

1938 Supplement
To
Mason's Minnesota Statutes
1927

(1927 to 1938)
(Superseding Mason's 1931, 1934, and 1936 Supplements)

Containing the text of the acts of the 1929, 1931, 1933, 1935, and 1937 General Sessions, and the 1933-34, 1935-36, 1936, and 1937 Special Sessions of the Legislature, both new and amendatory, and notes showing repeals, together with annotations from the various courts, state and federal, and the opinions of the Attorney General, construing the constitution, statutes, charters and court rules of Minnesota together with digest of all common law decisions.



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way aiding therein, and shall be exhibited to any officer of the law, forest ranger, forest patrolman, game warden or other officer of the department of conservation at his request at any time. Any such officer shall have power to inspect any such trees, bushes, saplings, or shrubs when being transported in any vehicle or other means of conveyance or by common carrier and to make such investigation with reference thereto as may be necessary to determine whether or not the provisions of this act have been complied with, and to stop any vehicle or other means of conveyance, found carrying any such trees, bushes, saplings, or shrubs upon any public highways of this state for the purpose of making such inspection and investigation and to seize and hold subject to the order of the court any such trees, bushes, saplings, or shrubs, found being cut, removed, or transported in violation of this act. No common carrier or agent thereof shall receive for shipment or transportation any such trees, bushes, saplings, or shrubs unless the consignor, whose name and address shall be recorded, exhibited at the time of consignment the written consent or certified copy thereof herein provided for. Failure to so exhibit such written consent shall be prima facie evidence that no such consent was given or exists. ('27, c. 10, §1; Apr. 22, 1929, c. 285, §1.)

10422-2. Penalties.—Any person who violates any of the provisions of this act shall, for the first violation, be guilty of a misdemeanor; and for a second and each subsequent violation during the same calendar year shall be guilty of a gross misdemeanor. Every written consent for any purpose specified in this act and every certified copy of such consent shall be deemed to be a written instrument within the meaning of the laws relating to forgery, and any person who shall forge any such written consent or certified copy thereof shall be guilty of forgery in the second degree, and shall be punished accordingly. Any person who shall lend or transfer or offer to lend or transfer any such written consent or certified copy thereof to another person who is not entitled to use the same, and any person not entitled to use any such written consent or certified copy thereof who shall use any such written consent or certified copy thereof, or who shall borrow, receive, or solicit from another any such written consent or certified copy thereof, shall be

guilty of a gross misdemeanor, and punished accordingly. ('27, c. 10, §2; Apr. 22, 1929, c. 285, §2.)

10422-5. Certain acts to be misdemeanor.—Every person who shall willfully place or deposit or cause to be placed or deposited, or who aids or abets or who conspires to aid or abet in the placing or depositing in, upon, under, against, or near to any building, car, vessel, or structure any foul, offensive or injurious substance or compound, or any gas, fluid or substance injurious to life or property, or any noxious or offensive gas, fluid or substance, with intent to wrongfully injure, molest or coerce another, or to injure the property or person of another, or to molest another in the use, management, conduct or control of his business or property; shall be guilty of a gross misdemeanor, and upon conviction thereof shall be punishable by a fine of not more than One Thousand Dollars or by imprisonment in the county jail for not more than one year. (Act Mar. 24, 1931, c. 86, §1.)

10431. Coercion.

To sustain an action for damages on the ground of coercion there must be some wrongful or unlawful act, acts or conduct sufficient to constrain the plaintiff against his will. 174M535, 219NW908.

A threat to shoot an officer if he takes property under replevin papers is a misdemeanor under this section and officer to whom threat is made may arrest without a warrant. 177M307, 225NW148.

Statutory costs denied respondents for failure of brief to comply with paragraph 3. 177M222, 225NW85.

It is not illegal for labor union to advertise that its membership does not patronize certain businesses, if there is no fraud, duress, intimidation, coercion, malice or defamation. Op. Atty. Gen. (641), July 6, 1936.

10432. Injury to other property.

Person hiring young man to put emery dust and waste in oil tank of automobile, resulting in damage, may be prosecuted under this section. Op. Atty. Gen., Mar. 4, 1933.

Throwing thistle seeds on neighbor's farm constitutes violation of this section. Op. Atty. Gen. (605a-18), Aug. 26, 1935.

10433. Interfering with electrical apparatus.

Section is without application to action for death of house mover attempting to get house under wires. Faribault v. N., 188M514, 247NW680.

10437. Draining meandered lakes, etc.

Owner of private lake cannot construct and maintain a channel to a public lake if it injuriously affects the public lake. Op. Atty. Gen., Sept. 26, 1929.

CHAPTER 102

Cruelty to Animals

10443. Overworking animals, etc.

Evidence held sufficient to support finding that horse's death resulted from starvation. State v. Maguire, 188M 627, 248NW216. See Dun. Dig. 279.

One in possession of horse under claim of lien is guilty if he permits it to starve to death. Id.

10444. Cruelty in transportation.

Prosecution must be for violation of statute and not "regulations" issued thereunder. Op. Atty. Gen. (293b-19), July 8, 1937.

10450. Animal with infectious disease.

Seller of infected hogs, held not entitled to directed verdict for price. 180M78, 230NW259.

CHAPTER 103

Miscellaneous Crimes

10453 to 10455-3. [Repealed.]

Repealed Mar. 19, 1937, c. 74, §25, post, §10455-28.

10455-4. Definitions.—The following words and phrases, as used in this act shall have the following meanings, unless the context otherwise requires:

(1) "Persons" includes any corporation, association, co-partnership, or one or more individuals.

