

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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[1518—]3. **Clerk.**—Such board shall appoint a clerk to serve during its pleasure; and fix his compensation, which shall not exceed one hundred and twenty-five dollars per month, and shall be paid out of the county poor fund. He shall keep a record of all the doings of the board; preserve in its office all documents relating to its business; keep an account of all its receipts and expenditures, and the name and address of each person to whom relief has been granted, with the amount and date thereof. He shall investigate the condition and needs of all persons by or for whom application is made for relief, and report to the board thereon. The board may authorize him to grant temporary relief in cases of emergency, but it shall by resolution limit the amount of relief to be so granted without previous action by the board. The board may employ such other assistance as may be necessary to discharge its duties. ('07 c. 222 § 3)

[1518—]4. **Taxes, how levied.**—On or before October 1, in each year, such board shall determine by resolution the amount of tax to be levied for the ensuing year for the support of the poor, the maintenance of the poorhouse and other places provided for the reception of the poor, and the erection of any buildings or improvements, and the adoption of such resolution shall constitute a levy on the property taxable in the county of the amount named therein; but the amount so levied for all purposes, except for the erection or repair of buildings, shall not exceed an amount equal to six-tenths of one mill on each dollar of assessed valuation. On or before October 5, thereafter, the board shall file a certified copy of such resolution with the county auditor, who shall enter the amount upon the tax lists. Such tax, when collected, shall be credited to the county poor fund. ('07 c. 222 § 4)

CHAPTER 16.

INTOXICATING LIQUORS.

LICENSES.

1519. Sale forbidden.

Operation of chapter.—This chapter provides a general system for the regulation of the business of selling intoxicating liquors, which is operative throughout the state and imposes a standard of regulation below which no municipality may fall. It does not deprive municipalities of their existing charter powers to provide for such supplementary and additional regulations as are required by local conditions. *Evans v. City of Redwood Falls*, 103 Minn. 314, 115 N. W. 200.

Constitutionality.—This section is not void because no maximum penalty is prescribed. *State v. Kight*, 106 Minn. 371, 119 N. W. 56.

Construction and operation in general.—The penalty provided in this section applies to violations of sections 1532–1534. *State v. Stroschein*, 99 Minn. 248, 109 N. W. 235.

An incorporated social organization, or club, is a "person"; and the distribution of intoxicating liquors in less quantities than five gallons by such a club to its members, for a consideration, though without profit, is a "sale" within this section, and is prohibited, unless protected by license. *State ex rel. Young v. Minnesota Club*, 106 Minn. 515, 119 N. W. 494, 20 L. R. A. (N. S.) 1101.

Nature and scope of licensing power.—A license is granted in pursuance of the police power, and not of the taxing power, of the state. Its primary purpose is not revenue, but regulation. It is subject to revocation. *Claussen v. City of Luverne*, 103 Minn. 491, 115 N. W. 643, 15 L. R. A. (N. S.) 698.

Indictment.—Under this section it is sufficient to charge in an indictment that the offender sold intoxicating liquors in quantities less than five gallons. *State v. Budworth*, 104 Minn. 257, 116 N. W. 486.

[1519—]1. Common and habitual selling—Penalty.—Any person who shall in any one county of this state have been adjudged guilty of the offense of selling, bartering or disposing of in any manner any spirituous, vinous, fermented, malt, or intoxicating liquor in a less quantity than five gallons, without first having obtained license therefor, agreeable to the provisions of the laws of this state, three or more times within two years immediately preceding the commencement of the proceedings against him, under the provisions of this act, shall be deemed guilty of the crime of "common and habitual liquor selling without license" and upon conviction of such crime of "common and habitual liquor selling without license" shall be punished by imprisonment in the state prison for not to exceed three years. ('05 c. 54 § 1)

Historical.—"An act defining and providing punishment for the crime of 'common and habitual liquor selling without license.'" Approved March 21, 1905.

