

GENERAL STATUTES

OF

MINNESOTA

1913

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its receipts and expenditures for the preceding three months. ('07 c. 222 § 2)

3107. 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)

3108. 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

3109. Sale forbidden—Any person who shall sell any intoxicating liquors in quantities less than five gallons, or in any quantity to be drunk upon the premises, except as hereinafter provided, is guilty of a misdemeanor, and shall be punished by a fine of not less than fifty dollars, and the costs of prosecution, and by imprisonment in the county jail for not less than thirty days. (1519)

1. Crime of selling without a license—The sale and want of a license constitute the crime (27-318, 7+359). It is no defence that the accused was entitled to a license, if one had not been issued and delivered to him (36-234, 30+764; 86-441, 90+1052); that a license could not be obtained for sales at the place where the sale charged was made (33-69, 21+856); that the county commissioners refused to issue any licenses (23-140); that the town had voted against license or that the accused had paid a federal tax on retail liquor dealers (27-318, 7+359); or that the accused honestly believed that the liquor sold was not intoxicating (89-502, 95+449). An indictment will lie under this section where a municipality has voted against license (69-423, 72+700; 70-462, 73+403; 85-112, 88+416).

2. Nature of license—A license is a mere privilege to pursue a business subject to police regulation and control (50-128, 52+387).

3. When license becomes operative—A license does not become operative until delivered to the licensee (36-234, 30+764; 60-510, 62+1135; 86-441, 90+1052). It cannot be given retroactive effect by antedating (60-510, 62+1135; 72-17, 74+901).

4. Granting license discretionary—Mandamus—Whether a license shall be granted or refused is a matter of discretion which cannot be controlled by mandamus (60-510, 62+1135; 94-81, 101+1063; see 86-441, 90+1052).

5. Who required to be licensed—All persons regardless of the nature of their business, except licensed pharmacists (§ 3112), are required to take out a license for sales of a less quantity than five gallons. It is immaterial that such sales are in the original package or in corked bottles or the liquor is not to be drunk on the premises (41-30, 42+547; 41-33, 42+548; 43-231, 45+149; 45-44, 47+308). Manufacturers, wholesalers or others are not required to obtain a license for the sale of liquor in quantities of five gallons or more (38-150, 36+103; 96-110, 104+709, 113 Am. St. Rep. 612). But they are prohibited from selling

in any quantity in municipalities where no license has been voted (86-121, 90+161, 1133). The payment of a federal tax on the business of retail liquor dealers does not relieve from the necessity of obtaining a license (27-318, 7+359).

6. Nature and scope of licensing power—To license and regulate the sale of intoxicating liquors is an exercise of the ordinary police power of the state (19-108, 78; 21-202; 22-312, 21 Am. Rep. 765; 70-99, 72+843; 103-491, 115+643, 15 L. R. A. [N. S.] 698, 14 Ann. Cas. 673). It is not an exercise of the taxing power (19-108, 78; 22-312; 103-491, 115+643, 15 L. R. A. [N. S.] 698, 14 Ann. Cas. 673), or of the power of eminent domain (19-108, 78). The power of regulation extends not only to the acts of the person licensed, but to the times and places when and where sales may be made (21-202; 82-256, 84+911, 1116, 53 L. R. A. 423). The power to license involves the power to refuse to license (3-291, 200; 94-81, 101+1063). It is permissible to limit the amount of the license fee; to prescribe the character of those who shall be permitted to engage in the traffic; to prescribe the character and location of the buildings where the traffic may be conducted (84-281, 87+764); to limit the number of licenses granted (94-81, 101+1063); to exclude the traffic from the resident or suburban portions of a city (32-145, 19+723; 33-69, 21+856); to regulate the fixtures of a saloon (82-256, 84+911, 1116, 53 L. R. A. 423); to prohibit sales by persons not licensed (89-502, 95+449); to prohibit sales altogether to Indians (70-99, 72+843). The control of the traffic calls for legislative discretion (32-145, 19+723). The expediency or necessity of the regulation is a legislative and not a judicial question (3-291, 200; 22-312, 21 Am. Rep. 765; 32-145, 19+723). The power of a city council to regulate and license includes the power to fix the amount of the license fee within the limits prescribed by law (83-9, 85+720). A license is subject to revocation (103-491, 115+643, 15 L. R. A. [N. S.] 698, 14 Ann. Cas. 673).

7. Constitutionality of statutes—To require a license for the sale of liquors is not to take private property for a public use without compensation or to impose an unequal tax (19-108, 78). To require saloons to close on Sunday is not an infraction of the constitutional right to liberty of conscience (21-202). Local option statutes are constitutional (24-247, 31 Am. Rep. 344). An act requiring saloon keepers to pay a license fee for the maintenance of a state inebriate asylum held constitutional (22-312, 21 Am. Rep. 765). An act prohibiting the sale of liquors to Indians held constitutional (70-99, 72+843). An act authorizing manufacturers in municipalities voting no license to sell liquor outside such municipalities held constitutional (86-121, 90+161, 1133). This section is not void because no maximum penalty is imposed (106-371, 119+56).

8. 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 (103-314, 115+200).

9. Construction and operation in general—The penalty provided in this section applies to violations of §§ 3141-3143 (99-248, 109+235). An incorporated social organization, or club, is a "person"; and the distribution of intoxicating liquors in less quantities than five gallons by such club to its members, for a consideration, though without profit, is a "sale" and is prohibited, unless protected by license. (106-515, 119+494, 20 L. R. A. [N. S.] 1101).

10. Indictment—It is sufficient to charge that the offender sold intoxicating liquors in quantities less than five gallons (104-257, 116+486). An indictment for selling to minor (111-180, 126+487).

3110. 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)

3111. 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)

3112. 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, amended '09 c. 287 § 1)

1909 c. 287 § 2 repeals inconsistent acts, etc.

Cited (99-248, 109+235; 111-180, 126+487).

3113. Licensee may sell—Any person duly licensed by the county board, or by the proper authorities of the municipality for which such license is issued, may sell such liquors in the room named in his license, and at the times, in the manner, and to the persons allowed by law, but not otherwise. (1521)

Cited (99-248, 109+235; 111-180, 126+487).

3114. Licenses, by whom granted—Licenses for the sale of liquor in municipalities may be granted by the councils thereof, and in other places by the county board. Every such license shall be for one year from its date, unless sooner annulled, shall specify the room in which sales are allowed, and shall state that the person named is authorized to sell such liquor only in such place and at the time, in the manner, and to the persons allowed by law. In cities of the first class, not more than five such licenses for places on one side of any block within the patrol limits of such city and fronting on such limits shall be granted. (1522)

Cited (111-180, 126+487).

