false with respect to the financial condition of himself or of any firm or corporation at the time of procuring such loan, credit or extension of credit, or

(3) Shall deliver to any note broker, or other agent, for the sale or negotiation of commercial paper to any person, firm or corporation engaged in banking, or to any savings bank or trust company, any statement in writing, knowing the same to be false, respecting his own financial condition or the financial condition of any person, firm or corporation for the purpose or with the intent of having such statement used in furtherance of the sale, pledge or negotiation of any note, bill or other instrument for the payment of money, made or endorsed or accepted, or owned in whole or in part by him individually, or by any person, firm or corporation, or

(4) Having previously delivered or having knowledge that another has previously delivered to any note broker, or other agent, for the sale or negotiation of commercial paper described in the preceding sub-division, a statement in writing respecting his own financial condition or the financial condition of any person, firm or corporation, shall afterwards deliver to any such note broker or other such agent, for the purpose of sale, pledge or negotiation, on

the faith of any such statement, any note, bill or other instrument for the payment of money made, endorsed, accepted or owned in whole or in part, either by himself or by any person, firm or corporation, knowing at the time that such previously delivered statement is in any material particular false as to the present financial condition of himself, or any person, firm or corporation, shall be guilty of a gross misdemeanor and punishable by fine not exceeding one thousand dollars or imprisonment not exceeding five years, or both. ('09 c. 431 § 1)

Historical.—"An act to punish the making or use of false statements to obtain credit." Approved April 22, 1909.

[5107—]2. False statements concerning value—Exception.—Any person who knowingly makes or publishes any book, prospectus, notice, report, statement, exhibit or other publication containing any statement which is wilfully false and which is intended to give and does give a substantially greater or less apparent value to the shares, bonds or property, or any part thereof, of any corporation, joint stock association, co-partnership or individual, than said shares, bonds, property or any part thereof, shall in fact possess, shall be deemed guilty of a felony. Provided, that nothing herein contained shall apply to any report or statement made to any commercial agency or any report or statement solicited by the person, firm or corporation to whom it is made. ('09 c. 479 § 1)

Historical.—"An act to prohibit the making or publishing of false statements or publications of or concerning the affairs, pecuniary condition or property of any corporation, joint stock association, copartnership or individual, which said statements or publications are intended to give or shall have a tendency to give, a less or greater apparent value to the shares, bonds or property, or any part thereof of said corporation, joint stock association, copartnership or individual than the said shares, bonds or property shall really and in fact possess, and providing a penalty therefor." Approved April 23, 1909.

FRAUD IN THE MANAGEMENT OF CORPORATIONS.

5118. Receiving deposit in insolvent banks.

Knowledge of insolvency.—The presumption is that defendant has such knowledge; but the presumption is of fact, and may be overcome by other evidence. *State v. Quackenbush*, 98 Minn. 515, 108 N. W. 953.

While the evidence was sufficient to show that defendant knew, or had reason to know, the bank and himself were insolvent, it was insufficient to prove that he voluntarily, knowingly, or negligently received the money, or permitted it to be received as a deposit. *State v. Strait*, 99 Minn. 327, 109 N. W. 598.

Indictment.—An indictment under this section need not allege an intent to defraud the depositor. A fraudulent intent is not made an essential element of the crime. *State v. Quackenbush*, 98 N. W. 515, 108 N. W. 953.

See note under section 5297.

MALICIOUS MISCHIEF—INJURIES TO PROPERTY.

5128. Injury to United States lights.

Cited in *Minnesota Canal & Power Co. v. Pratt*, 101 Minn. 197, 112 N. W. 395, 11 L. R. A. (N. S.) 105.

5131. Interfering with dam, etc.

Cited in *Minnesota Canal & Power Co. v. Pratt*, 101 Minn. 197, 112 N. W. 395, 11 L. R. A. (N. S.) 105.

5133. Injury of property.—Every person who shall wilfully—

1. Cut down, destroy, or injure any wood or timber standing or growing, or which has been cut down and is lying upon lands of another or of the state;
2. Cut down, girdle, or otherwise injure a fruit, shade, or ornamental tree standing on the lands of another or of the state;
3. Sever from the freehold of another or of the state any produce thereof, or anything attached thereto;

4. Dig, take, or carry away, without lawful authority or consent, from any lot of land in any city or village, or from any lands included within the limits of a street or avenue laid down on the map of such city or village, or otherwise recognized or established, any earth, soil, or stone;

5. Enter, without the consent of the owner or occupant any orchard, fruit garden, vineyard, garden, field, or ground whereon is cultivated or growing any fruit or vegetable with intent to take, injure, or destroy anything there grown or growing.

6. Cut down, destroy, or in any way injure any shrub, tree, or vine being or growing within any such orchard, garden, vineyard, or upon any such ground, or any building, framework, or erection thereon, or

7. Untie, unfasten or liberate, without authority, the horse or team of another, or lead, ride or drive away, without authority, the horse or team of another, from the place where left by the owner or person in charge thereof, any person who shall be found guilty of any offense named in subdivisions 1, 2, 3, or 6 of this section shall be punished by imprisonment in the county jail for not more than six months, or by a fine of not more than two hundred and fifty dollars, or both.