[1519—]2. Same—Date of commission.—In all prosecutions under the provisions of this act, the date of the last conviction of such selling, bartering or disposing of liquor, shall be deemed the date of the commission of the offense of "common and habitual liquor selling without license," charged against such person in the indictment. ('05 c. 54 § 2)

1520. Sale by pharmacists.—Prescription of physician or veterinarian.—Any duly licensed pharmacist actually carrying on business as such, may, in good faith, as such druggist or pharmacist, dispense such liquors upon the written prescription of a reliable practicing and licensed physician or duly licensed veterinarian, provided, that only one sale of such liquor shall be made upon any one prescription; and, provided, further, that such veterinarian shall only prescribe such liquors for actual use in the practice of his profession and any such veterinarian violating the provisions herein set forth shall, upon conviction, be punished by a fine of not less than \$50 nor more than \$100 or by imprisonment in the county jail for not less than 30 days nor more than 90 days, for each and every violation of this act. (R. L. § 1520, as amended by Laws 1909, c. 287, § 1.)

Section 2 repeals inconsistent acts.

R. L. § 1520, cited in *State v. Stroschein*, 99 Minn. 248, 109 N. W. 235.

1521. Licensee may sell.

Cited in *State v. Stroschein*, 99 Minn. 248, 109 N. W. 235.

1522. Licenses, by whom granted.

Constitutionality of law.—Laws 1901, c. 101, limiting the number of licenses to be issued in places bordering on the patrol limits in cities having over 50,000 inhabitants, is in violation of Const. art. 4, § 36, in that it does not apply equally to all the cities of the class. *State v. Schrap*, 97 Minn. 62, 106 N. W. 106.

Conflict between general laws and municipal charters and ordinances.—The general laws regulating the sale of intoxicating liquors operate uniformly throughout the state, anything contained in municipal charters or ordinances to the contrary notwithstanding. *State ex rel. Young v. Robinson*, 101 Minn. 277, 112 N. W. 269, 20 L. R. A. (N. S.) 1127.

The requirement of the charter of the city of Redwood Falls that all licenses commence and terminate on the 20th of January of each year was not repealed by Laws 1895, c. 90, nor by this section. *Evans v. City of Redwood Falls*, 103 Minn. 314, 115 N. W. 200.

See note under section 1562.

1523. Application for license.—Any person desiring a license to sell intoxicating liquors shall file with the clerk of the municipality, or, if such license is desired outside of a municipality, with the county auditor, a written application, stating the place for which it is desired and the date from which it is to run, and whether such applicant has ever prior thereto been licensed to sell intoxi-

cating liquors in this or any other state, and if so, shall state when and where licensed and shall deposit therewith ten dollars. Such officer shall give two weeks' published notice of the application, specifying the applicant, the description of the room for which license is sought, and the time and place of hearing. The expense of such publication shall be paid out of the deposit. Provided, that when such license is desired for a place of business in an unorganized town, such notice shall be published in a newspaper published in said county nearest to the proposed location of said place of business. (R. L. § 1523, as amended by Laws 1907, c. 380, Laws 1909, c. 283, § 1.)

Historical.—"An act to amend section 1523 of Revised Laws of Minnesota, 1905, as amended by chapter 380, Laws of Minnesota for the year 1907, and sections 1529 and 1535 of Revised Laws of Minnesota, 1905, regulating the sale of intoxicating liquors and licensing thereof." Approved April 20, 1909.

Section 4 repeals inconsistent acts. By section 5 the act took effect July 1, 1909.

1524. Bond.

See section [1524—] 1.

[1524—]1. **Same.**—Any person applying to the county commissioners of any county, or to the municipal authorities of any city, village, town or borough of this state for a license to sell intoxicating liquors shall, before the same is issued, file with the clerk of said board of commissioners or with the clerk or recorder of such city, village, town or borough, a bond, with two or more sureties who shall be freeholders of the county, and who shall justify in twice the amount of said bond, to be approved by said board of county commissioners or by the common council or other governing body of any town, village or borough, or the common council of any city, to which such application is made, in the penal sum of two thousand dollars conditioned that the said person so licensed will not sell or otherwise dispose of any intoxicating liquors at any place other than the room named in such license, nor on the Sabbath, nor on any general or special election day, and that he will keep a quiet and orderly house, and not permit gambling with cards or with any other means or device for money or its representative, or other thing of value, in the house or place of business of such person, and will not sell, barter, give away or otherwise furnish or dispose of such liquors to any minor person, or to any pupil or student in any public school, academy, seminary or other institution of learning, nor to any intemperate person nor habitual drunkard. Such licensee shall be liable upon his said bond whether his said license has been revoked or not. The surety or sureties on any such bond shall be liable for any damage or injury caused by or resulting from the violation of any of the conditions thereof in any and all cases where the principal upon such bond may be liable. The amount specified in such bond is declared to be a penalty, the amount recoverable to be measured by the actual damages. No persons shall be accepted as sureties on any such bond who are already on any other bond given pursuant to the provisions of this section. (Laws 1887, c. 6, § 1, as amended by Laws 1905, c. 246, § 1.)