1. Delegation of power to municipalities—The legislative power to regulate the sale of intoxicating liquors may be delegated to municipal corporations (21-202), including townships (21-512). When the legislature delegates the power to a municipal corporation it may prescribe by whom the power shall be exercised, whether by a particular officer or set of officers or by the electors at large; and it may transfer the power from a city council to the electors at large (24-247, 31 Am. Rep. 344). This delegated power of a municipality is completely under the control of the legislature (24-61). The legislature may authorize a municipality to impose new and additional penalties for acts already penal by the laws of the state (21-202). The power to license delegated to county commissioners cannot be delegated by them (16-381, 340).

2. Ordinances held valid—An ordinance for the closing of saloons on Sunday and election days (21-202); an ordinance prohibiting the sale of liquor without a license and not limiting the quantity (43-373, 45+712); an ordinance requiring every saloon and the bar of every tavern, inn, etc., to close on Sunday (50-128, 52+387); an ordinance prohibiting stalls, booths or inclosures of any kind in saloons (82-256, 84+911, 1116, 53 L. R. A. 428; 88-74, 92+509); an ordinance providing that one who applies for a liquor license must make an affidavit designating the place where the business is to be conducted, that the applicant will carry it on personally, and that the rooms in which it shall be conducted are not adjacent to any building wherein theatrical or variety entertainments are conducted (84-281, 87+764); an ordinance limiting the sale of liquor to certain parts of a city (32-145, 19+723; 33-69, 21+856); an ordinance prohibiting the sale of "malt" liquor without a license (89-502, 95+449).

3. Conflict between general laws and municipal charters and ordinances—The provisions of 1887 cc. 5, 6, 81 superseded all inconsistent charter provisions as to the terms and conditions on which licenses might be issued. Such provisions were complete in themselves and did not require any additional local legislation by city councils to render them operative (38-143, 36+443; 38-150, 36+103; 38-229, 36+447; 50-128, 52+387; 76-1, 78+877; 83-9, 85+720; 84-281, 87+764; 85-112, 88+416). But they were not exclusive and they did not have the effect of repealing by implication existing municipal ordinances or the charter power to enact ordinances not inconsistent with them (50-128, 52+387; 77-540, 80+701; 84-281, 87+764; see 43-373, 45+712). Prior to the legislation of 1887 the charters of some cities and villages gave to the municipality exclusive control over the regulation of the sale of liquor so that the general laws were not operative within the municipality (see 25-370; 25-429; 26-175, 2+474; 26-177, 2+475; 27-76, 6+423; 29-393, 13+187; 31-316, 17+859; 37-16, 33+36; 70-462, 73+403). Acts which are punishable under the general law may also be made punishable by ordinance and the punishment need not be the same (21-202; 50-128, 52+387; 84-367, 87+916).

The general laws regulating sale operate uniformly throughout the state, anything contained in municipal charters or ordinances to the contrary (101-277, 112+269, 20 L. R. A. [N. S.] 1127).

The requirement of the charter of Redwood Falls that licenses commence and terminate on the 20th of January was not repealed by 1895 c. 90 nor by this section (103-314, 115+200; see 117-329, 135+748).

See note under § 3186.

4. Constitutionality—1901 c. 101, limiting number of licenses in places bordering on patrol limits in cities having over 50,000 inhabitants, is in violation of Const. art. 4 § 36 (97-62, 106+106).

3115. 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 intoxicating 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, amended '07 c. 380; '09 c. 283 § 1)

1909 c. 283 § 4 repeals inconsistent acts.

3116. Bond—He shall also file with such officer a bond to the state in the penal sum of two thousand dollars, to be approved by the board or council granting the license, conditioned that he will not sell or otherwise dispose of any intoxicating liquors in any place other than the room named in the license, nor on Sunday, nor on any general or special election day, nor at any time when the sale of such liquor is forbidden by law, nor to any person to whom such sale is so forbidden; that he will keep a quiet and orderly place, and not permit gambling with cards or other means or device for money or its representative, or other thing of value, in such house or place of business; and that he will not allow the place for which he is licensed, nor any room in the same or an adjoining building directly or indirectly under his control, to be used as a resort for prostitutes or other disorderly persons. Each surety shall justify in twice the penalty of the bond, and no person already a surety on a license bond shall be accepted as a surety on another. (1524)

See following section.

47-521, 50+700; 76-1, 78+877; 83-124, 86+3, 54 L. R. A. 487; 86-253, 90+401.

3117. 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. ('87 c. 6 § 1, amended '05 c. 246 § 1)

Historical—1887 c. 6 was repealed by § 9447; the provisions of section 1 thereof being incorporated in the preceding section. So far as the above section differs from that section, it is to be construed, by virtue of § 9398, as amendatory or supplementary.

3118. Deposit, how disposed of—If for any cause no license be issued to the applicant, the auditor or clerk shall return to him any part of the deposit remaining after payment for the publication aforesaid; otherwise he shall pay such remaining sum into the county or municipal treasury, and the amount of such deposit shall be credited as part of the license fee. (1525)

3119. Hearing—At the time named in the notice, or at such other time as the hearing may be, on public notice, continued to, the board or council shall hear the application and any objections thereto, and shall make an order granting or denying the license. The names of all members voting for or against granting such license shall be entered on the record. (1526)

3120. License fee—The fee for such license shall be fixed by the county board or the municipal council as follows: In cities other than of the fourth class, at not less than one thousand dollars, and in all other cases at not less than five hundred dollars. No license shall be issued until such fee has been paid in full. (1527)

72-17, 74+901; 83-9, 85+720; 103-314, 115+200.

Council cannot arbitrarily discriminate (111-172, 126+624).

3121. 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)

1905 c. 346 is consistent, and does not violate Const. art. 3 § 1 (96-110, 104+709, 113 Am. St. Rep. 612; 96-521, 105+975).

Indictment held sufficient (96-521, 105+975).

3122. Same—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)

3123. 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)

3124. 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)

3125. 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 provisions 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)

3126. Same—Existing local option—Nothing in this act contained shall be construed as repealing or modifying existing local option laws. ('09 c. 75 § 4)

3127. 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)

3128. Local option—The clerk of any town or incorporated village, on the petition of ten legal voters thereof, filed with him at least twenty days before the annual town meeting, or annual or charter election, shall give notice, at the same time and in the same manner as the notice of such meeting or election, that the question of license will be submitted at such meeting or election. Said question shall be voted on by ballot, and the result thereof certified by the town clerk to the county auditor, and by the municipal clerk filed in his office. Such vote shall remain in force until reversed at a subsequent election or town meeting at which the question of license is again in like manner submitted. (1528)

See section following.

24-247, 31 Am. Rep. 344; 86-121, 90+161, 1133; 98-480, 108+3.

Does not apply to the "cities" (109-251, 123+665).

3129. 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)

So far as the provisions of this act differ from the preceding section, they are to be construed by virtue of § 9398, as amendatory or supplementary.