Any person found guilty of any offense named in subdivisions 4, 5 or 7 of this section shall be guilty of a misdemeanor. (R. L. § 5133, as amended by Laws 1909, c. 145, § 1.)

5134. Divulging telegram or telephone message.—Every person who shall wrongfully obtain or attempt to obtain any knowledge of a telegraphic or telephonic message by connivance with a clerk, operator, messenger or other employé of a telegraph or telephonic company, and every clerk, operator, messenger or other employé who shall wilfully divulge to any but the person for whom it was intended, the contents of any telephonic message or any telegraphic message intrusted to him for transmission or delivery, or the nature thereof, or who shall wilfully refuse or neglect duly to transmit or deliver any such telegraphic message shall be punished by imprisonment in the county jail for not more than six months or by fine of not more than one thousand dollars, or by both. (R. L. § 5134, as amended by Laws 1907, c. 212, § 1.)

[5137—]1. Injury to works of art, etc.—A person who, not being the owner thereof, and without lawful authority, wilfully injures, disfigures, removes or destroys a grave stone, monument, work of art, or useful or ornamental improvement, or any shade tree or ornamental plant, whether situated upon private ground or upon a street, road or sidewalk, cemetery or public park or place, or who injures or removes from any grave in a cemetery any flowers, memorials or other tokens of affection, or other thing connected with them, or who hitches any horse or other animal to any monument, grave stone, tree or shrub on any cemetery grounds, is guilty of a misdemeanor. (G. S. 1894, § 6786, as amended by Laws 1905, c. 90, § 1.)

Historical.—“An act to amend section 6786 of chapter 92-a of the General Statutes 1894, being section 486 of the penal code of the State of Minnesota, relating to crimes against property.” Approved March 29, 1905.

G. S. 1894, § 6786, was Pen. Code, § 486, the provisions of which were incorporated in R. L. § 5137. As to the construction of this act, see note under section [4799—] 1.

[5138—]1. Performing unpublished dramatic or musical composition—Selling copy.—Any person, company or corporation who knowingly causes to be publicly performed, or represented for profit, any unpublished or undedicated dramatic composition, or musical composition known as an opera, without the consent of its owner or proprietor, who knowing that such dramatic or musical composition is unpublished or undedicated, and without the consent of

its owner or proprietor, permits, aids or takes part in such a performance or representation, or any person, company or corporation who sells a copy or a substantial copy, of any unpublished, undedicated or copyrighted dramatic composition or musical composition known as an opera, without the written consent of the author or proprietor of such dramatic or musical composition, shall be guilty of a misdemeanor. ('05 c. 40 § 1)

Historical.—"An act forbidding any person or company from producing or playing for profit any unpublished or undedicated dramatic or musical composition, and prohibiting any person, company or corporation from selling a copy or substantial copy of any unpublished, undedicated or copyrighted opera or musical composition without the consent of the author or proprietor, and providing for a penalty therefor." Approved March 15, 1907.

5143. Fraudulent appropriation of electricity.—Every person who shall wilfully make any connection with any meter, pipe, conduit, wire, line, or other apparatus belonging to any person or company using; or engaged in the manufacture, supply, sale or distribution of, electricity or of electric current, for the purpose of taking, using, or wasting such electricity or electric current, or shall wilfully prevent an electric meter from duly measuring or registering the quantity of electricity supplied, or shall in any way interfere with its proper action or just registration, or shall without the consent of such person or company, wilfully divert any electrical current or power of such person or company or in any way wilfully use or cause to be used without the consent of such person or company any electricity manufactured or distributed by such person or company, or shall aid, agree with, employ, or conspire with any other person to do any of said acts, or who shall deposit in any electric meter or other apparatus used by an electric light or telephone company for the pre-payment for current or service any token, article or device, except lawful coin of the United States, for the purpose of fraudulently obtaining such current or service, shall be guilty of misdemeanor. (R. L. § 5143, as amended by Laws 1907, c. 166, § 1.)

5146. Draining meandered lakes, etc.

Cited in *Minnesota Canal & Power Co. v. Pratt*, 101 Minn. 197, 112 N. W. 395, 11 L. R. A. (N. S.) 105.

CHAPTER 102.

CRUELTY TO ANIMALS.

5157. Poisoning animals.

See section [5157—]1.

[5157—]1. Same.—Any person who unjustifiably administers any poisonous, or noxious drug or substance to any animal, or procures or permits the same to be done, or unjustifiably exposes any such drug or substance with intent that the same shall be taken by any animal, whether such animal be the property of himself or another, is punishable by imprisonment in the state prison not exceeding two years or in a county jail not exceeding six months or by a fine not exceeding five hundred dollars, or by both such fine and imprisonment. (Pen. Code, § 496, as amended by Laws 1889, c. 209, § 51, and Laws 1905, c. 53, § 1.)

Historical.—"An act to amend section 496 of the penal code as amended by section 5, chapter 209 of the General Laws of 1889, the same being section 6796 of the Statutes of Minnesota for the year 1894, relating to wantonly poisoning animals." Approved March 21, 1905.

Laws 1889, c. 209, was repealed by R. L. § 553S. The provisions of said amended section 496 were incorporated in R. L. § 5157. As to the construction of Laws 1905, c. 53, see note under section [4799—]1.

By section 2 it is provided that the act "shall take effect and be in force