Historical.—"An act to amend section one of chapter six of the General Laws for the State of Minnesota for the year 1887, being paragraph 2026 of the Statutes for the year 1894, relating to the disposition and sale of intoxicating liquor." Approved April 18, 1905.

Laws 1887, c. 6, was repealed by R. L. § 5537: the provisions of section 1 thereof being incorporated in section 1524. So far as the amended section above set forth differs from said section 1524, it is to be construed, by virtue of section 5504, as amendatory or supplementary.

1527. License fee.

Cited in *Evans v. City of Redwood Falls*, 103 Minn. 314, 115 N. W. 200.

[1527—]1. **Refunding fees in certain cities—Curative.**—That in all cases where the officers of any city in this state having a population of over 50,000 inhabitants, have heretofore in good faith paid out public moneys to any person, whose license to sell intoxicating liquors in such city has been revoked, or to his assigns, for the purpose of refunding to such person, or his assigns, any portion of the fee paid for such license, such payments are hereby in all respects validated and legalized. ('07 c. 15)

Historical.—"An act to validate and legalize payments of public moneys heretofore made by officers of cities having over 50,000 inhabitants to refund fees paid for liquor licenses to persons whose licenses have been revoked." Approved February 20, 1907.

Constitutionality.—Laws 1907, c. 15, held not unconstitutional as special legislation or as destroying a vested right. *Calderwood v. Jos. Schlitz Brewing Co.*, 107 Minn. 465, 121 N. W. 221.

[1527—]2. **Soliciting without license orders from unlicensed persons—Penalty.**—That whoever on his own behalf or as an agent for others, without having a license so to do as provided for in this act, shall solicit any person or persons, firm or corporation or association not having a license to keep a dram shop or saloon under the laws of this state or to a licensed physician or druggist to buy or contract for the future delivery or to make order for any spirituous or vinous liquors in any less quantity than five gallons or either on his own behalf or as said agent or as an agent for the purchaser make an order contracting for the future delivery of any such liquors to any said person, persons, firm, corporation or association shall be subject to a fine of not less than fifty dollars and not exceeding five hundred dollars and to imprisonment in the county jail for not less than thirty days nor more than ninety days or both such fine and imprisonment in the discretion of the court. ('05 c. 346 § 1)

Historical.—"An act prohibiting the sale of intoxicating liquors and for the granting of license for the sale of spirituous and vinous liquors and providing for a penalty for the violation thereof." Approved April 20, 1905.

Constitutionality.—Laws 1905, c. 346, properly construed, is consistent, and does not violate Const. art. 3, § 1. *State ex rel. Patterson v. Bates*, 96 Minn. 110, 104 N. W. 709, 113 Am. St. Rep. 612; *State v. Braun*, 96 Minn. 521, 105 N. W. 975.

Indictment.—Indictment held sufficient. *State v. Braun*, 96 Minn. 521, 105 N. W. 975.

[1527—]3. **License, by whom granted—Bond—Record—Fees.**—The board of county commissioners may grant license to persons to act on their own behalf or as agents for others in the sale of spirituous or vinous liquors for future delivery in quantities not less than five gallons to others than those duly licensed to keep a dram shop or saloon under the laws of the state in their respective counties as they think for the public good requires. Upon the application by said petitioner of a hundred of the legal voters and residents of said county and before said license shall be issued, said applicant shall furnish good and sufficient bond in the sum of not less than one thousand dollars or more than three thousand dollars to be approved by the chairman of the board of county commissioners and the judge of the district court of said district, conditioned that the person so licensed will not violate the conditions of this act and that the fines assessed against the applicant or owner of said license for violation of this act will upon final judgment against him be fully paid and said license shall set forth the name of the licensee, his place of residence, the place where said agency is to be exercised and the length of time he is authorized to act. The name of his principal business, the place where his principal business is located and in case he is acting as agent, the name of the sureties of his bond and such other information pertaining to the granting of said license as said board of county commissioners may

