

REVISED LAWS

MINNESOTA

1905

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EDITED AND ANNOTATED BY
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ST. PAUL
PUBLISHED BY THE STATE
1906

1518. Tax, 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. ('01 c. 242 s. 9)

CHAPTER 16

INTOXICATING LIQUORS

LICENSES

1519. 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. (2029)

See 1905 cc. 54, 59, 72, 346

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; 86-441, 90+1052; 60-510, 62+1135). 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 (§ 1520), 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 (43-231, 45+149; 45-44, 47+308; 41-30, 42+547; 41-33, 42+548). 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; 104+709). 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 (21-202; 19-108, 78; 22-312; 70-99, 72+843). It is not an exercise of the taxing power (19-108, 78; 22-312), 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). 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

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city (32-145, 19+723; 33-69, 21+856); to regulate the fixtures of a saloon (82-256, 84+911, 1116); 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; 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).

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). An act requiring saloon keepers to pay a license fee for the maintenance of a state inebriate asylum held constitutional (22-312). 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).

1520. Sales by pharmacists—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 reputable, practicing, and licensed physician; but only one sale of liquor shall be so made upon any one prescription. (2036)

1521. 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.

1522. 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. (2018; '01 c. 101)

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). 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; 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 25-429; 27-76, 6+423; 37-16, 33+36; 29-393, 13+187; 31-316, 17+859; 25-

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370; 26-175, 2+474; 26-177, 2+475; 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; 54-367, 87+916).

4. 1901 c. 101—Unconstitutional (State v. Schraps, Filed Jan. 5, 1906).

1523. Application for license—Any person desiring a license to sell 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 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. (2021)

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1524. 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. (2026)

See 1905 c. 246

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

1525. 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. (2021)

1526. 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. (2021)

1527. 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. (2022-2024)

72-17, 74+901; 83-9, 85+720.

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1528. 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. (1990)

24-247; 86-121, 90+161, 1133. See 1905 c. 10

1529. License, to whom not issued—No license shall be granted to any person of known bad character; to the keeper of any house of prostitution, or place frequented by prostitutes or other disorderly persons; to the keeper of any gambling house, or place where gambling in any form is allowed; to any person who has within one year knowingly violated any law or ordinance relating to the sale of liquor or to the conduct of drinking places, or any of the

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conditions of his bond; nor to any person not a bona fide resident of this state. (2021)

1530. 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. (2021)

1531. 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.

1532. Sale, when forbidden—No person licensed to sell intoxicating liquors shall sell or otherwise dispose of such liquors at any of the following times:

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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. (1999, 2012, 2021; '95 c. 90; '03 c. 240)

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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). Hotels 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 (104+682). See § 1519 Note 7.

1533. Sale, where forbidden—The sale of such liquor in any quantity whatever is also forbidden in the following places:

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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. (1990, 2006, 2008, 3923; '95 c. 191)

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

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1534. Sale, to whom illegal—The sale of such liquor at any time or place, except by a licensed pharmacist as aforesaid, is illegal:

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1. To a minor.

2. To a pupil or student of any school or other educational institution in this state.

3. To an intoxicated person or habitual drunkard.

4. To a public prostitute.

5. To a spendthrift or an 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 person, forbidding the sale of liquor to him.

6. To any person of Indian blood.

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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. (1999, 2002; '95 c. 90)

- 1. Sales to minors—27-153, 6+555; 30-48, 14+256; 38-497, 38+691; 74-463, 77+301; 83-124, 86+3.
- 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.

1535. Licenses, when transferred—Any liquor license may be transferred to another person or place in the same town or municipality 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 the applicant, as in case of an original license.

1536. 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. (2024; '97 c. 154; '03 c. 265)

1537. 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. (2001)

1538. 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. (2020)

A license may be revoked without judicial proceedings (50-128, 52+387; 83-124, 128, 86+3). Under an act authorizing local option a vote against granting licenses may operate to revoke all outstanding licenses (24-247). 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).

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. All money so paid into any municipal treasury shall be credited to the general fund, but the council may appropriate any part thereof to any school district wholly or partly 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. ('95 c. 130)

24-61; 91-186, 97+670.

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1540. 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. (1992)

83-124, 86+3.

1541. 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. (2019)

1542. 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. (1997)

PUBLIC DRINKING PLACES

1543. 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.

1544. 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.

1545. 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. (2012)

See cases under § 1532.

1546. License posted—Every keeper of a licensed drinking place shall keep his license and any transfer thereof posted conspicuously in such drinking place. (2017)

1547. 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. (2016)

1548. 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.