(2) "Physician" means a person authorized by law to practice medicine in this state and for the purposes of this act only, any other person authorized by law to treat sick and injured human beings in this state and to use narcotic drugs in connection with such treatment.

(3) "Dentist" means a person authorized by law to practice dentistry in this state.

(4) "Veterinarian" means a person authorized by law to practice veterinary medicine in this state.

(5) "Manufacturer" means a person who by compounding, mixing, cultivating, growing, or other process, produces or prepares narcotic drugs, but does not include an apothecary who compounds narcotic drugs to be sold or dispensed on prescriptions.

(6) "Wholesaler" means a person who supplies narcotic drugs that he himself has not produced or prepared, on official written orders, but not on prescriptions.

(7) "Apothecary" means a licensed pharmacist as defined by the laws of this state and, where the context so requires, the owner of a store or other place of business where narcotic drugs are compounded or

dispensed by a licensed pharmacist; but nothing in this act shall be construed as conferring on a person who is not registered nor licensed as a pharmacist any authority, right, or privilege, that is not granted to him by the pharmacy laws of this state.

(8) "Hospital" means an institution, where the sick and injured receive care and treatment, approved by the department of health of the State of Minnesota as proper to be entrusted with the custody of narcotic drugs.

(9) "Laboratory" means a laboratory approved by the department of health as proper to be entrusted with the custody of narcotic drugs and the use of narcotic drugs for scientific purposes.

(10) "Sale" includes barter, exchange, or gift, or offer therefor, and each such transaction made by any person, whether as principal, proprietor, agent, servant, or employee.

(11) "Coca leaves" includes cocaine and any compound, manufacture, salt, derivative, mixture, or preparation of coca leaves, except derivatives of coca leaves which do not contain cocaine, ecgonine, or substances from which cocaine or ecgonine may be synthesized or made.

(12) "Opium" includes morphine, codeine, and heroin, and any compound, manufacture, salt, derivative, mixture, or preparation of opium, but does not include apomorphine or any of its salts.

(13) "Narcotic drugs" means coca leaves, opium, and every substance neither chemically nor physically distinguishable from them.

(14) "Federal Narcotic Laws" means the laws of the United States relating to opium, coca leaves, and other narcotic drugs.

(15) "Official written order" means an order written on a form provided for that purpose by the United States Commissioner of Narcotics, under any laws of the United States making provision therefor, if such order forms are authorized and required by federal law, and if no such order form is provided, then on an official form provided for that purpose by the department of health of the State of Minnesota.

(16) "Dispense" includes distribute, leave with, give away, dispose of, or deliver.

(17) "Registry number" means the number assigned to each person registered under the Federal Narcotic Laws. (Mar. 19, 1937, c. 74, §1.)

10455-5. Certain acts unlawful.—It shall be unlawful for any person to manufacture, possess, have under his control, sell, prescribe, administer, dispense, or compound any narcotic drug, except as authorized in this act. (Mar. 19, 1937, c. 74, §2.)

10455-6. Must obtain license.—No person shall manufacture, compound, mix, cultivate, grow, or by any other process produce or prepare narcotic drugs, and no person as a wholesaler shall supply the same, without having first obtained a license so to do from the said department of health, provided, however, that no such license shall be required of the University of Minnesota, nor any college approved by the University of Minnesota, in the manufacturing, compounding, mixing, cultivating, growing, producing and preparing of narcotic drugs for educational and scientific purposes only. (Mar. 19, 1937, c. 74, §3.)

10455-7. Qualifications for licensee.—No license shall be issued under the foregoing section unless and until the applicant therefor has furnished proof satisfactory to said department of health:

(a) That the applicant is of good moral character or, if the applicant be an association or corporation, that the managing officers are of good moral character.

(b) That the applicant is equipped as to land, buildings, and paraphernalia properly to carry on the business described in his application.

No license shall be granted to any person who has within five years been convicted of any willful violation of any law of the United States, or of any state,

relating to opium, coca leaves, or other narcotic drugs, or to any person who is a narcotic drug addict.

The department of health of the State of Minnesota may suspend or revoke any such license for cause. (Mar. 19, 1937, c. 74, §4.)

10455-8. Who may purchase drugs.

(1) A duly licensed manufacturer or wholesaler may sell and dispense narcotic drugs to any of the following persons, but only on official written orders:

(a) To a manufacturer, wholesaler, or apothecary.

(b) To a physician, dentist, or veterinarian.

(c) To a person in charge of a hospital, but only for use in that hospital.

(d) To a person in charge of a laboratory, but only for use in that laboratory for scientific purposes.

(2) A duly licensed manufacturer or wholesaler may sell narcotic drugs to any of the following persons:

(a) On a special written order accompanied by a certificate of exemption, as required by the Federal Narcotic Laws, to a person in the employ of the United States Government or of any state, territorial, district, county, municipal, or insular government, purchasing, receiving, possessing, or dispensing narcotic drugs by reason of his official duties.

(b) To a master of a ship or a person in charge of any aircraft upon which no physician is regularly employed, for the actual medical needs of persons on board such ship or aircraft, when not in port. Provided: Such narcotic drugs shall be sold to the master of such ship or person in charge of such aircraft only in pursuance of a special order form approved by a commissioned medical officer or acting assistant surgeon of the United States Public Health Service.

(c) To a person in a foreign country if the provisions of the Federal Narcotic Laws are complied with.

(3) An official written order for any narcotic drug shall be signed in duplicate by the person giving said order or by his duly authorized agent. The original shall be presented to the person who sells or dispenses the narcotic drug or drugs named therein. In event of the acceptance of such order by said person, each party to the transaction shall preserve his copy of such order for a period of two years in such a way as to be readily accessible for inspection by any public officer or employee engaged in the enforcement of this act. It shall be deemed a compliance with this sub-section if the parties to the transaction have complied with the Federal Narcotic Laws, respecting the requirements governing the use of order forms.