3130. 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)

3131. Local option in cities of fourth class—Definitions—In this act and in the sections and parts thereof, the terms, "intoxicating liquor" and "liquor," "sell" and "sale" shall be given the same meaning respectively as is prescribed therefor in section 1564 of the Revised Laws of Minnesota for 1905 [3188]. ('13 c. 387 § 1)

By section 6 the act took effect June 1, 1913.

3132. Same—Petition—Notice of election—The clerk or recorder of any city of the fourth class, whether the same is incorporated under a special law or the general laws or under a home rule charter, on petition of ten per cent, and in no case less than twenty-five of the legal voters, such percentage to be determined by the number of votes cast at the last city election, filed with him at least twenty days before the regular city election, shall give notice at the same time and in the same manner as the notice of such city election that the question of granting license in such city for the sale of intoxicating liquor will be submitted for determination at such election. ('13 c. 387 § 2)

3133. Same—Election, etc.—At such election, when so petitioned for, said question shall be voted on by separate ballot provided by the city clerk or city recorder, which ballot shall be known as "license ballot." The said ballot shall have printed thereon the words "for license" and "against license," and each qualified elector voting upon said question, shall place a cross mark (X) in the place opposite the words "for license" or in the place opposite the words "against license," which ballot shall be deposited in a separate ballot box to be provided for in each voting precinct, and such votes shall be counted for or against said question in accordance with the expressed will of the elector, as provided by the election laws of this state. The ballots so cast shall be duly canvassed, returned and certified, according to the law governing such city elections and if a majority of the votes cast upon the question shall be in favor of license then license for the sale of intoxicating liquor may be granted, but if such majority shall be against license then no license shall be granted and no liquor shall be sold in any quantity whatever, either wholesale or retail, in any such city, until such vote shall be reversed at a subsequent election at which the question of license is again in like manner submitted; provided that intoxicating liquor manufactured therein may be sold to be consumed outside of said city; and provided further that any duly licensed and practicing physician or veterinarian may prescribe or any duly licensed druggist or pharmacist actually carrying on business as such may in good faith as such druggist or pharmacist dispense, intoxicating liquor under the conditions and restrictions and subject to the penalties prescribed in such cases by chapter 16 of the Revised Laws of Minnesota for 1905 and acts amendatory thereof. ('13 c. 387 § 3)

The provisions of R. L. 1905 c. 16 are included in chapter 16 hereof.

3134. Same—Existing charters, etc.—All charter provisions and ordinances of any such city authorizing or providing for a vote by the electors on the question of either license for or the prohibition of the sale of intoxicating liquor therein, or prohibiting such sale or the granting of license therefor in consequence of any such vote had on said questions shall continue and remain in full force and effect until an election shall have been held and determined under the provisions of this act in any such city; and all such provisions, ordinances and prohibitions shall be and remain suspended after said election shall have been held and determined for so long a time as this act remains in force, and no longer, except that the provisions of this act as to petitions for, procedure in, and conduct of elections shall take effect immediately. ('13 c. 387 § 4)

3135. Same—Penalty for violation.—Any person violating any provision of this act shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than fifty (\$50) dollars nor more than one hundred (\$100) dollars and the costs of prosecution, or by imprisonment in the county jail for not less than thirty (30) nor more than ninety (90) days. ('13 c. 387 § 5)

3136. Soliciting orders, etc., in local option municipalities.—It shall be unlawful for any person, directly or indirectly, to solicit, take or receive or aid in the soliciting, taking or receiving, either for himself or for any other person, firm or corporation, in any township, village or city in this state in which a majority of the votes at the last election, at which the question of license was voted, shall not have been in favor of license, an order for the sale of intoxicating liquors; or for any itinerant peddler to go from place to place within this state and expose for sale or sell such liquors, provided that nothing in this act shall be construed as modifying or repealing sub-division one of section 1533, of the Revised Laws of Minnesota for the year 1905 [3142]. ('13 c. 484 § 1)

3137. Same—Penalty for violation.—Any person who violates any of the provisions of this act shall be guilty of a misdemeanor and upon conviction thereof shall be punished for the first offense by a fine of not less than twenty-five (25) dollars nor more than fifty (50) dollars, or by imprisonment in the county jail for not less than thirty (30) days nor more than sixty (60) days, and upon conviction of each subsequent offense shall be punished by

a fine of not less than sixty (60) dollars and not more than one hundred (100) dollars, or by imprisonment in the county jail for not less than sixty (60) days nor more than ninety (90) days. ('13 c. 484 § 2)

3138. 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, amended '09 c. 283 § 2)

3139. Licenses, where not issued—No license shall be issued for the sale of liquor in any place where such sale is forbidden. Any license issued in violation of this section, or to any person who within one year next preceding the issue thereof has been convicted of violating any law or ordinance regarding the sale of liquor or the conduct of drinking places, or whose license bond has been declared forfeited, shall be void, and all sales thereunder illegal. (1530)

3140. Voting for illegal license—Penalty—Any member of a county board or municipal council who shall knowingly vote in favor of granting any illegal license for the sale of intoxicating liquor, or who, being present, shall fail to vote against it, and any officer knowingly signing or issuing any such illegal license, shall be guilty of a misdemeanor. (1531)

3141. Sale, when forbidden—No person licensed to sell intoxicating liquors shall sell or otherwise dispose of such liquors at any of the following times:

1. On any day between 11 o'clock p. m. and 5 o'clock a. m.
2. On any general, special, or primary election day.
3. At any hour on Sunday. (1532)

See note under § 3109.

Cited (99-248, 109+235; 111-180, 126+487).

1. Sales and keeping open after 11 o'clock—The hours of compulsory closing are to be determined by standard time (74-381, 77+293). Hôtels are excepted from the provision requiring closing, but not from the provision prohibiting sales. An instruction ignoring this distinction held prejudicial (74-385, 77+294).

2. Sales and keeping open on Sunday—Penal Code § 229 does not authorize the sale of beer on Sunday (37-212, 34+24). The accused must own the saloon or have charge or control of it (41-553, 43+483). The fact that a license does not particularly describe the room in which the bar is to be kept is no defence (84-444, 87+1130). The revocation of a license for keeping a saloon open on Sunday does not bar a criminal prosecution (50-128, 52+387; 58-193, 59+999). The owner held prima facie liable for a saloon being kept open on

Sunday whether present or not (58-193, 59+999. See 84-444, 87+1130). Sufficiency of evidence to justify conviction (96-39, 104+682). See § 3109 note 7.

Ordinance requiring saloons to be kept closed on Sunday was authorized by the charter. G. S. 1894 § 1999, requiring saloons to be kept closed on the Sabbath, did not revoke the authority to pass the ordinance. Nor was it repugnant to the statute as imposing a different penalty (97-355, 105+965).

