

(11) To plant, set out, maintain, protect and care for shade trees in any of the public streets or highways of their respective districts, and to specify and regulate the kinds of trees that shall be planted or set out in such streets or highways, the size and location of such trees and the methods to be used in the planting and cultivation thereof, and to pass such ordinances as may be requisite, necessary or needful for the protection and control of such trees.

(12) To plat and lay out such portions of park property as is not needed for the accommodation of the general public and to lease, let and demise such lots or portions as are now or may hereafter be laid out for residential or concession purposes, and to provide by ordinances the use that shall be made of said leaseholds, the character of structures that may be reared or placed thereon and to generally regulate the use and enjoyment thereof by the lessees or their successors.

Approved March 9, 1921.

PROHIBITION

CHAPTER 97.

(H. B. No. 5—Miller and Halcrow.)

PROHIBITION.

AN ACT to Prohibit intoxicating Liquors and Beverages and Property intended for the Manufacture of Same; Prohibiting the Transportation of Liquor and Providing for the Forfeiture of Property Used for the Transportation of Same; to Provide for its Enforcement and the Repeal of Laws in Conflict Therewith.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. INTOXICATING LIQUOR DEFINED.] The following liquors are hereby declared to be intoxicating and their intoxicating quality shall, by the courts, be presumed, viz: alcohol, brandy, whisky, rum, gin, beer, ale, porter, and wine, and in additions thereto any spirituous, vinous, malt, or fermented liquor, liquids, and compounds, whether medicated, proprietary, patented, of not, and by whatever name called, containing one half of 1 percentum or more of alcohol by volume which are fit for use for beverage purposes; provided, that the foregoing definition shall not extend to dealcoholized wine nor to any beverage or liquid produced by the process by which beer, ale, porter or wine is produced, if it contains less than one-half of 1 percentum of alcohol by volume, and is made as prescribed by and under the direction of Federal Statute, and is otherwise denominated than as beer, ale, or porter, and is pasturized and contained and sold in, or from, hermetically sealed and labeled bottles.

(2) The word "person" shall mean and include natural persons, associations, copartnerships, and corporations, and their clerks, agents and abettors.

(3) The phrase "Federal Statute" shall mean the laws, regulations and requirements of the United States now or hereafter in force in North Dakota.

§ 2. PROHIBITING INTOXICATING BEVERAGES.] No person shall within this state manufacture, sell, barter, transport, import, deliver, export or furnish any intoxicating liquor or possess the same except as permitted by Federal Statute. All the provisions of this Act shall be liberally construed to the end that the use of intoxicating liquor as a beverage may be prevented. Provided, that pure grain or ethyl alcohol for non-beverage purposes; wine for sacramental purposes; denatured alcohol or denatured rum; medical preparations that are unfit for beverage purposes; patented, patent and proprietary medicines that are unfit for beverage purposes; toilet, medical and antiseptic preparations and solutions that are unfit for beverage purposes; flavoring extracts and sirups that are unfit for use as a beverage, or for intoxicating beverage purposes; or vinegar or sweet cider may be manufactured, purchased, sold, bartered, transported, imported, exported, delivered, furnished and possessed when permitted by Federal Statute.

§ 3. PROHIBIT UNLAWFUL ADVERTISEMENTS, ETC.] It shall be unlawful to advertise, manufacture, sell or possess any utensil, contrivance, machine, preparation, compound, tablet, substance, formula direction, or recipe, advertised, designed, or intended for use in the unlawful manufacture of intoxicating liquor.

§ 4. SOLICITING AND RECEIVING PROHIBITED.] No person shall solicit or receive, nor knowingly permit his employe to solicit or receive for him from any person any order for liquor or property designed, or intended for use in the unlawful manufacture of intoxicating liquor, or give any information of how such liquor or property may be obtained in violation of this Act.

§ 5. COMMON NUISANCE. TO BE ABATED. LIQUORS AND PROPERTY DESTROYED. PRESUMPTIONS. PROCESS. PROCEDURE.] Any room, house, building, boat, vehicle, aircraft, automobile, railway car, conveyance, structure, or place where intoxicating liquors, or property designed, or intended for use in the manufacture of such liquors is manufactured, sold, bartered, furnished, kept, possessed, or transported in violation of any of the provisions of this Act, or where persons are permitted to resort for the purpose of drinking intoxicating liquor, is hereby declared to be a common nuisance; and if the existence of such a nuisance is established, either in a criminal or equitable action, upon the judgment of a court or judge having jurisdiction, finding such room, house, building, boat, vehicle, aircraft, automobile, railway car, conveyance, structure, or place to be a nuisance, the sheriff, his deputy, or under sheriff, or any constable of the proper county or marshal of any city