(4) Possession of or control of narcotic drugs obtained as authorized by this section shall be lawful if in the regular course of business, occupation, profession, employment, or duty of the possessor.

(5) A person in charge of a hospital or of a laboratory, or in the employ of this state or of any other state, or of any political subdivision thereof, and a master or other proper officer of a ship or aircraft, who obtains narcotic drugs under the provisions of this section or otherwise, shall not administer, nor dispense, nor otherwise use such drugs, within this state, except within the scope of his employment or official duty, and then only for scientific or medicinal purposes and subject to the provisions of this act. (Mar. 19, 1937, c. 74, §5.)

10455-9. Apothecaries may sell certain drugs upon prescription.

(1) An apothecary, in good faith, may sell and dispense narcotic drugs to any person upon a written prescription of a physician, dentist, or veterinarian, dated and signed by the person prescribing on the day when issued and bearing the full name and address of the patient for whom, or of the owner of the animal for which, the drug is dispensed, and the full name, address, and registry number under the Federal Narcotic Laws of the person prescribing, if he is required by those laws to be so registered. If the

prescription be for an animal, it shall state the species of animal for which the drug is prescribed. The person filling the prescription shall write the date of filling and his own signature on the face of the prescription. The prescription shall be retained on file by the proprietor of the pharmacy in which it is filled for a period of two years, so as to be readily accessible for inspection by any public officer or employee engaged in the enforcement of this act. The prescription shall not be refilled.

(2) The legal owner of any stock of narcotic drugs in a pharmacy, upon discontinuance of dealing in said drugs, may sell said stock to a manufacturer, wholesaler, or apothecary, but only on an official written order.

(3) An apothecary, only upon an official written order, may sell to a physician, dentist, or veterinarian, in quantities not exceeding one ounce at any one time, aqueous or oleaginous solutions of which the content of narcotic drugs does not exceed a proportion greater than twenty per cent of the complete solution, to be used for medicinal purposes. (Mar. 19, 1937, c. 74, §6.)

10455-10. Physicians and dentists may prescribe.

(1) A physician or a dentist, in good faith and in the course of his professional practice only, may prescribe, administer, and dispense narcotic drugs, or he may cause the same to be administered by a nurse of interne under his direction and supervision.

(2) A veterinarian, in good faith and in the course of his professional practice only, and not for use by a human being, may prescribe, administer and dispense narcotic drugs, and he may cause them to be administered by an assistant or orderly under his direction and supervision. (Mar. 19, 1937, c. 74, §7.)

10455-11. Application of act.—Except as otherwise in this act specifically provided, this act shall not apply to the following cases:

(1) Prescribing, administering, dispensing, or selling at retail of any medicinal preparation that contains in one fluid ounce, or if a solid or semi-solid preparation, in one avoirdupois ounce, (a) not more than two grains of opium, (b) not more than one-quarter of a grain of morphine or of any of its salts, (c) not more than one grain of codeine or of any of its salts, (d) not more than one-eighth of a grain of heroin or of any of its salts, (e) not more of any combination of the drugs named above than a quantity that does not exceed in pharmacologic potency any one of such drugs named in clauses (a), (b), (c) and (d).

(2) Prescribing, administering, dispensing, or selling at retail of liniments, ointments, and other preparations, that are for external use only and that contain narcotic drugs in such combinations as prevent their being readily extracted from such liniments, ointments, or preparations, except that this act shall apply to all liniments, ointments, and other preparations, that contain coca leaves in any quantity or combination.

The exemptions authorized by this section shall be subject to the following conditions:

(a) No person shall prescribe, administer, dispense, or sell under the exemptions of this section, to any one person, or for the use of any one person or animal, any preparation or preparations included within this section, when he knows, or can by reasonable diligence ascertain, that such prescribing, administering, dispensing, or selling will provide the person to whom or for whose use, or the owner of the animal for the use of which, such preparation is prescribed, administered, dispensed, or sold, within any 48 consecutive hours, with more than four grains of opium, or more than one-half grain of morphine, or of any of its salts, or more than two grains of codeine or any of its salts, or more than one-quarter of a grain of heroin or of any of its salts, or will provide

such person or the owner of such animal, within 48 consecutive hours, with more than one preparation exempted by this section from the operation of this act.

(b) The medicinal preparation, or the liniment, ointment, or other preparation for external use only, prescribed, administered, dispensed, or sold, shall contain in addition to the narcotic drug in it, some drug or drugs conferring upon it medicinal qualities other than those possessed by the narcotic drug alone. Such preparation shall be prescribed, administered, dispensed, and sold in good faith as a medicine, and not for the purpose of evading the provisions of this act.

Nothing in this section shall be construed to limit the kind and quantity of any narcotic drug that may be prescribed, administered, dispensed, or sold, to any person or for the use of any person or animal, when it is prescribed, administered, dispensed, or sold in compliance with the general provisions of this act. (Mar. 19, 1937, c. 74, §8.)

10455-12. Physicians and dentists, etc., to keep records.

(1) Every physician, dentist, veterinarian, or other person who is authorized to administer or professionally use narcotic drugs, shall keep a record of such drugs received by him, and a record of all such drugs administered, dispensed, or professionally used by him otherwise than by prescription. It shall, however, be deemed a sufficient compliance with this subsection if any such person using small quantities of solutions or other preparations of such drugs for local application, shall keep a record of the quantity, character, and potency of such solutions or other preparations purchased or made up by him, and of the dates when purchased or made up, without keeping a record of the amount of such solution or other preparation applied by him to individual patients.