3142. Sale, where forbidden—The sale of such liquor in any quantity whatever is also forbidden in the following places:

1. In any town or municipality in which a majority of votes at the last election at which the question of license was voted upon shall not have been in favor of license, or within one-half mile of any such municipality, except that any intoxicating liquor, manufactured within any such district, may be sold to be consumed outside of such district.

2. Within the capitol, or upon the grounds thereof.

3. Upon the state fair grounds, or within one-half mile thereof.

4. At any place on the east side of the Mississippi river within one mile from the main building of the university of Minnesota.

5. Within fifteen hundred feet of any state normal school, or any public school outside of a municipality.

6. At more than five places on any one side of a block within and fronting upon the patrol limits of cities of the first class. (1533)

The provision authorizing manufacturers to sell out of their districts is constitutional (86-121, 90+161, 1133).

A general provision applying to all municipalities having local option as to sale of intoxicants, and superseded 1885 c. 145 § 48 (112-365, 128+295).

Not applicable to cities of fourth class operating under home rule charters (114-395, 131+372).

Cited (99-248, 109+235; 111-180, 126+487; 118-371, 136+1031).

3143. Districts outside territory wherein drinking places may exist in cities of first class not under home rule charters—Hotels—The city council in any city of this state now or hereafter having a population of over 50,000 inhabitants other than cities operating under home rule charters, may, by ordinance or resolution, designate only one district therein outside of the territory within which licensed public drinking places shall then be allowed by law to exist, and shall thereupon have power and authority to grant licenses for the sale of intoxicating liquors in hotels located within such districts, subject to the limitation prescribed in section 2 [3144] hereof; but no part of said district so designated shall be more than 660 feet distant from the said territory within which drinking places may then be licensed under any pre-existing statute or ordinance, nor shall said city council, having once designated said district have any authority under this act to thereafter enlarge or change the same. ('11 c. 204 § 1)

3144. Same—To what hotels licenses may be granted—No license shall be granted in any district designated as aforesaid, for the sale or other disposition of intoxicating liquors in any hotel, unless the same shall contain adequate facilities for the entertainment of transient guests and shall have at least 200 rooms fully furnished, equipped and kept for that purpose under the control of a single proprietor or manager in whose name the license shall be granted, and every such license for the sale of such liquor in any such hotel shall immediately become void when such hotel shall cease to have the requisites or be of the character above described; nor shall this act be so construed as to permit the granting of any such license contrary to the provisions of section 1533 of the Revised Laws of 1905 [3142]. ('11 c. 204 § 2)

3145. Same—Liquors to be served only in dining room—No intoxicating liquors shall be served in any hotel as herein provided, except in a regular dining room thereof. No liquors shall be stored or kept in stock in any room in which such liquor is served, nor shall there be any sign or notice of any kind upon, in, or about such hotel, indicating in any manner that liquor is dispensed therein, except upon the bills of fare, provided by the management of the said hotel. ('11 c. 204 § 3)

3146. Same—Subject to laws and ordinances—A person so licensed, as herein provided, shall be subject to all the laws and ordinances regulating the sale of intoxicating liquors within the city in which such hotel is located. ('11 c. 204 § 4)

3147. Same—Violation gross misdemeanor—Any person violating any of the provisions of this act shall be guilty of a gross misdemeanor, and shall, upon conviction thereof, be punished by a fine not exceeding \$200.00 or by imprisonment for a term not exceeding ninety (90) days. ('11 c. 204 § 5)

3148. Sale, to whom illegal—a. It shall be unlawful for any person, except a licensed pharmacist as aforesaid, to sell, give, barter, furnish or dispose of, in any manner, either directly or indirectly, any spirituous, vinous, malt or fermented liquors in any quantity, for any purpose, whatever, to any minor person, or to any pupil or student of any school or other educational institution in this state, or to any intoxicated person, or to any person of Indian blood, or to any public prostitute.

b. It shall be unlawful for any person except a licensed pharmacist as aforesaid to sell, give, barter, furnish or dispose of in any manner either directly or indirectly any spirituous, vinous, malt or fermented liquors in any quantity for any purpose whatever, to any spendthrift, habitual drunkard, or improvident person within one year after written notice by any peace officer, parent, guardian, master, employer, relative, or by any person annoyed or injured by the intoxication of such spendthrift, habitual drunkard, or improvident person, forbidding the sale of liquor to any such spendthrift, habitual drunkard, or improvident person.

Whoever shall in any way procure liquor for the use of any person named in this section shall be deemed to have sold it to such person. Any person violating any of the provisions of this section shall be deemed guilty of a gross misdemeanor. (R. L. § 1534, amended '11 c. 83; '13 c. 538 § 1)

1. Sales to minors—27-153, 6+555; 30-48, 14+256; 38-497, 38+691; 74-463, 77+301; 83-124, 86+3, 54 L. R. A. 487; 99-248, 109+235; 111-180, 126+487.

2. Sales to habitual drunkards—23-181; 23-549; 30-52, 14+258. See 40-55, 41+299.

3. Sales to Indians—70-99, 72+843.

3149. Licenses, when transferred—Any liquor license may be transferred to another person or place in the same town or municipality, 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—1909 c. 283 § 3 enacts that "section 1536" of the Revised Laws [3150] be amended "so as to read as follows: Section 1535," etc. The title of the act refers to R. L. § 1535.

3150. Licenses, how annulled—Every liquor license shall be annulled by operation of law:

1. By the death of the licensee.

2. By the sale of liquor becoming unlawful in the place for which such license is granted.

3. When granted by a county board, by the subsequent inclusion of the place for which it was granted within a municipality.

In such cases, and in no other, such part of the license fee as corresponds to the time such license had yet to run may be returned. (1536)

The provision for refundment held to vest in the municipal officers discretionary authority only, and is not mandatory (115-66, 131+849).

3151. Licenses to become void—Every license shall become void upon the conviction of the licensee of selling or furnishing intoxicating liquor to a minor, habitual drunkard, spendthrift, or improvident person, after the notice forbidding such sale, as in this chapter provided. (1537)

3152. Revocation—Any liquor license may be revoked and made void by the board or council authorized to issue the same, after notice to the licensee and opportunity to be heard, upon proof of violation of any law or ordinance regarding the sale of liquor or the keeping of public drinking places, or of any condition of his bond. In such case, if the licensee is the owner of the premises, no

license shall be issued to any person for such premises during the term for which such license was granted. If the license is revoked by reason of a sale to a minor, habitual drunkard, or a spendthrift or improvident person, after notice forbidding such sale, no license shall be issued to the licensee for five years thereafter, nor in any other case for one year after the time for which the license forfeited was granted. No acquittal on a criminal charge shall prevent the revocation of a license. (1538)

A license may be revoked without judicial proceedings (50-128, 52+387; 88-124, 128, 86+3, 54 L. R. A. 487). Under an act authorizing local option a vote against granting licenses may operate to revoke all outstanding licenses (24-247, 31 Am. Rep. 344). A provision that no license shall be granted for a less term than one year held not to withhold power to revoke a license before the expiration of the year for which it was granted (21-512). In proceedings for the revocation of a license under G. S. 1878 c. 16 § 28 a refusal of the council to postpone the hearing held not improper (41-211, 42+1058). The revocation of a license upon conviction is not a punishment within the meaning of the constitution limiting the jurisdiction of justices of the peace (50-128, 52+387; 58-193, 59+999).