require in a book provided for that purpose by the county clerk of the county in which such license shall be issued and said license shall be signed by the chairman of the county board and attested by the clerk of the court of said county. No such license shall issue for less than \$500.00 per annum nor for a shorter time than one year and the payment of a license fee for the term of one year shall be conditioned precedent to the issuance of said license, such fee shall be collected by the clerk of the court of said county to be paid by him immediately into the county treasury of such county to become a part of the general school fund of said county. Provided, however, that nothing in this act shall prohibit any person, firm, corporation or association upon their own behalf of becoming an agent from soliciting for the sale of liquors herein enumerated within the limits of any city of (or) village for which they have a city or village license for the sale of said liquors. ('05 c. 346 § 2)

[1527—]4. Licenses not to exceed one for each 500 inhabitants.—From and after the passage of this act the number of licenses for the sale of intoxicating liquors which may be granted by any county or municipality shall be limited to one for each five hundred of population or fraction thereof in any township, town, village or city of this state, such population to be determined by the last preceding state or national census; Provided, however, that in all such cities, villages, towns and townships where a greater number of licenses may have been granted or issued at the time of the passage of this act, than would be permissible under the foregoing limitation, it shall be lawful, and the local authorities are hereby authorized in their discretion, to grant and issue licenses equal in number to those granted or issued at the time of the passage of this act, but no additional licenses in number shall be granted or issued in any such city, village, town or township until the increase in population thereof brings the same within the foregoing limitation whereupon additional licenses may be granted from time to time to lawful applicants, upon compliance by such applicants with the laws of this state then in force, until the total number of licenses in force in any township, town, village or city shall equal one, for each five hundred of population or fraction thereof, as ascertained by the last preceding state or national census. ('09 c. 75 § 1)

Historical.—"An act to limit the granting of licenses for the sale of intoxicating liquors." Approved March 16, 1909.

[1527—]5. Same—Licenses hereafter granted where no licenses exist.—Whenever any county or municipality in which no licenses exist, shall at any time hereafter, grant licenses for the sale of intoxicating liquors, it shall be lawful for such county or municipality to grant licenses only to the number of one for every five hundred of population or fraction thereof, in any township, town, village or city, as ascertained by the then last preceding state or national census, and no more, until the increase in population thereof brings the same within the limitation of one for each five hundred of population or fraction thereof as ascertained by the then last preceding state or national census, whereupon additional licenses may be granted from time to time, to lawful applicants upon compliance by such applicants with the law of this state, then in force: Provided, that the respective local authorities may grant one license in any township, town or municipality having less than five hundred of population. ('09 c. 75 § 2)

[1527—]6. Same—Licenses hereafter granted after return to license system.—Whenever any town or municipality in which licenses have been granted at the time of the passage of this act, shall at any time hereafter vote "no license," under the provi-

sions of the local option laws of this state, or the provisions of any municipal charter, as the case may be, and such town or municipality shall at any time, after voting "no license," again vote "for license," under the laws of this state, or the provisions of any municipal charter, as the case may be, the number of licenses which may then and thereafter be granted within such town or municipality, shall, at no time, exceed one for each five hundred of population or fraction thereof, as ascertained by the then last preceding state or national census; provided, that one license may be granted in any town or municipality having less than five hundred of population. ('09 c. 75 § 3)

[1527—]7. Same—Existing local option.—Nothing in this act contained shall be construed as repealing or modifying existing local option laws. ('09 c. 75 § 4)

[1527—]8. Licenses for dining or buffet cars.—Every railway or private car company which operates dining or buffet cars in which intoxicating liquors are sold, shall first obtain a license for each and every car in which such liquors are so sold. The license shall show the name and number of the car, and the company operating the same and shall be posted in a conspicuous place in the car so licensed. Such license may be obtained from the secretary of state on the payment of an annual fee of fifty dollars, which money shall go into the general revenue fund of the state. Such licenses shall be granted only for the purpose of selling liquors at retail in cars forming a part of a train on its regular runs, and to bona fide passengers on such trains. ('09 c. 93 § 1)

Historical.—"An act licensing the place of sale of intoxicating liquors on railway trains and fixing the license therefor." Approved March 24, 1909.