Provided: That no record need be kept of narcotic drugs administered, dispensed, or professionally used in the treatment of any one patient, when the amount administered, dispensed, or professionally used for that purpose does not exceed in any forty-eight consecutive hours, (a) four grains of opium, or (b) one-half of a grain of morphine or of any of its salts, or (c) two grains of codeine or of any of its salts, or (d) one-fourth of a grain of heroin or any of its salts, or (e) a quantity of any other narcotic drug or any combination of narcotic drugs that does not exceed in pharmacologic potency any one of the drugs named above in the quantity stated.

(2) Manufacturers and wholesalers shall keep records of all narcotic drugs compounded, mixed, cultivated, grown, or by any other process produced or prepared, and of all narcotic drugs received and disposed of by them, in accordance with the provisions of subsection 5 of this section.

(3) Apothecaries shall keep records of all narcotic drugs received and disposed of by them, in accordance with the provisions of subsection 5 of this section.

(4) Every person who purchases for resale, or who sells narcotic drug preparations exempted by Section 8 of this act, shall keep a record showing the quantities and kinds thereof received and sold, or disposed of otherwise, in accordance with the provisions of subsection 5 of this section.

(5) The form of records shall be prescribed by the department of health of the State of Minnesota. The record of narcotic drugs received shall in every case show the date of receipt, the name and address of the person from whom received, and the kind and quantity of drugs received; the kind and quantity of narcotic drugs produced or removed from process of manufacture, and the date of such production or removal from process of manufacture; and the record shall in every case show the proportion of morphine, cocaine, or ecgonine contained in or producible from crude opium or coca leaves received or produced. The record of all narcotic drugs sold, administered,

dispensed, or otherwise disposed of, shall show the date of selling, administering, or dispensing, the name and address of the person to whom, or for whose use, or the owner and species of animal for which the drugs were sold, administered or dispensed, and the kind and quantity of drugs. Every such record shall be kept for a period of two years from the date of the transaction recorded. The keeping of a record required by or under the Federal Narcotic Laws, containing substantially the same information as is specified above, shall constitute compliance with this section, except that every such record shall contain a detailed list of narcotic drugs lost, destroyed, or stolen, if any, the kind and quantity of such drugs, and the date of the discovery of such loss, destruction, or theft. (Mar. 19, 1937, c. 74, §9.)

10455-13. Manufacturers to label all packages.

(1) Whenever a manufacturer sells or dispenses a narcotic drug, and whenever a wholesaler sells or dispenses a narcotic drug in a package prepared by him, he shall securely affix to each package in which that drug is contained a label showing in legible English the name and address of the vendor and the quantity, kind, and form of narcotic drug contained therein. No person, except an apothecary for the purpose of filling a prescription under this act, shall alter, deface, or remove any label so affixed.

(2) Whenever an apothecary sells or dispenses any narcotic drug on a prescription issued by a physician, dentist, or veterinarian, he shall affix to the container in which such drug is sold or dispensed, a label showing his own name, address and registry number, or the name, address, and registry number of the apothecary for whom he is lawfully acting; the name and address of the patient, or, if the patient is an animal, the name and address of the owner of the animal and the species of the animal; the name, address, and registry number of the physician, dentist, or veterinarian, by whom the prescription was written; and such directions as may be stated on the prescription. No person shall alter, deface, or remove any label so affixed. (Mar. 19, 1937, c. 74, §10.)

10455-14. Must be kept in original container.—A person to whom or for whose use any narcotic drug has been prescribed, sold, or dispensed, by a physician, dentist, apothecary, or other person authorized under the provisions of Section 5 of this act, and the owner of any animal for which any such drug has been prescribed, sold or dispensed, by a veterinarian, may lawfully possess it only in the container in which it was delivered to him by the person selling or dispensing the same. (Mar. 19, 1937, c. 74, §11.)

10455-15. Enforcement of act.—It shall be the duty of all peace, police officers, sheriffs and county attorneys to enforce the provisions of this act.

On complaint before any court having jurisdiction charging any person with manufacturing, selling or keeping or having in his possession any narcotic drugs in violation of the provisions of this act, and particularly describing the premises or place, the court in addition to issuing a warrant for the arrest of such person shall upon request issue a search warrant commanding any officer to search such premises or place and to seize and hold, subject to the order of the court, all narcotic drugs found therein, any of which is apparently kept, had or possessed, or manufactured or sold in violation of any of the provisions or part of the constitution or law of this state or of the United States relating to narcotic drugs and to make an inventory of the same and to serve a copy thereof forthwith on the defendant or person in charge of the premises, provided, however, that the failure to make, file or serve any such inventory shall not invalidate or in any way affect the legality of any search or seizure or proceeding made or had under the provisions of this act. (Mar. 19, 1937, c. 74, §12.)

10455-16. Not to apply to common carriers or warehousemen.—The provisions of this act restricting

the possession and having control of narcotic drugs shall not apply to common carriers or to warehousemen, while engaged in lawfully transporting or storing such drugs, or to any employee of the same acting within the scope of his employment; or to public officers or their employees in the performance of their official duties requiring possession or control of narcotic drugs; or to temporary incidental possession by employees or agents of persons lawfully entitled to possession, or by persons whose possession is for the purpose of aiding public officers in performing their official duties. (Mar. 19, 1937, c. 74, §13.)

10455-17. Places selling or allowing the use of drugs a common nuisance.—Any store, shop, warehouse, dwelling house, building, vehicle, boat, aircraft, or any place whatever, which is resorted to by narcotic drug addicts for the purpose of using narcotic drugs or which is used for the illegal keeping or selling of the same, shall be deemed a common nuisance. No person shall keep or maintain such a common nuisance. (Mar. 19, 1937, c. 74, §14.)