A municipality is not liable in tort for mistaken action of the council in attempting to revoke a license (103-491, 115+643, 15 L. R. A. [N. S.] 698, 14 Ann. Cas. 673).

3153. 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 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 a fund to be designated as a "road improvement fund," and shall be expended under the direction of the common council or governing body of such municipality in the repair and improvements of roads outside of but leading into such municipality. The remaining ninety per cent shall be credited to the general fund of the municipality issuing such license. Provided, that nothing herein contained shall be construed to repeal chapter 443 of the Special Laws of the state of Minnesota for the year 1899. (R. L. § 1539, amended '07 c. 433; '09 c. 450; '13 c. 248 § 1)

24-61; 91-186, 97+670; 115-66, 131+849.

Gives to county 10 per cent. of all license money paid into treasury of incorporated village situated within limits of the county, and that the village cannot defeat right of county by appropriating the 10 per cent. for either school or road and street purposes (115-56, 131+786).

3154. Refunding fees in certain cases—The county board of any county in this state is hereby authorized, empowered and required to refund the unused pro rata portion of the money heretofore paid by any holder of a license to sell intoxicating liquors issued by such board where such license after its issuance and after payment by the licensee of the license money into the county treasury was found to be null and void and was in fact cancelled and revoked by said county board because it was through inadvertence and mistake on the part of said board issued for a place where the sale of intoxicating liquors was forbidden by law. ('13 c. 109 § 1)

1907 c. 15 validating refundments of fees in cities of first class, held not unconstitutional (107-465, 121+221).

3155. Liability for acts of intoxicated person—The licensee and the sureties on his bond shall be jointly and severally liable for all damage done by persons while intoxicated by liquor obtained from such licensee after the revocation of the license. (1540)

83-124, 86+3, 54 L. R. A. 487.

3156. Certificate of conviction—Upon any conviction for violation of any law or ordinance relating to the sale of liquor or the conduct of drinking places, or upon any judgment forfeiting his license bond, the court shall cause to be filed with the clerk of the board or council having power to issue a license in the place for which such license was issued a certificate showing the offence for which conviction was had or judgment rendered. (1541)

3157. List of licenses—The clerk of every board or council granting liquor licenses shall keep a list of all such licenses, showing the date of each, the name

of the licensee, the amount paid therefor, the place for which it was granted, and any transfer thereof, with the name of the person to whom, and a description of the place to which, it was transferred. (1542)

3158. 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)

Section 4 repeals inconsistent acts, etc.

3159. 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)

3160. 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)

3161. 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)

PUBLIC DRINKING PLACES

3162. Defined—All saloons, public bars, and other places of business or public resort where liquor is commonly sold in quantities less than five gallons, or to be drunk on the premises, shall be public drinking places. (1543)

3163. Conduct—All public drinking places shall be kept quiet and orderly, and no person to whom the sale of liquor is forbidden shall be allowed to frequent any such place. (1544)

3164. To be kept closed, when—All such places, except hotels and restaurants, and, in hotels and restaurants, all public bars and places where liquor is exposed or sold, shall be kept closed at all times during which the sale of liquor is forbidden. (1545)

See cases under § 3141.

3165. License posted—Every keeper of a licensed drinking place shall keep his license and any transfer thereof posted conspicuously in such drinking place. (1546)

3166. Games prohibited—No gambling or playing for money or its representative, or other thing of value, shall be allowed in any drinking place, or in any room communicating therewith, nor any tables except pool and billiard

tables, nor any slot machines or other gambling devices. No game of any kind, except pool and billiards, and no throwing of dice, shall be allowed in any such place or room. (1547)

3167. **Penalty**—Any person violating any of the provisions of this chapter relating to the conduct of public drinking places shall be guilty of a misdemeanor, and shall be punished by a fine of not less than ten dollars. (1548)

3168. **Unlicensed places nuisances**—All unlicensed drinking places are hereby declared public nuisances, and may be abated as such by injunction or other legal proceeding. (1549)

86-149, 90+305; 89-205, 94+675; 115-100, 131+1014.

3169. **Unlicensed place**—Every person who, directly, by himself or by combining with others, shall keep an unlicensed drinking place, or in any way aid or abet in keeping any such place, shall for the first and second offenses be guilty of a misdemeanor, and shall be punished by a fine of not less than fifty dollars (\$50.00) nor more than one hundred dollars (\$100.00) or imprisonment in the county jail for not less than thirty (30) days nor more than ninety (90) days; and shall for every succeeding offense, be guilty of a gross misdemeanor and be punished by a fine not less than one hundred fifty dollars (\$150.00) nor more than one thousand dollars (\$1,000.00) or by imprisonment in the county jail for not less than ninety (90) days or more than one year. (R. L. § 1550, amended '13 c. 501 § 1)

Under R. L. § 4763 [8482], *held*, that a justice has jurisdiction of the offense denounced by this section (114-136, 130+79).

Cited (114-434, 131+369; 115-100, 131+1014).

3170. **Allowing premises to be used**—Every person who, as owner, agent, or lessee, shall let or sublet any building, premises, or part of either, knowing that it is intended to be used as an unlicensed drinking place, or, with such knowledge, assigns any lease, or knowingly permits any such building, premises, or part of either, to be so used, shall be guilty of a misdemeanor, and shall be punished by a fine of not less than fifty dollars, or imprisonment for not less than thirty days. (1551)

3171. **Evading law**—Every person who shall evade or attempt to evade the liquor laws of this state by means of any artifice or contrivance intended to conceal the unlawful sale of liquor, or the identity of the person selling the same, shall be guilty of a misdemeanor. (1552)

86-149, 90+305; 89-205, 94+675.

3172. **Search warrant**—Upon complaint before a magistrate charging any person or persons with keeping an unlicensed drinking place, and particularly describing the premises on which such place is kept, the magistrate, in addition to a warrant for the arrest of such person, shall issue a search warrant, commanding the officer to search such premises, and to seize and hold, subject to the order of the court, all intoxicating liquors, vessels, bars, bar fixtures, screens, bottles, glasses, jugs, and all other appurtenances found therein apparently used in retailing liquors, to make an inventory of the same, and forthwith to serve a copy thereof on the defendant, or person in charge thereof. (1553)

89-205, 94+675.