1528. Local option.

As to certain villages, see section next following and note thereunder.

Records as evidence.—The record of an annual town meeting, showing that the question of license was submitted to the meeting to be determined by ballot, and that the ballots were canvassed, showing 24 for license and 105 against, is competent and sufficient evidence to sustain a finding that the electors legally voted against the issuance of license. *State v. Bollenbach*, 98 Minn. 480, 108 N. W. 3.

[1528—]1. Local option in certain villages—Election.—The village recorder of any village of this state incorporated under chapter 146 of the General Laws of 1891 and acts authorizing villages of 2,000 inhabitants to incorporate under the provisions of said chapter, shall, upon the petition of ten legal voters of such village, filed with him at least fifteen days before the annual village election thereof, give notice at the same time and in the same manner as the notice of such election that the question of granting license in such village for the sale of intoxicating liquor will be submitted for determination at such election. At such election, when so petitioned for, said question shall be voted upon by a separate ballot the terms of which shall be either "for license" or "against license," which ballots shall be deposited in a separate ballot box to be provided in each voting precinct and the result of such voting shall be duly canvassed, certified and returned in the same manner and at the same time as the other facts and returns of said election. ('05 c. 10 § 1)

Historical.—"An act authorizing the electors of villages incorporated under chapter 146 of the General Laws of 1891 to vote upon the question of licensing the sale of intoxicating liquors in such villages." Approved February 14, 1905.

So far as the provisions of this act differ from R. L. § 1528, they are to be construed by virtue of R. L. § 5504, as amendatory or supplementary.

[1528—]2. Same—Licenses, when granted.—If a majority of all the ballots cast upon such question at such election shall be "for

license" the village council of said village may grant license for the sale of intoxicating liquors for the ensuing license year, but if such majority shall be "against license" then no such license shall be granted and such vote shall remain in force until reversed at a subsequent annual election at which the said question of license is again in like manner submitted. ('05 c. 10 § 2)

1529. Licenses, to whom not granted—Duty of licensing body—Penalty.—No license shall be granted to any person of known bad character; nor to the keeper of any house of prostitution or place frequented by prostitutes or other disorderly persons; nor to the keeper of any gambling house or place where gambling in any form is allowed; nor to any person who has within one year next preceding the filing of his application for such license, knowingly violated any law or ordinance relating to the sale of liquor or to the conduct of drinking places, or any of the conditions of his bond; nor to any person not a bona fide resident of this state; nor to any person not of good moral character; nor to any person until the licensing body shall have investigated the applicant for such license, his character, and his record as licensee in the event such applicant has prior thereto been licensed to sell intoxicating liquors in this or any other state, and for that purpose may continue the hearing upon such application from time to time; and no such license shall be granted unless, after such investigation, such applicant shall be ascertained to be of good moral character and otherwise qualified to hold license under this act. It is hereby made the especial and positive duty of every such licensing body to fully investigate, or cause to be fully investigated, the character and record of every such applicant for license, in accordance with the provisions of this act, and any officer in this state who shall wilfully violate any of the provisions of this act, or who shall wilfully refuse or neglect to perform any duty imposed upon him thereby, shall be guilty of a misdemeanor, and upon conviction thereof, in addition to other penalty imposed by law, he shall forfeit his office and the same shall thereupon be deemed vacant; and any applicant for such license who shall wilfully make any false statement or representation to the licensing body, in his application for license, or otherwise, concerning his application or his qualifications for holding license, shall be guilty of a misdemeanor and, upon conviction thereof, in addition to other penalties imposed by law, all the rights and privileges granted by such license shall thereupon cease. (R. L. § 1529, as amended by Laws 1909, c. 283, § 2.)

See note under section 1523.

1532. Sale, when forbidden.

Cited in *State v. Stroschein*, 99 Minn. 248, 109 N. W. 235.

See note under section 1519.

Sales and keeping open on Sunday.—Ordinance requiring saloons to be kept closed on Sunday was authorized by the charter, and is not void for the reason that in fixing the penalty for its violation the charter provisions were not followed. *G. S. 1894, § 1999*, requiring saloons to be kept closed on the Sabbath day, did not revoke the authority given by the charter to pass the ordinance. Nor was it repugnant to the statute as imposing a different penalty. *State v. Marciniak*, 97 Minn. 355, 105 N. W. 965.