10455-18. Drugs shall be forfeited in certain cases.—All narcotic drugs, the lawful possession of which is not established or the title to which cannot be ascertained, which have come into the custody of a peace officer, shall be forfeited and disposed of as follows:

(a) Except as in this section otherwise provided, the court or magistrate having jurisdiction shall order such narcotic drugs forfeited and destroyed. A record of the place where said drugs were seized, of the kinds and quantities of drugs so destroyed, and of the time, place, and manner of destruction, shall be kept and a return under oath, reporting said destruction, shall be made to the court or magistrate and to the United States commissioner of narcotics, by the officer who destroys them.

(b) Upon written application by the state department of health, the court or magistrate by whom the forfeiture of narcotic drugs has been decreed may order the delivery of any of them, except heroin and its salts and derivatives, to said state department of health, for distribution or destruction, as hereinafter provided.

(c) Upon application by any hospital within this state, not operated for private gain, the state department of health may in its discretion deliver any narcotic drugs that have come into its custody by authority of this section to the applicant for medicinal use. The state department of health may from time to time deliver excess stocks of such narcotic drugs to the United States commissioner of narcotics, or may destroy the same.

(d) The state department of health shall keep a full and complete record of all drugs received and of all drugs disposed of, showing the exact kinds, quantities, and forms of such drugs; the persons from whom received and to whom delivered; by whose authority received, delivered, and destroyed; and the dates of the receipt, disposal, or destruction, which record shall be open to inspection by all federal or state officers charged with the enforcement of federal and state narcotic laws. (Mar. 19, 1937, c. 74, §15.)

10455-19. Board may suspend or revoke licenses in certain cases.—On the conviction of any person of the violation of any provision of this act, a copy of the judgment and sentence, and of the opinion of the court or magistrate, if any opinion be filed, shall be sent by the clerk of the court, or by the magistrate, to the board or officer, if any, by whom the convicted defendant has been licensed or registered to practice his profession or to carry on his business. On the conviction of any such person, such board or officer may, in its discretion, suspend or revoke the license or registration of the convicted defendant to practice his profession or to carry on his business. On the application of any person whose license or registration has been suspended or revoked, and upon

proper showing and for good cause said board or officer may in its discretion, reinstate such license or registration. (Mar. 19, 1937, c. 74, §16.)

10455-20. Records, etc., to be open to inspection.—Prescriptions, orders, and records, required by this act, and stocks of narcotic drugs, shall be open for inspection only to federal, state, county, and municipal officers, whose duty it is to enforce the laws of this state or of the United States relating to narcotic drugs. No officer having knowledge by virtue of his office of any such prescription, order, or record shall divulge such knowledge, except in connection with a prosecution or proceeding in court or before a licensing or registration board or officer, to which prosecution or proceeding the person to whom such prescriptions, orders, or records relate is a party. (Mar. 19, 1937, c. 74, §17.)

10455-21. Restrictions on obtaining drugs.

(1) No person shall obtain or attempt to obtain a narcotic drug, or procure or attempt to procure the administration of a narcotic drug, (a) by fraud, deceit, misrepresentation, or subterfuge; or (b) by the forgery or alteration of a prescription or of any written order; or (c) by the concealment of a material fact; or (d) by the use of a false name or the giving of a false address.

(2) Information communicated to a physician in an effort unlawfully to procure a narcotic drug, or unlawfully to procure the administration of any such drug, shall not be deemed a privileged communication.

(3) No person shall wilfully make a false statement in any prescription, order, report, or record, required by this act.

(4) No person shall, for the purpose of obtaining a narcotic drug, falsely assume the title of, or represent himself to be a manufacturer, wholesaler, apothecary, physician, dentist, veterinarian, or other authorized person.

(5) No person shall make or utter any false or forged prescription or false or forged written order.

(6) No person shall affix any false or forged label to a package or receptacle containing narcotic drugs.

(7) The provisions of this section shall apply to all transactions relating to narcotic drugs under the provisions of Section 8 of this act, in the same way as they apply to transactions under all other sections. (Mar. 19, 1937, c. 74, §18.)

10455-22. Burden of proof.—In any complaint, information, or indictment and in any action or proceeding brought for the enforcement of any provision of this act, it shall not be necessary to negative any exception, excuse, proviso, or exemption, contained in this act, and the burden or proof of any such exception, excuse, proviso, or exemption, shall be upon the defendant. (Mar. 19, 1937, c. 74, §19.)

10455-23. State department of health to cooperate with police officers.—The state department of health shall cooperate with all peace officers within this state, and all county attorneys to enforce the provisions of this act and with all agencies charged with the enforcement of the laws of the United States, of this state and of all other states relating to narcotic drugs. (Mar. 19, 1937, c. 74, §20.)

10455-24. Penalties for violation.—Any person violating any provisions of this act shall, upon conviction, be punished by a fine not exceeding \$1000.00 or by imprisonment in a state penal institution for not exceeding five years, or by both such fine and imprisonment. (Mar. 19, 1937, c. 74, §21.)

10455-25. Who may be prosecuted.—No person shall be prosecuted for a violation of any provisions of this act if such person has been acquitted or convicted under the federal narcotic laws of the same act or omission which, it is alleged, constitutes a violation of this act. (Mar. 19, 1937, c. 74, §22.)

10455-26. Provisions severable.—If any provision of this act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this and the provisions of this act are declared to be severable, and nothing in this act may be construed into placing any citizen of this State in double jeopardy, either State or Federal, for the same offense. (Mar. 19, 1937, c. 74, §23.)

