

PROHIBITION.

CHAPTER 110.

[H. F. 6.]

PREScribing PENALTIES FOR UNLAWFUL DEALING IN SPIRITUOUS LIQUORS.

AN ACT to Prescribe Penalties for the Unlawful Manufacture, Sale and Keeping for Sale Intoxicating Liquors, and to Regulate the Sale, Barter and Giving Away of Such Liquors for Medical, Scientific and Mechanical Purposes.

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

§ 1. PENALTY FOR MANUFACTURE OR SALE—WHO MAY LAWFULLY SELL.] Any person, association or corporation, who shall, within this State, directly or indirectly, manufacture any spirituous, malt, vinous, fermented or other intoxicating liquor, or shall import any of the same for sale, or gift as a beverage, or shall keep for sale, or sell, or offer for sale or gift, barter or trade, any of such intoxicating liquors, as a beverage, shall for the first offense be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined in any sum not less than two hundred (200) dollars 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 State's prison for a period not exceeding two years and not less than one year; *Provided*, That registered pharmacists under the laws of this State may sell intoxicating liquors for medicinal, mechanical, scientific, and wine for sacramental purposes as hereinafter provided.

§ 2. DRUGGISTS' PERMIT, HOW OBTAINED—APPLICATION TO BE PUBLISHED—BOND APPROVED BY COUNTY JUDGE—APPEAL, HOW TAKEN.] It shall be unlawful for any person or persons to sell or barter, for medicinal, scientific or mechanical purposes, any malt, vinous, spirituous, fermented or other intoxicating liquors, without first having procured a druggist's permit therefor from the county judge of the county wherein such druggist may be doing business at the time; and such county judge is hereby authorized, in his discretion, to grant a druggist permit for the period of one year, to any person of good moral character who is a registered pharmacist under the laws of this State, and lawfully and in good

faith engaged in the business of a druggist in his county, and who in his judgment can be entrusted with the responsibility of selling such liquors for the purposes aforesaid in the manner hereinafter provided. In order to obtain a druggist permit under this act, the applicant shall file in the office of the county judge of the county wherein he is doing business, not less than thirty days prior to the hearing thereof, a petition signed by the applicant and twenty-five reputable freeholders having the qualifications of electors of the town, village, township or ward of any city, and twenty-five reputable women over twenty-one years of age who are residents of the town, village, township, or city, wherein such business is located, setting forth: first, the town, village, city or township and particular place therein where such business is located, and that the applicant is [a] person of good moral character, and does not use intoxicating liquor as a beverage, and can be entrusted with the responsibility of selling the same; second, that said applicant is a pharmacist as aforesaid, and is lawfully and in good faith engaged personally in the business of a druggist as the proprietor thereof at the place designated in the petition, and well versed in the profession; third, that said applicant has, in his said business, exclusive of intoxicating liquors and fixtures, a stock of drugs, if in any city, of the value of at least \$1,000, and if elsewhere, of the value of at least five hundred (500) dollars. Before any such petition shall be heard, or any permit issued to such applicant, he shall publish, for at least thirty days next prior thereto, a notice in some newspaper in the town, village, township or city where such business is located, or if none be published therein, then in some paper of general circulation in the county, stating the time and place set by such judge for the hearing of such petition. The applicant shall be required to prove the truthfulness of each and every statement contained in such petition, and the state's attorney of such county shall, and any other citizens of the county may appear and cross-examine the witnesses of the applicant, and may introduce evidence in rebuttal of the evidence offered by the applicant. If satisfied that the signatures to such petition were signed by such persons, and that such petitioners are free-holders or citizens of such town, village, township, city or ward, as above expressed, and that the statements in such petition are true, the county judge may in his discretion, grant a permit to the applicant to sell intoxicating liquors for medical, mechanical and scientific purposes only; and such permit shall be recorded upon the journal of the county court, and a certified copy thereof shall be posted in a conspicuous place in the store wherein said business is carried on before it shall be of any validity. Before such permit shall be of any validity, such druggist shall file with the county judge, to be approved by him, a good and sufficient bond to the State of North Dakota in the sum of \$1,000, conditioned that such applicant and any one in his employ will neither use, sell barter or give away any intoxicat-