1533. Sale, where forbidden.

Cited in *State v. Stroschein*, 99 Minn. 248, 109 N. W. 235.

1534. Sale, to whom illegal.

Sales to minors.—The Revised Laws prohibit the sale to minors precisely as such sales were prohibited before their enactment. *State v. Stroschein*, 99 Minn. 248, 109 N. W. 235.

1535. Licenses, when transferred.—Any liquor license may be transferred to another person or place in the same town or municipi-

pality, any provisions of any city charter, or city or village ordinance to the contrary notwithstanding, in the following cases only:

- (1) When the licensee desires to change his place of business.
- (2) When the licensee has sold and disposed of his business.

But no license shall be transferred to any person or place to whom or for which license might not at the time of transfer be legally issued; nor unless notice of application for transfer be given at the expense of applicant, and only upon investigation as in the case of an original license. ('09 c. 283 § 3)

Historical.—Laws 1909, c. 283, § 3, enacts that "section 1536" of the Revised Laws be amended "so as to read as follows: Section 1535," etc. See title of act in note under section 1523.

1538. Revocation.

In general.—A license is subject to revocation. A municipality is not liable in tort for mistaken action of the council in attempting to revoke a license. *Claussen v. City of Luverne*, 103 Minn. 491, 115 N. W. 643, 15 L. R. A. (N. S.) 698.

1539. License money, how applied.—All money paid into the county treasury for liquor licenses shall be credited one-half to the county road and bridge fund, and one-half to the road and bridge fund of the town in which the drinking place is situated, except that in counties having a population of 275,000 or more inhabitants, the entire amount of such liquor license money shall be credited to the road and bridge fund of the town in which the drinking place, from which such money came, is situated. All money so paid into any municipal treasury, except cities of the first, second and third class, shall be distributed as follows: Ten per cent thereof shall be paid into the county treasury and credited to the general revenue fund and the remaining ninety per cent thereof shall be credited to the general fund of the municipality issuing the license. Provided, that in case any such municipality is situated in two or more counties, then said ten per cent shall be divided pro rata among such counties; but the council may appropriate any part thereof to any school district wholly or partially within such municipality for general or specific purposes. Such council may also appropriate the whole or any part thereof, to the construction or repair of roads or streets within or adjacent to, or leading from such municipality. Provided, that nothing herein contained, shall be construed to repeal chapter 443 of the Special Laws of the state of Minnesota for the year 1889. (R. L. § 1539, as amended by Laws 1907, c. 433, and Laws 1909, c. 450, § 1.)

By section 2 the act shall take effect January 1, 1910.

[1542—]1. Selling, etc., without license in counties having not less than 75,000 nor more than 150,000 inhabitants.—Whoever sells, barter, gives away, delivers, transfers or otherwise disposes of or has in his possession for the purpose of selling, giving away, bartering, delivering, transferring or otherwise disposing of any spirituous, malt, fermented or vinous liquors without first having obtained license therefor agreeably to the laws of the State of Minnesota shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof in any court having jurisdiction of the same, be punished by a fine of not less than one hundred dollars, nor more than five hundred dollars, together with the costs of prosecution and by imprisonment in the county jail not less than sixty days nor more than ninety days; provided, that the provisions of this section shall not be so construed as to prohibit any regularly licensed druggist from dispensing liquors in filling prescriptions made by any regular, reputable and duly licensed physician in the practice of his profession. ('05 c. 59 § 1)

Historical.—"An act prohibiting the barter, sale, delivery, giving away or transfer of spirituous, malt, fermented or vinous liquors, or the having of any

such spirituous, malt, fermented or vinous liquors in possession for the purpose of giving, selling, bartering, transferring or delivering the same, without first having obtained license therefor, and providing for the securing of evidence in such cases in all counties having not less than 75,000 nor more than 150,000 inhabitants." Approved March 23, 1905.

Section 4 repeals inconsistent acts.