10455-27. Interpretation of act.—This act shall be so interpreted and construed as to effectuate its general purpose, to make uniform the laws of those states which enact it. (Mar. 19, 1937, c. 74, §24.)

10455-28. Laws repealed.—Mason's Minnesota Statutes of 1927, Sections 10453 to 10455-3 and all acts amendatory thereof and supplemental thereto, except Chapter 321, Session Laws of 1935, together with all other acts or parts of acts which are inconsistent with the provisions of this act, are hereby repealed. (Mar. 19, 1937, c. 74, §25.)

10455-29. Uniform narcotic drug act.—This act may be cited as the Uniform Narcotic Drug Act. (Mar. 19, 1937, c. 74, §26.)

10463. Trusts and combinations in restraint of trade prohibited.

A patent pooling agreement held not an unlawful attempt to restrain trade. 181M606, 233NW870. See Dun. Dig. 8437.

Contract which restrained trade and limited competition in a reasonable way only, was not obnoxious to the statute. Pittsburgh Plate Glass Co. v. P., 182M368, 234NW453. See Dun. Dig. 8436(1).

Contracts should be so construed as to uphold rather than defeat them. Pittsburgh Plate Glass Co. v. P., 182M368, 234NW453. See Dun. Dig. 8434(92).

Where all of newspapers in county agreed that only one would bid for county publication, and this fact was made known to county board, and a bid for highest legal rate was accepted on condition that publication be made in form of supplement and be distributed by all papers in county, bidder was entitled to recover whole contract price as against claim of county that agreement was fraudulent and illegal. Brainerd Dispatch Newspaper Co. v. C., 196M194, 264NW779. See Dun. Dig. 8434.

A creamery corporation may not enter into an agreement with cooperative marketing association to fix the price of milk, but such a contract may be entered into by one cooperative marketing association with other cooperative associations. Op. Atty. Gen. (93a-14), Sept. 15, 1934.

Although all newspapers of county have an understanding that they will make no publication for county only at legal rates and have divided up printing and submitted bids according to such understanding, mandamus will not lie to compel newspaper designated by county auditor to publish delinquent tax list at legal rate. Op. Atty. Gen. (314b-22), Feb. 9, 1937.

10464 to 10467. [Repealed.]

Repealed Mar. 30, 1937, c. 116, Pt. 1, §3, ante, §3976-39.

Annotations under §10464.

Payment by buyer of cream of daily cash price as posted during a month period and at the end of this period an additional two cents per pound to farmers bringing cream to station would violate §3928-8 but not this section. Op. Atty. Gen. (135b-6(f)), Oct. 12, 1936.

A symposium on the law of unfair competition. 21Iowa LawRev175.

10482. Unfair discrimination in the purchase and sale of milk, cream.

Payment of additional price for butterfat when certain amount is sold does not violate this section if not limited to certain localities. Op. Atty. Gen. (135b-6(c)), Aug. 29, 1936.

10493. Gift enterprises defined.

It is not a gift enterprise to enclose a penny sucker within the paraffin wrapper of loaves of bread where the same kind and value is included with each loaf. Op. Atty. Gen., Jan. 9, 1932.

10497. Gift enterprise defined.

Contest held not the sort of gift enterprise defined in this section. 173M337, 217NW345.

10503. Indians located on reservations.

Tribal Indians are immune from arrest or prosecution under state laws for acts committed upon their reservations or allotments. Op. Atty. Gen., Dec. 2, 1931.

Though it may be unlawful for Indian to take wild animals on allotment, a tribal Indian is not personally

amenable to state criminal laws. Op. Atty. Gen., Apr. 11, 1933.

Muskrats' skins taken by tribal Indian on allotment may be seized as contraband where not intended to be used on reservation by Indian or his tribe. Id.

10520. Fraudulently presenting claims, etc.

If one presents a claim against a town for bounties on gophers and crows which he did not kill within the town, he violates this section. Op. Atty. Gen., Mar. 18, 1931.

10522-1. Conservation of certain wild flowers.—

No person within the State of Minnesota shall buy, sell, offer or expose for sale, the state flower (Cypripedium reginae) or any species of lady slipper (Cypripedidae) or any member of the orchid family trillium of any species, lotus (Nelumbolutea), gentian (Gentiana), arbutus (Epigaea repens), or any species of lilies (Lilium), or any thereof, dug, cut, plucked, pulled or gather [Sic] in any manner whatsoever from any public land, or from the land of any private owner without the written consent of such owner or other occupant of such land, and then only upon written permission of the Commissioner of Agriculture, Dairy and Food, and for scientific and herbarium purposes. Except that any persons may upon their own lands cultivate for sale and sell said flowers by registering the purpose to do the same with the Commissioner. ('25, c. 409, §1; Apr. 1, 1935, c. 100, §1.)

Transplanting moccasin flowers from marshes to home flower garden is not violation of this section, but might afford cause of action for damages. Op. Atty. Gen., June 12, 1930.

There is no other legislation pertaining to picking of wild flowers. Op. Atty. Gen., May 9, 1933.

10522-2. Same—Prosecution.—

The Commissioner of Agriculture, Dairy and Food is hereby authorized and it shall be his duty to administer this law, and when, by investigation, complaint or otherwise, it shall be made to appear that any person has violated any of the provisions of this act, it shall be his duty to assemble the facts and transmit the same to the Attorney General, or in the discretion of the Commissioner, he may act through the county Attorney of the county in which said violation was committed, whose duty it shall be to forthwith institute proceedings and prosecute the same against the person or persons charged with such violation. It is hereby made the duty of the County Attorney to prosecute any and all cases submitted to him by the Commissioner or the Attorney General. (Act Apr. 1, 1935, c. 100, §1.)