where the same is located, shall be directed to shut up and abate such room, house, building, boat, vehicle, aircraft, automobile, railway car, conveyance, structure, or place by taking possession thereof, if he has not already done so under the provisions of this chapter and by taking possession of all such intoxicating liquors and property designed or intended for use in the unlawful manufacture of liquors found therein, together with all signs, screens, bars, bottles, glasses, and other property used in keeping and maintaining such nuisance and such personal property so taken possession of shall, after judgment, be forthwith publicly destroyed by such officer, and the owner or keeper thereof or any person who, in any manner, by using such room, house, building, boat, vehicle, aircraft, automobile, railway car, conveyance, structure, or place for the illegal purposes forbidden herein, or otherwise, aids, abets or assists in any violation of this Section or Act, shall, upon such conviction, be adjudged guilty of maintaining a common nuisance, and shall for the first offense be punished by a fine of not less than \$200, nor more than \$1,000, and by imprisonment in the county jail not less than ninety days nor more than one year, and for the second and every successive offense be punished by imprisonment in the penitentiary not exceeding two years and not less than one year; and said officer abating such nuisance shall securely close said room, house, building, boat, railway car, structure, or place and keep securely in his possession such vehicle, aircraft, automobile, or conveyance where such nuisance was located, as against the use or occupation of the same for saloon purposes, and keep the same securely closed and in his custody for the period of one year (unless sooner released as hereinafter provided), and any person breaking open said room, house, building, boat, railway car, structure, or place, or using the premises, or said vehicle, aircraft, automobile, or conveyance so ordered to be closed, or taken possession of shall be punished for contempt, as hereinafter provided, in case of violation of injunctions; provided, however, that when lease hold premises or property so taken possession of are closed under a temporary injunctive order or have been adjudged to be a nuisance, the owner thereof shall have the right to terminate the lease by giving three days' notice thereof, in writing to the tenant, and when this is done, if the said owner shall prove to the court that he was without fault, and neither knowingly, nor without knowledge negligently permitted the keeping or maintaining of the nuisance complained of, the premises or property shall be turned over to the owner upon the order of the court or judge as hereinafter set forth. But the release of the premises and property shall be upon the condition that the nuisance shall not be continued, and the return of the property shall not release any lien upon said property occasioned by any prosecution of the tenant. If the owner appears and pays all costs of the proceedings and files a bond with sureties to be approved by the clerk in the full value of the property to be ascertained by the court or judge, conditioned that he will immediately abate said nuisance and prevent the same from being established or kept therein

within the period of one year thereafter the court, or in vacation time the judge may, if satisfied of his good faith, order the premises taken and closed under the order of abatement, to be delivered to said owner; and if the proceeding is an action either at law or in equity and bond is given and costs therein paid, the action shall be dismissed at the end of one year from the date of the service of the temporary injunctinal order, if in an equity case, or the closing of the premises and taking the property, if in a criminal case; in the meantime and in either form of action the premises and property where such nuisance is kept and maintained, shall be regarded as being under a restraining order of the court, a violation of which will subject the violator to punishment for contempt as hereinafter provided; provided, however, that the release of the property under the provisions of this section shall not release it from any judgment, lien, or penalty, or liability to which it may be subject under any statute or law. Provided, further, that when an injunction, either temporary or permanent, has been granted, under the provisions of this chapter, the same shall be binding personally on the defendant or defendants, throughout the entire state, and for the violation of such injunction in any place in the State of North Dakota, the offending party shall be punished as for contempt according to the rules in this chapter prescribed.

§ 6. The attorney general, his assistant, state's attorney, or any citizen of the county where such nuisance exists, or is kept, or is maintained, may maintain an action in the name of the state to abate and perpetually enjoin the same. The injunction shall be granted at the commencement of the action in the usual manner of granting injunctions, except that the affidavit or complaint, or both, may be made by the state's attorney, attorney general or his assistant upon information and belief; and no bond shall be required; and if an affidavit shall be presented to the court or judge, stating or showing that intoxicating liquor, or property designed for use in the manufacture of intoxicating liquor, particularly describing the same, is manufactured, sold, bartered, furnished, kept, possessed, or transported on the premises, or at any room, house, building, boat, vehicle, aircraft, automobile, railway car, conveyance, structure or place, particularly describing the same, where said nuisance is located, contrary to law the court or judge must at the time of granting the injunction issue his warrant commanding the officer serving such writ of injunction, at the time of such service to search diligently the premises and conveyances and carefully invoice all the articles found therein, used in or about the carrying on of the unlawful business, for which search and invoicing said officer shall receive the sum of \$10 in addition to the fees now allowed by law for serving an injunction. If such officer upon such search shall find upon such premises any intoxicating liquor, or property designed, or intended for use in the manufacture of such liquor he shall take the same into his custody and securely hold the same to abide the final judgment in the action (the expenses for such holding to be taxed