R. L. §§ 1553, 1554 [3172, 3173], are constitutional (114-136, 130+79; 115-100, 131+1014).

Complaint and search warrant *held* sufficient, under Const. art. 1 § 10 (114-136, 130+79).

Requisites of search warrant (117-105, 134+505).

3173. **Liquors, etc., how disposed of**—If the defendant in any such action be convicted, the liquors found on the premises shall be destroyed by the officer seizing the same, and all other articles taken under the warrant shall be forfeited to the school fund of the county, and sold by such officer, as upon execution. (1554)

89-205, 94+675.

See note under § 3172.

PENALTIES AND PROSECUTIONS

3174. **Fraudulent shipment**—Every person who shall knowingly deliver or cause to be delivered to any common carrier for shipment any liquor under a false or misleading title, name, or mark, and every common carrier, or

agent of such carrier, who shall knowingly receive the same for shipment, and every person knowingly shipping or receiving any liquor so marked, shall be guilty of a misdemeanor; and any liquor so shipped with the knowledge of the owner, and the casks or packages containing the same, shall be forfeited to the school fund of the county. The books and waybills of any common carrier handling such liquors may be examined by any police officer for the purpose of tracing such liquors to the shipper or receiver. (1555)

89-205, 94+675.

3175. Sale near state fair grounds—Any person who shall sell any liquor or maintain a drinking place within one mile of the state fair grounds, while the state fair is being held, or shall aid or abet another in either of such acts, shall be guilty of a gross misdemeanor, and shall be punished for the first offence by a fine of not less than one hundred dollars nor more than two hundred and fifty dollars, or imprisonment for not less than thirty nor more than ninety days, or by both such fine and imprisonment; for each subsequent offence, by a fine of not less than five hundred dollars nor more than one thousand dollars, or by imprisonment in the county jail for not less than three nor more than six months, or by both. (1556)

3176. Pharmacists—Any pharmacist or druggist who shall sell any liquor except as allowed by this chapter, or who shall allow his place of business to be used as an unlicensed drinking place, shall be subject to all the penalties provided in this chapter for such acts. (1557)

3177. Physician—Every physician who shall give a prescription of liquor for other than medicinal purposes, or with intent to aid in the evasion of the liquor laws of this state, shall be guilty of a misdemeanor, and shall be subject to the penalties prescribed for the illegal sale of liquor, and shall also forfeit his license as a physician. (1558)

3178. 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, amended '07 c. 247 § 1)

Cited and applied (99-248, 109+235).

See note under § 3148.

3179. Giving, procuring, or purchasing for minors, etc.—Any person who shall give to, procure or purchase intoxicating liquors for any minor person or other person to whom the sale of intoxicating liquors is by law forbidden, shall be guilty of a gross misdemeanor and upon conviction, shall be punished in accordance with the laws of the state. ('11 c. 290 § 1)

3180. Inducing minors, etc., to enter saloon—Any person who shall assist, procure or induce any minor or other person to whom the sale of liquor is by law forbidden, to enter or visit any saloon, bar, buffet or public drinking place for the purpose of obtaining intoxicating liquors, shall be guilty of a gross misdemeanor, and upon conviction, shall be punished therefor according to the laws of the state. ('11 c. 369 § 1)

3181. 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)

3182. Sale to Indians—Whoever sells or in any way furnishes liquor to any person of Indian blood, whether a member of any tribal organization or not, except as hereinbefore provided in case of licensed pharmacists, shall be guilty of a felony, and shall be punished by imprisonment in the state prison for not more than two years, and a fine of not more than three hundred dollars. (1560)

70-99, 72+843.

3183. Sale to person on parole—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)

3184. 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)

3185. Duty of officers—Every sheriff, constable, marshal, and policeman shall summarily arrest any person found committing any act forbidden by this chapter, and make complaint against him. Every county attorney shall prosecute all cases under this chapter arising in his county. The president or mayor of every municipality shall make complaint of any known violation of the provisions of this chapter, and the chief of police and all policemen shall make arrests and complaints as in this section provided, anything in the ordinances or by-laws of such municipality to the contrary notwithstanding. (1561)

Cited and applied (101-277, 112+269, 20 L. R. A. [N. S.] 1127).
See note under following section.

3186. Official neglect—Any county commissioner, member of a municipal council, sheriff, or other officer, who wilfully refuses or neglects to perform any official duty imposed by this chapter, shall be guilty of malfeasance in office, and shall be removed therefrom, and be disqualified from holding the same for and during the remainder of the term for which he was elected or appointed, and shall forfeit not less than one hundred dollars nor more than five hundred dollars, which amount may be recovered in an action against him personally or on his official bond. (1562)

The forfeiture of office and pecuniary penalty, prescribed by R. L. §§ 1561, 1562 [3185, 3186], for failure of the mayor or other officer to make complaint, may be enforced by the attorney general (101-277, 112+269, 20 L. R. A. [N. S.] 1127).
See note under § 3114.

3187. Commissioners, etc., personally liable—When property cannot be found sufficient to satisfy any judgment rendered in an action against principal and sureties upon any license bond, of which the return of an execution of the district court unsatisfied shall be prima facie evidence, the county commissioners or members of the municipal council who voted to approve such bond shall be personally and individually liable for such judgment, un-

less such sureties at the time of signing such bond testified before a district judge or justice of the peace that they were worth double the amount of the penalty of such bond, above debts and exemptions. Any county commissioner or member of a municipal council voting for the granting of any liquor license without a license bond as required by law, or present and not voting against the same, shall be personally liable as a surety upon the required bond. (1563)

3188. Construction of terms—The terms "intoxicating liquor" and "liquor," wherever used in this chapter, shall include distilled, fermented, spirituous, vinous, and malt liquor. The terms "sell" and "sale" shall include all barter, gifts, and all means of furnishing liquor in violation or evasion of law. (1564)

See §§ 3189, 3190.

1. What are intoxicating liquors—Courts and juries will take judicial notice that brandy and whisky are intoxicating liquors (54-105, 55+903; 86-174, 90+318). Intoxicating liquors include distilled, fermented, spirituous, vinous, and malt liquors (§ 3188; 40-55, 41+299). Ordinary fermented malt beer has been held not to be a spirituous liquor (40-55, 41+299), but it is an intoxicating liquor (§ 3188; 40-55, 41+299; 47-375, 50+362; 54-105, 55+903. See 96-140, 104+898). The intoxicating quality of "maltum" has been held a question for the jury (87-5, 91+26. See 89-502, 95+449). Ale, porter, stout, and lager are all varieties of beer (40-55, 41+299; 89-502, 95+449). Malt liquor is an alcoholic liquor prepared by fermenting an infusion of malt. It is a fermented liquor (89-502, 95+449). Where there is reasonable doubt as to the intoxicating quality of liquor the question is for the jury (87-5, 91+26; 89-502, 95+449. See 95-104, 103+727).