10522-3. Same—Punishment.—

Any person who violates any of the provisions of this act shall be guilty of a misdemeanor, and upon conviction shall be fined not less than \$10.00 and the costs of such prosecution, nor more than \$50.00 and the costs of such prosecution, or in default of payment thereof shall be imprisoned in the county jail for not less than 10 nor more than 30 days for each and every such conviction. All fines and moneys thus collected shall be deposited in the State Treasury. ('25, c. 409, §2; Apr. 1, 1935, c. 100, §1.)

10522-4. "Person" defined.—

The word "person" when used in this act shall be construed to impart both the singular and the plural as the case demands and shall include corporations, co-partnerships, companies, societies, firms and associations. (Act Apr. 1, 1935, c. 100, §1.)

10530. Railway cars obstructing roads and streets.

Civil liability for placing car so as to obstruct view of main track. 174M404, 219NW554.

10534. Application of term "vagrancy" and extension of the same so as to include various persons.

Circulation of a "chain letter" or any variation of that scheme is not a public offense. State v. Hellen, 273NW 363. See Dun. Dig. 9997.

Conviction of vagrancy to cause one to become a habitual offender must be for violations of state laws and not municipal ordinances. Op. Atty. Gen. (605b-44), Dec. 19, 1936.

(5).

Evidence showing solicitation of two men for purposes of sexual intercourse for hire is sufficient to sustain a

conviction of prostitution. State v. Burke, 187M336, 245 NW153. See Dun. Dig. 7860c.

10536-1. Employers not to accept consideration for securing employment.—Any employer, or any manager, superintendent, foreman or other representative of any employer, who directly or indirectly demands or accepts from any employe any part of such employe's wages or other consideration, or any gratuity, in consideration of giving to or securing or assisting in securing for any employe any employment with such employer, shall be guilty of a misdemeanor. (Act Mar. 2, 1933, c. 47.)

10536-2. Circuses prohibited, when.—It shall be unlawful for any person or persons, firm or corporation to conduct any circus in any city or village, or within a radius of six miles of any city or village, within a period of eighteen days immediately preceding the dates of the annual Minnesota State Fair, or during the time of holding such fair. Provided, however, any such circus may be exhibited during this period of time, if and when said circus is engaged or contracted by an accredited Agricultural Society to form a part of the entertainment program of the annual fair of said accredited Agricultural Society. Provided that nothing herewith contained shall exempt said circus from obtaining proper license or permit as provided by law. (Act Apr. 21, 1933, c. 357, §1.)

10536-3. Violation a gross misdemeanor.—Any person or persons, firm or corporation violating the provisions of this Act shall be guilty of a gross misdemeanor and upon conviction shall be punished by a fine of not more than \$1,000.00 or by imprisonment in the county jail for a period not to exceed one year, or by both such fine and imprisonment. (Act Apr. 21, 1933, c. 357, §2.)

~~10536-4. All Acts and parts of Acts inconsistent herewith are repealed.—~~ (Act Apr. 21, 1933, c. 357, §3.)

10536-5. Visitors at tourist camps, etc., to register.—Every person operating within this State a tourist camp, cabin camp or other resort furnishing sleeping or over-night stopping accommodations for transient guests, shall provide and keep thereat a suitable guest register for the registration of all guests provided with sleeping accommodations or other over-night stopping accommodations at such camp or resort; and each and every such guest shall be registered therein. Upon the arrival of every such guest, the operator of such camp or resort shall require him to enter in such register, or enter for him therein, in separate columns provided in such register, the name and home address of the guest and each and every person, if any, with him as a member of his party; and if traveling by motor vehicle, the make of such vehicle, registration number, and other identifying letters or characters appearing on the official number plate carried thereon, including the name of the State issuing such official plate. (Apr. 12, 1937, c. 186, §1.)

10536-6. Shall register upon arrival.—Every person upon arriving at any touring camp, cabin camp or other resort described in this act and applying for guest accommodations therein of the character described in the preceding section shall furnish to the operator or other attendant in charge at such camp or resort the registration information necessary to complete his registration in accordance with the requirements of Section 1 hereof, and shall not be provided with accommodations unless and until such information shall be so furnished. (Apr. 12, 1937, c. 186, §2.)

10536-7. Registration records to be open for inspection of officers.—The registration records herein provided for shall be open to the inspection of all law enforcement officers of the State and its subdivisions. (Apr. 12, 1937, c. 186, §2.)

10536-8. Violation a misdemeanor.—Every person who shall violate any of the provisions of this act shall be guilty of a misdemeanor. (Apr. 12, 1937, c. 186, §4.)

Sec. 5 of Act Apr. 12, 1937, cited, provides that the Act shall take effect from its passage:

10536-11. County board to license shows, etc.—The board of county commissioners of the several counties of this state are hereby authorized to license and regulate itinerant shows, carnivals, circuses, endurance contests and exhibitions of any nature whatsoever except those prohibited by Laws 1935, Chapter 228 [§§10267-1, 10267-2]. Provided, however, that this act shall not apply to shows, carnivals, circuses, contests and exhibitions held within the incorporated limits of a village, borough or city. (Apr. 21, 1937, c. 331, §1.)

10536-12. County board to fix fees.—The fee for such license shall be fixed by the board of county commissioners in such amount as the board shall deem advisable. (Apr. 21, 1937, c. 331, §2.)

10536-13. May require bond.—The board of county commissioners may require, as a condition to the

granting of such license, the posting of a penal bond in such amount as it shall determine. (Apr. 21, 1937, c. 331, §3.)

10536-14. Applications—forms.—Application for such license shall be made on such form as the board of county commissioners shall determine. Upon the approval of such application and the payment of the license fee and the posting of such bond as may be required the county auditor shall issue the license. (Apr. 21, 1937, c. 331, §4.)