as part of the costs in the action); and such officer shall also take and hold possession of all personal property found on such premises, and shall take and hold possession of such premises and conveyances and keep the same closed and in his custody until such final judgment. The findings of such intoxicating liquor or property on such premises or in such conveyances shall be prima facie evidence of the existence of the nuisance complained of. Any person violating the terms of any injunction granted in such proceedings shall be punished for contempt, for the first offense by a fine of not less than \$200 nor more than \$1,000, and by imprisonment in the county jail not less than ninety days nor more than one year, and for the second and every successive offense of contempt by imprisonment in the penitentiary not exceeding two years and not less than one in the discretion of the court or judge thereof. In case judgment is rendered in favor of the plaintiff in any action brought under the provisions of this section, the court or judge rendering the same shall also render judgment for a reasonable attorney's fee in such action in favor of the plaintiff and against the defendants therein; which attorney's fee shall be taxed and collected as other costs therein, and when collected paid to the attorney or attorneys of the plaintiff therein; provided, if such attorney is the state's attorney, such attorney's fee shall be paid into the county treasury as in Section 10110 provided. In contempt proceedings arising out of the violation of any injunction granted under the provisions of this chapter, the court, or in vacation the judge thereof, shall have the power to try summarily and punish the party or parties guilty as required by law. Processes shall run in the name of the State of North Dakota. The affidavits upon which the attachment for contempt issues, shall make a prima facie case for the state. The accused may plead in the same manner as to an information, or indictment, insofar as the same is applicable. Evidence may be oral or in the form of affidavits, or both; the defendant may be required to make answer to interrogatories, either written or oral as in the discretion of the court or judge may seem proper; the defendant shall not necessarily be discharged upon his denial of the facts stated in the moving papers; the clerk of court shall upon the application of either party issue subpoenas for witnesses, and except as above set forth, the practice in such contempt proceedings shall conform as nearly as may be to that adopted by the ninetieth rule of the supreme court of the United States for proceedings in equity in the circuit courts.

§ 7. FINES AND COSTS CONSTITUTE LIENS. PROVISOR.] All fines and costs assessed against any person or persons for any violation of this chapter shall be a lien upon the real estate of such person or persons until paid; and in case any person or persons shall let or lease any building, premises, or conveyance or shall permit the same to be used and occupied for the manufacture, storage, transportation, or sale of intoxicating liquor, or property designed, or intended for use in the manufacture of such liquor contrary to the provisions of this Act, the premises or con-

veyance so leased and occupied shall be subject to a lien for and may be sold to pay all fines and costs assessed against any such occupant for any violation of this chapter; and such lien may be enforced by civil action in any court having jurisdiction; provided, that the persons against whom such fines and costs are assessed shall be committed to the county jail until such fines and costs are paid; provided, that no imprisonment for non-payment of fine and costs shall exceed the period of six months.

§ 8. CONTENTS OF AFFIDAVIT. SEARCH WARRANTS.] It shall be unlawful to have or possess any intoxicating liquor or property designed for the manufacture of liquor intended for use in violating this act or which has been so used, and no property rights shall exist in any such liquor or property. A search warrant may issue out of any court of competent jurisdiction heretofore authorized to issue search warrants whenever any person shall appear before such court and make affidavit that he has discovered that such liquor or property is, or has recently been manufactured, stored, possessed or sold in violation of this act in any place or upon any premises and particularly describing the place to be searched. Such court shall issue a search warrant against said premises, and directed to the proper officer, commanding him to search the premises described in the above affidavit, and to seize all intoxicating liquors, and all property designed, or intended for use in the manufacture of such liquor, and all vessels, bottles, or containers which have been used in connection therewith, and take the same into his custody, make proper return upon such search warrant with invoice of such liquor and property seized, to abide the further order of the court. If it is found that such liquor or property was so unlawfully held or possessed, or had been so unlawfully used, the liquor and all property designed for the unlawful manufacture of liquor, shall be destroyed. The property seized on any such warrant shall not be taken from the officer seizing the same on any writ of replevin or other like process.

§ 9. SEIZING TRANSPORTED LIQUOR.] When any sheriff, deputy sheriff, constable, marshal, police or peace officer of this State shall discover any person in the act of transporting in violation of the law, intoxicating liquor in any wagon, buggy, automobile, water or air craft, or other vehicle, or conveyance, it shall be his duty to seize any and all intoxicating liquors found therein being transported contrary to law. Whenever intoxicating liquors transported or possessed illegally shall be seized by an officer he shall take possession of the vehicle and team or automobile, boat, air or water craft, or any other conveyance, and shall arrest any person in charge thereof. Such officer shall at once proceed against the person arrested under the provisions of this act in any court having competent jurisdiction; but the said vehicle or conveyance shall be returned to the owner upon execution by him of a good and valid bond, with sufficient sureties, in sum double the value of the property, which said bond shall be approved by said officer and shall be conditioned to return said property to the custody of said officer on the day