2. Gifts—A gift of liquor to a prospective purchaser by a traveling salesman of a licensed liquor dealer held unlawful under G. S. 1894 § 2029 (88-27, 92+468). A gift of liquor held unlawful under an ordinance making it unlawful to "dispose" of liquor without a license (33-102, 22+442, 53 Am. Rep. 12).

3189. Sale, etc., of malt liquors except in licensed saloon, prohibited—The keeping for sale, selling, giving away, disposing of malt liquors, whether intoxicating or not, in any other place than a licensed saloon, is hereby prohibited. ('11 c. 131 § 1)

3190. Same—Violation a misdemeanor—Exceptions—The keeping for sale, selling, giving away, disposing of malt liquors, whether intoxicating or not, in any other place than a licensed saloon, is hereby declared to be a misdemeanor and shall be punished by a fine of not less than five dollars nor more than one hundred dollars or by imprisonment in the county jail of not more than ninety days. Provided, however, that drug stores may keep and sell such malt liquors for medicinal purposes, only. And provided further, that nothing herein shall prevent the manufacturers of such malt liquors and the wholesalers thereof from keeping for sale and selling and disposing of such malt liquors. ('11 c. 131 § 2)

3191. Sale by employee—Any sale of liquor in or from any public drinking place by any clerk, barkeeper, or other employee authorized to sell liquor in such place shall be deemed the act of the employer as well as that of the person actually making the sale; and every such employer shall be liable to all the penalties provided by law for such sale, equally with the person actually making the same. (1565)

23-181; 38-497, 38+691; 84-444, 87+1130.

3192. Intoxicated persons on trains or street cars—No person shall while intoxicated enter or be or remain upon a railway train or street car as a passenger. ('11 c. 28, amended '13 c. 417 § 1)

3193. Same—Intoxicants on trains, etc.—No person shall publicly drink any intoxicating liquor as a beverage in any railway train, coach, or street car, or give, or cause to be given to any other person therein, intoxicating liquor as a beverage, except in a compartment or place where such liquor is sold or served under the authority of a license lawfully issued. ('11 c. 28, amended '13 c. 417 § 2)

3194. Same—Carriers permitting, etc.—Penalty—Persons and corporations engaged wholly or in part, in the business of carrying passengers for hire, their agents, servants or employees who shall knowingly permit any person to drink any intoxicating liquor as a beverage in any railway train, coach, or street car, except in the compartment where such liquor is sold or served

under the authority of a license lawfully issued and any person violating any provision of this act, shall be guilty of a misdemeanor and upon conviction, shall be punished by a fine of not less than ten dollars (\$10.00) or more than one hundred dollars (\$100.00), or by imprisonment in the county jail for not less than twenty (20) days, nor more than ninety (90) days. ('11 c. 28, amended '13 c. 417 § 3)

3195. Same—Powers of conductor—Arrest—The conductor of any railway train or street car shall summarily arrest, with or without a warrant, any person violating any of the foregoing provisions and for such purpose shall have the same power and authority as any peace officer, including the power to summon assistance and such conductor shall further have power to deliver any such person to any policeman, constable, or other public officer of the county in which such offense was committed, and it shall be the duty of such officer to bring the person charged with such offense before the nearest justice of the peace or municipal court of the county where said offense was committed and to make a complaint against such person, and such complaint made upon information and belief of said officer, shall be sufficient. ('11 c. 28, amended '13 c. 417 § 4)

3196. Same—Intoxicated persons leaving trains, etc.—Duty of conductor, etc.—No conductor or employé of any railroad company shall expel or allow any intoxicated person who is not in the charge of a person that is not intoxicated, to depart from his train at a station where there is no police protection, jail or lockup, but shall carry such intoxicated person to the nearest station having police and jail protection. ('11 c. 28, amended '13 c. 417 § 5)

3197. Same—Seizure of liquor—The conductor of any railway train or street car may take from any person found violating any of the foregoing provisions, any intoxicating liquor then in the possession of such person and deliver the same to the nearest station agent, giving the person from whom it is taken a receipt therefor. Upon the presentation and surrender of such receipt within ten (10) days thereafter such liquor shall be delivered to the person presenting same and if not so delivered within such time shall be destroyed by such station agent. ('11 c. 28, amended '13 c. 417 § 6)

3198. Prosecutions and evidence—In prosecutions under this chapter, it shall not be necessary to allege or prove the name or kind of intoxicating liquor sold, and proof of the sale of what appeared to be intoxicating liquor shall be prima facie proof of the sale of such liquor. In all prosecutions for keeping an unlicensed drinking place, the finding of intoxicating liquor on the premises, or of any bar, bar fixtures, or other things apparently used for or in connection with the sale of intoxicating liquor, or any sign or advertisement indicating the sale of liquor on such premises, or a receipt for the United States tax for the sale of spirituous or vinous, malt, or fermented liquor posted therein, and covering the time alleged in the complaint or indictment, or proof of the payment of such tax for such period, shall, except in case of a licensed pharmacist engaged at such place in the business of druggist or pharmacist, be prima facie evidence that such place is a public drinking place. In any prosecution under this chapter, it shall not be necessary to prove the want of license, but such license shall be a matter of defence. (1566)

1. Jurisdiction of district, municipal and justice courts—The district court has jurisdiction to try indictments for selling liquor without a license (26-148, 1+1054; 36-234, 30+764; 69-499, 72+832). A justice of the peace has no jurisdiction of offenses under the liquor laws (47-270, 50+226. See 40-63, 41+363). The municipal court of Minneapolis held to have jurisdiction of a prosecution for the violation of a city ordinance (50-128, 52+387; 77-540, 80+701).

1901 c. 252, authorizing trial of person charged with keeping a "blind pig" before any magistrate in county where offense was committed, held valid (97-221, 106+904).

2. Indictment for selling liquor without a license—It must negative a license (33-480, 24+321; 69-349, 72+564); it must allege the name of the person to whom the sale was made, or if that is unknown, give a description of him (25-368); it must allege the quantity so as to show that it was less than five gallons (26-526, 6+339, 37 Am. Rep. 415; 29-393, 13+187; 36-234, 30+764; 42-182, 43+1116); and it must describe the liquor, but it is sufficient to describe it as an intoxicating liquor (§ 3198; 30-52, 14+258; 40-55, 41+299; 80-314, 83+182). It was held not necessary to negative the proviso as to druggists in G. S. 1894 §.2029 (70-12, 72+732), nor the exceptions and conditions in 1895 c. 259 (69-423, 72+700). The indictment need not be certain as to the date of the sale. It is sufficient to allege that

the accused "sold" the liquor. An allegation as to the place of sale "in said county of Lincoln" held sufficient (26-526, 6+339, 37 Am. Rep. 415). An indictment under 1895 c. 259 held sufficient against the objection that it failed to allege that the liquor was sold for consumption in the village (86-121, 90+161, 1133).