[1542—]2. Same—Search warrants, how issued.—When complaint is made, on oath, to any magistrate authorized to issue warrants in criminal cases, that any person, naming him, if his name is known, has in his possession for the purpose of selling, giving away, bartering, delivering, transferring or otherwise disposing of, any spirituous, malt, fermented or vinous liquors, without first having obtained license therefor agreeably to the laws of this state, such magistrate, if he is satisfied that there is reasonable cause for such belief, shall issue a search warrant to search for and seize any such spirituous, malt, fermented or vinous liquors, 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. After such liquor is used as evidence it shall be returned to the person in whose possession it was found. ('05 c. 59 § 2)

[1542—]3. Same—Possession as evidence.—The finding of any such spirituous, malt, fermented or vinous liquors in the possession of any person, either by means of search warrant or otherwise, shall be prima facie evidence that such person had possession of such liquors for the purpose of selling, bartering, giving away, delivering, transferring or otherwise disposing of the same without first having obtained license therefor agreeably to the laws of this state, and no further evidence of guilt shall be required of the prosecution, but such possession may be satisfactorily explained by the accused in his defense. ('05 c. 59 § 3)

[1542—]4. Same—In what counties applicable.—This act shall apply only in counties having more than 75,000 and less than 150,000 inhabitants. ('05 c. 59 § 5)

PENALTIES AND PROSECUTIONS.

1559. Sale to minors, etc., after notice.—Every person selling liquor to a minor, habitual drunkard, or person under guardianship, after written notice by a parent, husband, wife, child, guardian, master or employer, of such minority, habitual drunkenness, or guardianship, or in the case of an habitual drunkard after written notice by the mayor, chief of police or any member of the council of the municipality in which such habitual drunkard resides, or member of the county board of the county in which such habitual drunkard resides, and within one year after such notice in case of an habitual drunkard, and in other cases during the continuance of the minority, or guardianship, shall be punished by a fine of not less than fifty dollars, nor more than one hundred dollars, or imprisonment in the county jail for not less than 30 days nor more than 90 days. (R. L. § 1559, as amended by Laws 1907, c. 247, § 1.)

R. L. § 1559, cited and applied in *State v. Stroschein*, 99 Minn. 248, 109 N. W. 235.

See note under section 1534.

[1559—]1. Exclusion of minors, intemperate drinkers, etc., after notice—Penalty.—No minor, intemperate drinker, habitual drunkard, inmate of a poor or almshouse, or person under guardianship, shall be allowed in any room where intoxicating liquor is sold.

in less quantities than five gallons as a beverage, after written notice upon the licensee or his agent, by parent, husband, wife, child, guardian, master or employer of such minority, intemperate drinking, habitual drunkenness or guardianship, or in the case of an intemperate drinker, inmate of a poor or almshouse, or habitual drunkard, after written notice by the mayor, chief of police, judge of the municipal court, or any member of the council of the municipality in which such intemperate drinker or habitual drunkard resides, or member of the county board of the county in which such inmate of a poor or almshouse, intemperate drinker or habitual drunkard resides, and within one year after such notice, in case of an inmate of a poor or almshouse, intemperate drinker or habitual drunkard, and in other cases during the continuance of the minority or guardianship. Any violation of this act shall be punished by a fine of not less than twenty-five dollars nor more than one hundred dollars, or by imprisonment in the county jail for not less than thirty days nor more than ninety days. ('09 c. 198 § 1)

Historical.—"An act to regulate the conduct of licensed saloons and bar-rooms and requiring same to exclude minors, intemperate drinkers, habitual drunkards, inmates of a poor or almshouse and persons under guardianship." Approved April 17, 1909.

[1560—]1. **Sale to person on parol.**—It shall be unlawful for any person to sell, give, barter, furnish, or dispose of, in any manner, either directly or indirectly, or by agent, employé or otherwise, any spirituous, vinous, malt, or fermented liquors in any quantity or for any purpose whatever to any person on parole from any state institution of this state during the term of his parole; and any person violating the foregoing provision of this section shall be guilty of a misdemeanor, and on conviction thereof by any court having jurisdiction shall be punished by fine of not less than twenty-five dollars nor more than one hundred dollars, and costs of prosecution, or by imprisonment in the county jail not less than thirty nor more than ninety days, or until such fine and costs are paid, not exceeding ninety days. ('05 c. 72 § 1)

Historical.—"An act to prohibit the furnishing of intoxicating liquors to prisoners paroled from penal institutions of the state of Minnesota." Approved March 24, 1905.