ing liquor in violation of law, and on violation of the provisions of said bond the same shall thereby become forfeited; and the conviction of said pharmacist or any one in his employ shall be deemed *prima facie* evidence of such violation. Any applicant or any citizen feeling himself aggrieved by the decisions of the county judge, may, within ten days thereafter, upon filing a bond made payable to the State of North Dakota, in the sum of fifty (50) dollars, to be approved by the county judge, conditioned that he will prosecute the same to a speedy determination, and pay the costs occasioned by such appeal if the order of the county judge shall be sustained, prosecute the cause upon appeal to the district court. The procedure in any case taken on appeal to the district court from the order of the county judge shall be as prescribed by Article 2 of Chapter 12 of the Probate Code of the Compiled Laws of Dakota of 1887, so far as applicable, and a case or bill of exceptions may be made, signed and certified by the county judge. If the district court shall find that the county judge has abused his discretion, it shall have power to cause the county judge to comply with its judgment, otherwise the order of the county judge shall be by the district court affirmed. No appeal shall be allowed from the order of the district court. If the order of the county judge shall be reversed, the costs shall be paid by the county. If at any time there shall be filed with the county judge a petition stating that any druggist, naming him, who has a permit to sell intoxicating liquors, is not in good faith conforming to the provisions of this act, verified by the affidavit of at least one of the petitioners hereinafter named, and signed by twenty-five reputable men and twenty-five reputable women, all of whom reside in the town, village, township, city or ward in which the business of said druggist is carried on, requesting that the permit of such druggist be cancelled, the county judge shall immediately issue an order citing such druggist to appear before him on a day named, not more than ten days from the issuing of such order, at which time the question of the cancellation of such permit shall be considered. Such examination shall be conducted in the same manner in all respects as is herein provided for the hearing of the original petition for granting such permit, and such county judge shall, if there are reasonable grounds for believing such druggist is not in good faith carrying out all the provisions of this act, cancel such permit. An appeal may be had from the decision of such county judge to the district court as herein provided for appeals from the application for a permit; *Provided*, The permit of such druggist shall be inoperative till such appeal is finally decided. If any county judge shall issue a permit to any person not registered as a pharmacist, or shall knowingly grant the same to a person in the habit of becoming intoxicated, or not in good faith engaged in the business of a druggist as proprietor thereof, he shall be deemed

guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than five hundred (500) dollars nor more than \$1,000; and if any person shall sign the petition, as provided herein, of any applicant known by such person to be in the habit of becoming intoxicated, or not in good faith engaged in the business of a druggist, he shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than fifty (50) dollars nor more than one hundred (100) dollars. Before the petition of a druggist for a permit to sell intoxicating liquors shall be heard by the county judge the applicant shall pay a fee of five (5) dollars to the county judge, who shall pay the same into the county treasury on or before the first day of the following month for the benefit of the general revenue fund.

§ 3. PHYSICIANS MAY PRESCRIBE UNDER CERTAIN CONDITIONS.] Any physician who is lawfully and regularly engaged in the practice of his profession as a business, and who, in case of actual need, shall deem any intoxicating liquors necessary for the health of his patients, may give such patient a written or printed prescription therefor, stating in said prescription the particular disease for which it is given, or may administer the same himself; but no such prescription shall be given, or liquors administered, except in cases of actual need, and where, in his judgment, the use of intoxicating liquors is necessary. And every physician who shall give such prescription or administer such liquors in violation of this act, and every physician who shall give to or write for any person a prescription for intoxicating liquors for the purpose of enabling or assisting any person to evade any of the provisions of this act, or for the purpose of enabling or assisting any person to obtain any intoxicating liquors for use as a beverage, or to be sold or disposed of in any manner, in violation of the provisions of this act, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than three hundred (300) dollars, nor more than eight hundred (800) dollars, and by imprisonment in the county jail not less than thirty days nor more than six months.

§ 4. DRUGGIST'S SALE, HOW REGULATED—AFFIDAVITS REQUIRED—PHARMACISTS MAY ADMINISTER OATHS—COUNTY AUDITOR TO FURNISH AFFIDAVIT BLANKS—RECORD OF SALES—PENALTY.] Any druggist having a permit to sell intoxicating liquors under the provisions of this act, may sell the same only by himself in person, or by clerk who is a registered pharmacist or assistant pharmacist under the laws of this State, for medical purposes only, upon the printed or written affidavit of the applicant, setting forth the particular medical purposes for which such liquor is required, the kind and quality [quantity] desired; that it is necessary and actually needed for the particular purpose, by the patient to be named; and that it is not intended for a beverage, nor to sell or give away, that the applicant is over twenty-one years of age; which affidavits

shall be in the following form and subscribed by the applicant, in ink:

No.....

Date,.....

STATE OF NORTH DAKOTA, } ss.
 COUNTY OF....., }

I, the undersigned, do solemnly swear that my real name is that I reside at.....county, state of....., that.....of..... is necessary and actually needed by....., to be used as a medicine for the disease of.....; that it is not intended as a beverage, nor to sell nor to give away, and that I am over twenty-one years of age. I therefore make application to....., druggist, for said liquor.

.....Applicant.

Subscribed in my presence and sworn to before me this..... day of.....

.....Pharmacist.

And such druggist may sell intoxicating liquors for mechanical, scientific and wine for sacramental purposes only upon the written or printed affidavit of the applicant, setting forth the particular purpose for which such liquor is required, the kind and quantity desired, that it is not intended to be used as a beverage, nor to sell nor to give away, and that it is intended only for his own use, and that the applicant is over twenty-one years of age. Such affidavit shall be in the following form, and subscribed by the applicant in ink:

No.....

Date.....

STATE OF NORTH DAKOTA, } ss.
 COUNTY OF..... }

I, the undersigned, do solemnly swear that my real name is that I reside at.....,county, state of....., that.....of.....is required by myself to be used for..... purposes, to be used for....., that it is not intended for a beverage, nor to sell, nor to give away, and that I am over twenty-one years of age. I therefore make application to....., druggist, for said liquor.