1549. Unlicensed places nuisances—All unlicensed drinking places are hereby declared public nuisances, and may be abated as such by injunction or other legal proceeding. ('01 c. 252 s. 2)

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

1550. Unlicensed place—Every person who, directly or indirectly, 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 be guilty of a misdemeanor, and shall be punished by a fine of not less than fifty dollars, or imprisonment in the county jail for not less than thirty days. ('03 c. 206)

1551. 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. ('03 c. 206)

1552. 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. (2033)

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

1553. 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. ('01 c. 252 s. 2)

89-205, 94+675.

1554. 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. ('01 c. 252 s. 3)

89-205, 94+675.

PENALTIES AND PROSECUTIONS

1555. 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. ('01 c. 252 s. 4)

89-205, 94+675.

1556. 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. ('95 c. 103)

1557. 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. (2037)

1558. 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. (2038)

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, 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, and imprisonment for not less than thirty nor more than ninety days. (1999; '95 c. 91)

See cases under § 1534.

1560. 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. (2002)

70-99, 72+843.

1561. 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. ('95 c. 50)

1562. 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. (1995, 2028)

1563. 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, unless 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. (1996)

1564. 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. (2000)

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 (§ 1564; 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 (§ 1564; 40-55, 41+299; 47-375, 50+362; 54-105, 55+903. See 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 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).

1565. 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.

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

1566. 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. (2000)

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See 1905 c. 59

1. Jurisdiction of district, municipal and justice courts—The district court has jurisdiction to try indictments for selling liquor without a license (36-234, 30+764; 26-148, 1+1054; 69-499, 72+832). A justice of the peace has no jurisdiction of offences 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).

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; 36-234, 30+764; 29-393, 13+187; 42-183, 43+1116); and it must describe the liquor, but it is sufficient to describe it as an intoxicating liquor (§ 1566; 30-52, 14+258; 80-314, 83+182; 40-55, 41+299). 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). 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 negated (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 (§ 1566; 25-370;

36-234, 30+764; 54-195, 55+959; 54-105, 55+903). The rule is otherwise on a prosecution for keeping a licensed saloon open during prohibited hours (84-370, 87+915. See § 1566).

12. Proof of liquor sold—It is unnecessary to prove the particular kind of intoxicating liquor sold (§ 1566; 30-52, 14+258; 80-314, 83+182. See 40-55, 41+299; 23-549). Proof of the sale of what appeared to be intoxicating liquor is prima facie proof of the sale of intoxicating liquor (§ 1566; 47-375, 50+362; 54-105, 55+903).

13. Variance—23-549; 26-526, 6+339; 26-148, 1+1054; 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; 103+727.

15. Sufficiency of the evidence—Evidence held sufficient to warrant a conviction for selling liquor to a minor (74-292, 77+48; 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). 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).

CHAPTER 17

BASTARDS

1567. Complaint—Warrant—On complaint being made to a justice of the peace by any woman who is delivered of a bastard child, or pregnant with a child which, if born alive, might be a bastard, accusing any person of being the father of such child, the justice shall take the complaint in writing, under her oath, and thereupon shall issue his warrant, directed to the sheriff or any constable of his county, commanding him forthwith to bring such accused person before him to answer such complaint; which warrant may be executed anywhere within the state. (2039, 2052)

Requisites of complaint (29-132, 12+347; 47-475, 50+605; 81-501, 84+340). Requisites of warrant (46-343, 49+54). Nature and object of act and proceedings thereunder (23-1; 29-132, 12+347; 35-238, 28+501; 41-196, 42+933; 72-415, 75+725; 94-177, 102+204).

1568. Action, how entered—Proceedings—The justice shall enter an action in his docket, in which the state shall be plaintiff and the accused defendant, and shall make such other entries as are required in criminal actions. On the return of the warrant with the accused, the justice shall examine under oath the complainant, and such other witnesses as may be produced by the parties, respecting the complaint, and shall reduce such examination to writing. (2040)

Scope of proceedings (42-32, 43+571). Failure to make docket entries held immaterial (29-132, 12+347).

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 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 give bond to the county, approved by the justice, conditioned to indemnify such county against all charges for the maintenance of the child born, or that may be born, the justice shall discharge him. (2041)

Exclusive mode of settlement. Release by mother not a bar (47-436, 50+475). Discharge by one justice not a bar to fresh proceedings before another justice (42-32, 43+571). Cited (35-238, 28+501; 72-415, 417, 75+725; 94-177, 102+204).

1570. Recognizance—If the defendant does not comply with the provisions of § 1569, and there is probable cause to believe him guilty as charged in the

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