[1560—]2. **Same—Knowledge.**—This act shall not apply to persons who have no knowledge that the person procuring such liquors is such paroled person. ('05 c. 72 § 2)

1561. Duties of officers.

Cited and applied in *State ex rel. Young v. Robinson*, 101 Minn. 277, 112 N. W. 269, 20 L. R. A. (N. S.) 1127.

See note under section next preceding.

1562. Official neglect.

Forfeiture of office—Enforcement.—The forfeiture of office and pecuniary penalty, prescribed by sections 1561, 1562, for the failure of the mayor or other officer to make complaint, may be enforced by the Attorney General. The power conferred by the charter of St. Cloud upon the council, upon the subject of the removal of officers, does not exclude the power of the state, through the Attorney General, to effect a removal for a violation of statute; the powers being concurrent. Nor is the authority of the Attorney General superseded by the provisions of section 1561, by which the county attorney is required to prosecute. *State ex rel. Young v. Robinson*, 101 Minn. 277, 112 N. W. 269, 20 L. R. A. (N. S.) 1127.

See note under section 1522.

1566. Prosecutions and evidence.

Evidence—Other sales.—The admission of evidence of sales by defendant to persons other than the one named in the indictment held not error. *State v. Peterson*, 98 Minn. 210, 108 N. W. 6.

— **That liquor was intoxicating.**—In a prosecution for selling intoxicating liquor, under the name of "Swedish Malt," without a license, evidence

held sufficient to justify a finding that the article sold was intoxicating liquor. *State v. Schagel*, 102 Minn. 401, 113 N. W. 1014.

Jurisdiction—Constitutionality.—The provisions of Laws 1901, c. 252, which authorized the trial of a person charged with keeping a "blind pig" before any magistrate in the county where the offense was committed, were valid. *State ex rel. Rosckes v. Dreger*, 97 Minn. 221, 106 N. W. 904.

[1566—]1. **Securing evidence—Immunity of witness.**—Upon the filing of an affidavit subscribed and sworn to by a resident voter of the county, with any justice of the peace having criminal jurisdiction, or clerk of a municipal court in said county, which affidavit shall set forth upon knowledge or upon information and belief the name of any person or persons who frequent any place in said county for the purpose of obtaining intoxicating liquors, the location of such place and the name of the proprietor thereof, if known, such justice of the peace if such place is within the town or district in which he was elected, or a justice of the peace having criminal jurisdiction in an adjoining town or district, or clerk of such municipal court having jurisdiction shall forthwith issue a subpoena for the person or persons named in said affidavit as frequenting such place, commanding them to appear before such justice or court at a day and hour named therein. At the time of said appearance such justice or court shall interrogate said witnesses for the purpose of determining whether or not intoxicating liquors are illegally sold or disposed of at the place named in said affidavit; and if it shall appear as the result of such examination that intoxicating liquor has been illegally sold or disposed of at such place, such justice of the peace or judge of such court shall forthwith issue a warrant for the arrest of any person or persons who shall appear by such examination to have been guilty of such illegal sale or disposition; and such person shall thereupon be prosecuted for such offense. No testimony given upon such hearing shall be in any manner used to the prejudice of the witness giving the same, and the failure of any witness to answer questions put to him upon such examination may be punished as a contempt the same as in other cases. ('05 c. 192 § 1)

Historical.—"An act to provide for securing evidence against persons illegally disposing of intoxicating liquors and for the prosecution of such persons." Approved April 15, 1905.

CHAPTER 17.

BASTARDS.

1568. Action, how entered—Proceedings.

Proceedings—Absence of complainant—Waiver.—Where at the preliminary hearing, complainant did not appear, and her evidence was not taken and reduced to writing, but the defendant testified without objection to her absence, he thereby waived her examination, and the justice had jurisdiction over the subject-matter and the person of the defendant. *State v. Charlton*, 101 Minn. 535, 111 N. W. 733.

1569. Defendant discharged, when.—If the defendant pays, or secures to be paid, to the complainant such sum of money, or other property, as she, with the written approval of the county attorney and the chairman of the county board, or by the county board, may agree to receive in full satisfaction, a memorandum of which agreement and approval the justice shall enter in his docket, and shall also pay the costs of prosecution and the expenses incurred by such county for the lying-in and support of and attendance upon the mother during her sickness, and bond be given to the county, by either the defendant or the complainant, approved by the county at-