3. Indictment for keeping open on Sunday—It must show that the accused either owned the saloon or had charge or control of it (41-553, 43+483). An indictment held sufficient as to the place where the offence was committed (38-143, 36+443).

4. Indictment for keeping open after 11 o'clock—The exception as to hotels must be negatived (67-10, 69+474; 69-499, 72+832). It must allege a license (see 84-370, 87+915). A complaint concluding contrary to the statute as well as against the ordinance held not double (84-367, 87+916).

5. Indictment for selling liquor to habitual drunkard—A complaint substantially following the language of the statute held sufficient (23-549).

6. Indictment for selling liquor to minor—It need not allege a notice forbidding a sale (27-153, 6+555). Under G. S. 1878 c. 16 § 10 it was held not necessary to allege that the accused was a person licensed to sell intoxicating liquors or engaged in any particular occupation (30-48, 14+256).

7. Indictment for selling to husband after notice—29-134, 12+353.

8. Complaint under ordinance for selling liquor without a license—A complaint which substantially follows the language of the ordinance is sufficient (36-62, 30+305; 89-502, 95+449). A complaint held to negative a license sufficiently (69-349, 72+564). In a complaint for selling malt liquor without a license contrary to a city ordinance held unnecessary to allege that the liquor was intoxicating or to plead the ordinance (89-502, 95+449; 89-506, 95+1133).

9. Duplicity—An indictment charging a sale on a specified day "and divers other days and times since said day and the day of the finding of the indictment" held not double (26-148, 1+1054). A complaint charging a sale and disposal held not double (30-52, 14+258). A complaint under an ordinance concluding contrary to the statute as well as against the ordinance held not double (84-367, 87+916).

10. Election—A motion to compel the state to elect whether to ask for a conviction for a sale of "spirituous" or for a sale of "malt" liquors held properly denied (80-314, 83+182. See 38-497, 38+691).

11. Burden of proving license—When a sale is proved the presumption is that it was unlawful and the burden of proving a license is on the accused (§ 3198; 25-370; 36-234, 30+764; 54-105, 55+903; 54-195, 55+959). The rule is otherwise on a prosecution for keeping a licensed saloon open during prohibited hours (84-370, 87+915. See § 3198).

12. Proof of liquor sold—It is unnecessary to prove the particular kind of intoxicating liquor sold (§ 3198; 30-52, 14+258; 80-314, 83+182. See 23-549; 40-55, 41+299). Proof of the sale of what appeared to be intoxicating liquor is prima facie proof of the sale of intoxicating liquor (§ 3198; 47-375, 50+362; 54-105, 55+903).

13. Variance—23-549; 26-148, 1+1054; 26-526, 6+339, 37 Am. Rep. 415; 30-52, 14+258; 40-55, 41+299; 54-105, 55+903; 54-195, 55+959; 80-314, 83+182.

14. Evidence admissible—38-143, 36+443; 38-229, 36+447; 38-497, 38+691; 43-373, 45+712; 74-463, 77+301; 84-444, 87+1130; 86-174, 90+318; 89-205, 94+675; 89-506, 95+1133; 95-104, 103+727; 98-210, 108+6.

15. Sufficiency of the evidence—Evidence held sufficient to warrant a conviction for selling liquor to a minor (74-292, 77+48; 96-140, 104+898); for selling liquor without a license (86-121, 90+161, 1133; 87-5, 91+26; 54-105, 55+903; 89-502, 95+449); for selling liquor on Sunday (47-375, 50+362); for keeping a saloon open on Sunday (58-193, 59+999). Evidence held sufficient to justify finding that article sold was intoxicating liquor (102-401, 113+1014). A single sale to an habitual drunkard by a clerk of the accused held insufficient to warrant a conviction (23-181). Evidence held insufficient to justify a conviction for keeping open after 11 o'clock (84-370, 87+915).

16. Punishment—Acts which are punishable under the general law may also be made punishable by ordinance and the punishment need not be the same (21-202; 50-128, 52+387; 84-367, 87+916). A commitment to the county jail to await the payment of a fine held proper (38-143, 36+443). Punishment allowable under Minneapolis charter defined (76-1, 78+877).

3199. 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)

CIVIL ACTIONS

3200. Action for injuries caused by intoxication—Every husband, wife, child, parent, guardian, employer, or other person, who shall be injured in person or property, or means of support, by any intoxicated person, or by the intoxication of any person, shall have a right of action, in his or her own name, against any person, who shall by illegally selling, bartering, or giving intoxicating liquors, have caused the intoxication of such person, for all damages sustained; and all damages recovered by a minor under this act shall be paid either to such minor or to his or her parent, guardian, or next friend, as the court shall direct; and all suits for damages under this act shall be by civil action in any of the courts of this state having jurisdiction thereof. ('11 c. 175 § 1)

CHAPTER 16A

CIGARETTES

3201. Sale to minors forbidden—That it shall be unlawful for any person and any clerk, servant, employee or agent of any person, directly or indirectly, upon any pretense or by any device to sell, exchange, barter, dispose of or give away to any minor any cigarettes, cigarette paper or cigarette wrappers or any paper made or prepared for the purpose of being filled with tobacco for smoking or any tobacco prepared for smoking in the form of cigarettes. ('13 c. 580 § 1)

This act impliedly repeals '09 c. 194, prohibiting the gift or sale, which is therefore omitted from this compilation.

3202. Penalty for violation—Any person violating the provisions of section 1 [3201] of this act shall be guilty of a misdemeanor and upon first conviction for such violation 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 fifteen days, nor more than sixty days, or both such fine and imprisonment and costs; and upon second conviction for violation of any of said provisions shall be punished by imprisonment in the county jail for not less than thirty (30) days, nor more than ninety (90) days, and his license shall then be terminated as hereinafter provided. ('13 c. 580 § 2)

3203. Smoking by minors prohibited—The smoking of cigarettes within this state by any minor is hereby prohibited. ('13 c. 580 § 3)

3204. Penalty for violation—Any person violating the provisions of section 3 [3203] of this act shall be guilty of a misdemeanor, and upon conviction for such violation shall be punished by a fine of not more than ten dollars, in the discretion of the court and upon second conviction for violation of the provisions of said section 3 [3203] shall be punished by imprisonment in the county jail for not more than five (5) days in the discretion of the court. ('13 c. 580 § 4)

3205. Unlicensed sale, etc., forbidden—That it shall be unlawful for any person and any clerk, servant, employee or agent of any person directly or indirectly, upon any pretense, or by any device, to manufacture, sell, exchange, barter, dispose of or give away, or keep for sale any cigarettes, cigarette paper or cigarette wrappers, or any paper made or prepared for the purpose of being filled with tobacco without first obtaining a license therefor, as hereinafter provided. ('13 c. 580 § 5)