of trial to abide the judgment of the court. The court upon conviction of the person so arrested shall order the liquor destroyed, and the property used in the transportation of the same to be forfeited, and shall require the State's Attorney of the county in which such property was seized to cause summons to be issued against all persons having any right, title or interest in the property seized, which summons shall particularly describe the property and state that the same is held for forfeiture and sale under the provisions of this act, and that in default of answer or claim filed within thirty days after the service of such summons, the court will enter its order forfeiting such property to the State of North Dakota. Such summons shall be served in the manner provided for the service of summons in a civil action. If no answer shall be filed or claim made within the time allowed, the court shall under its order forfeiting such property to the State of North Dakota, and for the sale of the same in the manner provided for the sale of personal property on execution. If answer is filed or claim made the court shall require each claimant to furnish a good and sufficient bond conditioned for the prosecution of said action and for the payment of costs should he fail to support his claim. The Court shall thereupon proceed to hear and determine the claim according to law. If at such hearing any claimant shall prove to the satisfaction of the Court that he is the owner of such property or has a valid lien thereon and that he had no knowledge of the use of such automobile, wagon, buggy, water or air craft, or other vehicle or conveyance for such unlawful purpose, the same shall be surrendered to him, if the owner; if a lien holder, the lien shall be foreclosed, the property sold and the proceeds applied in payment of the costs of such sale, then in satisfaction of the lien or liens and the balance deposited as hereinafter provided. If the claimant or claimants shall fail to sustain their claim, judgment shall be entered against them for costs, and the court shall enter its order for the forfeiture and sale of the property as hereinbefore provided in case of default. After deducting the costs and expenses of such proceeding the balance of all money received under the provisions of this Act shall be paid to the Treasurer of the County wherein the seizure was made for the benefit of the State School fund.

§ 10. INTOXICATED ON TRAIN.] Any person who shall publicly drink, or offer to another any intoxicating beverage upon any train within this state, or who shall be intoxicated upon any train operated upon any railroad in the State of North Dakota, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not exceeding fifty dollars or by imprisonment not exceeding thirty days, or by both such fine and imprisonment, in the discretion of the court.

§ 11. PERSON CHARGED WITH INTOXICATION TO ANSWER QUESTIONS. Whenever any person shall be arrested for intoxication the justice of the peace, police magistrate, county or district judge before whom he shall be brought for trial may cause him to be questioned fully

under oath as to where, when and how he secured the intoxicating liquor causing his intoxication. Testimony so taken shall be reduced to writing and signed by the witness and one copy thereof shall forthwith be delivered to the states attorney of the county wherein the same is taken. If any person shall fail or refuse to answer fully and truthfully any question that may be put to him on such examination, as to where, when and how he secured the liquor causing his intoxication, he shall be deemed guilty of contempt of court and shall be punished by a fine of not less than \$50, nor more than \$100, or by imprisonment in the county jail for not less than ten days nor more than thirty days, or by both such fine and imprisonment; provided that when compelled to testify and disclose incriminating testimony against himself in any case he shall not be prosecuted in such case.

§ 12. If any section, or provision of this Act shall be held to be invalid, it is hereby provided that all other provisions of this act which are not expressly held to be invalid shall continue in full force and effect.

§ 13. PENALTY.] Any person who shall within this state violate any of the provisions of this Act, (unless the penalty is elsewhere provided for) shall for the first offense be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined in any sum not less than \$200 nor more than \$1,000, and be imprisoned in the county jail not less than ninety days nor more than one year; and for the second and every successive offense shall be deemed guilty of a felony and be punished by imprisonment in the penitentiary not exceeding two years and not less than one year. Provided, that the phrase "second offense" shall mean a conviction of any offense prohibited by this Act, and a subsequent conviction of violating any provision of this Act whether for the first time or not. This shall not apply to sections five, six, ten and eleven of this Act. Provided, however, that if the evidence in such case convinces the court that the person convicted of transporting intoxicating liquors in violation of this Act, was in charge of and used any wagon, buggy, automobile, water or air craft, or other vehicle or conveyance not owned by him, or without permission of the owner, or when such vehicle or conveyance so used was mortgaged property, or if there be in or upon such conveyance so used or upon any person therein any firearms, or guns, he shall be deemed guilty of a felony, and be punished by imprisonment in the penitentiary not less than six months and not more than five years.

§ 14. REPEAL.] All Acts, or parts of Acts in conflict with this Act are hereby repealed.

§ 15. EMERGENCY.] Whereas, this Act is intended to bring the prohibition laws of North Dakota into full accord with the Eighteenth Amendment and the Volstead Act, it is hereby declared to be an emergency measure and shall take effect and be in force from and after its passage and approval.

Approved February 18, 1921.