10536-15. Taking part in unlicensed show, etc., to be misdemeanor.—Any person, partnership, association or corporation who conducts or takes part in any itinerant show, carnival, circus, endurance contest or exhibition not licensed as herein provided, shall be guilty of a misdemeanor. (Apr. 21, 1937, c. 331, §5.)

10536-16. Exceptions.—The provisions of this act shall not apply to any itinerant show, carnival, circus, endurance contest or exhibition held in connection with any agricultural association fair. (Apr. 21, 1937, c. 331, §6.)

CHAPTER 104 Criminal Procedure

SEARCH WARRANTS

10537. When issued.

There was no error in condemning and destroying slot machines, though there was no search warrant. 176M 346, 223NW455.

Search warrants may not be issued in intoxicating liquor cases. Op. Atty. Gen. (218f-3), Apr. 18, 1934.

If an intoxicating liquor inspector is rightfully within a place where non-intoxicating liquors are sold, he may seize intoxicating liquor for purpose of using same for evidence in a prosecution, but he may not search premises for intoxicating liquors, and in such case a search warrant is not necessary. Op. Atty. Gen. (218f), Feb. 5, 1935.

State law does not provide for search and seizure of intoxicating liquors, and it would be necessary for village ordinance to provide therefor. Op. Atty. Gen. (218f-3), Dec. 27, 1935.

10540. Property seized—How kept and disposed of.—Whenever, any officer, in the execution of a search warrant, shall find any stolen property, or seize any other things for which search is allowed by law, the same shall be safely kept by direction of the court or magistrate, so long as may be necessary for the purpose of being produced as evidence on any trial, and then the stolen property shall be returned to the owner thereof, and the other things seized destroyed under the direction of the court or magistrate. Any money found in gambling devices when seized shall be paid into the county treasury, or, if such gambling devices are seized by a police officer of a municipality, such money shall be paid into the treasury of such municipality. (R. L. '05, §5199; G. S. '13, §9036; Apr. 13, 1929, c. 177.)

Court erred in ordering that destroyed slot machines should be sold and proceeds of sale and money found in slot machines turned into county treasury. 176M346, 223NW455.

Fact that liquor was unlawfully taken from possession of defendant does not prevent its use in evidence against him. State v. Kaasa, 198M181, 269NW365. See Dun. Dig. 24681, 3239.

Gambling devices suitable only for use as such may be destroyed under Stillwater ordinance without first prosecuting the keepers thereof. Op. Atty. Gen., June 19, 1931.

Money found in slot machines may not be confiscated, under Stillwater ordinance, and paid into city treasury. Op. Atty. Gen., June 19, 1931.

This section contains no provision for procedure which would be applicable to the forfeiture of money found in gambling devices. Op. Atty. Gen., June 19, 1931.

Where sheriff seized slot machines containing money and proprietor died before trial after pleading not guilty, slot machines could be destroyed upon summary order of court and probably money could be paid into county treasury, but safest course would be to bring

proceeding in rem and make personal representative of proprietor a party. Op. Atty. Gen., Sept. 15, 1932.

EXTRADITION

10542. Warrant of extradition, service, etc.

½. In general.

Extradition is governed by the Constitution and laws of the United States, and chapter 19, Laws 1929, ante, §40, cannot interfere or delay its operation. State v. Moeller, 182M369, 234NW649. See Dun. Dig. 8835, 1721.

A prisoner who has been removed from demanding state by federal authorities is nevertheless a fugitive from justice in an asylum state and must be delivered to demanding state upon proper extradition process. State v. Wall, 187M246, 244NW811. See Dun. Dig. 3705.

County attorney is not required to appear for and on behalf of the sheriff in habeas corpus proceedings brought to discharge a person held by the sheriff for the purpose of being extradited to another state. Op. Atty. Gen., May 6, 1931.

Sheriff may charge officials of another state a fee of \$4.00 per day in transporting a prisoner demanded by another state to the boundary line of this state. Op. Atty. Gen., May 6, 1931.

3. Who is a fugitive from justice.

Father and husband, guilty of abandoning wife and child, when he stopped payments to them for their support, could not be extradited where he was not in the state when the crime was committed, though by failing to make payments he committed a crime within the state. Op. Atty. Gen. (840a-1), Apr. 13, 1934.

Where husband and father deserted wife and child in Chicago and wife and children came to Minnesota, the husband and father was a fugitive from justice if he made trip to Minnesota while refusing to furnish wife and children a home and support. Op. Atty. Gen. (339a), July 13, 1934.

A resident of another state who sends wife and children into certain county in state with intent to follow but then neglects to support them commits crime of abandonment in such county in state, but cannot be extradited where he has never come into the state, as he is not a fugitive from justice. Op. Atty. Gen. (494b-15), Nov. 1, 1934.

Minor charged with being delinquent cannot be extradited from another state. Op. Atty. Gen. (494b-15), Sept. 9, 1936.

4. Proof that party demanded is a fugitive.

Governor's issuance of extradition warrant raises presumption which controls until rebutted that named person is a "fugitive from justice" and hence subject to extradition. State v. Moeller, 191M193, 253NW668. See Dun. Dig. 3707.

5. The crime charged.

Generally speaking extradition on misdemeanor is not favorably considered, but law permits extradition in misdemeanor cases within the discretion of a governor. Op. Atty. Gen. (605a-6), Nov. 1, 1934.

Abandonment under §10135 is an extraditable offense. Op. Atty. Gen. (193b-1), Mar. 26, 1936.

6. Requisition papers.

Whether there was a compliance with Georgia statutes as regarded prerequisites for issuance of requisition