.....Applicant.

Subscribed in my presence, and sworn to before me this..... day of....., 18....

.....Pharmacist.

And there shall be but one sale and one delivery on any one affidavit, but no druggist shall permit the drinking on his premises, nor in any apartment connected therewith, and under his control, any of the intoxicating liquors purchased by affidavit or otherwise; *Provided*, Such druggist shall be permitted to sell any

of the liquors mentioned herein, in quantities not less than one gallon, to any other druggist within the State holding a permit as provided in this act. The affidavits provided for in this section shall be made before the pharmacist or assistant pharmacist making sale of such liquors upon proper printed blanks, which it is hereby made the duty of the county auditor of the county in which such sales are made to furnish to such druggist at a cost equal to the actual and necessary outlay made therefor by him. Such blanks shall be in series of 100 each, numbered from 1 to 100 consecutively, and bound in book form, each series being of uniform style throughout, except that no two blanks of the same series shall be of the same number. It shall be the duty of the county auditor to endorse each such book with the date of delivery and to whom made, to sign such indorsement and attest to the same with his official seal, and to keep two exact printed copies, except as to numbers, of the blanks of each series, one of which shall be filed in his office and one in the office of the county judge; he shall also keep a record of the series, and of the number of each series, of such blanks furnished to each druggist, and shall, within ten days after the same are delivered to such druggist, file a copy thereof, together with a copy of the blank affidavits, in the office of the county judge of his county. For such services the county auditor shall be entitled to a fee of twenty-five (25) cents for each series of blanks so furnished to be paid by the druggist obtaining such blanks. All pharmacists and assistant pharmacists are hereby empowered to administer oaths for the purposes of this act, and no such affidavit shall be received by any pharmacist or assistant pharmacist until it shows on its face that it has been properly subscribed and sworn to by the applicant. The affidavits provided for in this section shall be retained by the druggist in the original book form, and on or before the first day of each month shall, together with the affidavit of such druggist that the liquors therein mentioned are all the intoxicating liquors sold by him during the month, except the liquors sold to other druggists, be filed in the office of the county judge who issued his permit, where they shall be safely kept for the period of two years from the date of filing. Before said affidavits shall be received or filed by said county judge, he shall make strict examination of the copies of affidavits and record of numbers thereof furnished him by the county auditor, and ascertain whether such druggist has returned all affidavits furnished him in blank by the county auditor; and if any such affidavit or blank is missing, said county judge shall require such druggist to file instead thereof his affidavit showing as near as he can what has become of such affidavit or blank. And any person having a permit to sell intoxicating liquors under the provisions of this act shall each month, at the time he files the affidavit herein provided for, also file with the county judge an affidavit setting forth the amounts and kinds of liquors, as nearly as can be done, which such person or firm of

which he is a member has on hand on the day such affidavit is made, as well as the amounts and kinds of liquors he has purchased or procured during the preceding month and the name or names of the persons, companies or corporations and their place of doing business, from whom, and the dates on which such liquors were purchased or procured. For each series of affidavits filed under the provisions of this act, the county judge shall collect one dollar and fifty cents (\$1.50) from the druggist filing the same, or the proportionate part thereof for the number filed, which shall be paid by him on the first day of each month into the county treasury for the benefit of the general county fund. The county judge shall receive no fees for his services under this act, except a salary of fifteen (15) dollars per annum for each 1,000 inhabitants in such county, the number to be determined by the last census return of such county, but in no case shall such salary exceed in the aggregate the sum of \$1,000 per annum, to be paid by the county commissioners as other salaries. Every person, whose affidavit so made for the purpose of obtaining intoxicating liquors shall be false in any material matter, shall be deemed guilty of perjury, and shall be punished by confinement and hard labor in the State Prison for a period not exceeding two years, or by confinement in the county jail not less than six months. Any person who shall subscribe any name or character other than his own name to any affidavit for the purpose of obtaining intoxicating liquors as provided herein, shall be deemed guilty of forgery in the fourth degree, and punished therefor by imprisonment in the State Prison not exceeding two years and not less than one year. Any person who shall sell or furnish any intoxicating liquors so obtained by him upon affidavit or certificate, to others as a beverage, or shall use the same as a beverage, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than one hundred (100) dollars nor more than five hundred (500) dollars, and by imprisonment in the county jail not less than thirty days nor more than ninety days. Every such druggist shall keep a book wherein shall be recorded, daily, all sales of intoxicating liquors made by him or his employes, showing the name and residence of the purchaser, the kind and quantity of the liquors sold, the purpose for which it was sold, and the date of the sale. Such record and affidavit shall be open for the inspection of the public at all reasonable times during business hours, and any person so desiring may take memoranda or copies thereof.

§ 5. PENALTY FOR MAKING FALSE AFFIDAVIT OR VIOLATION OF PROVISIONS OF THIS ACT.] Any druggist or pharmacist, or assistant pharmacist in his employ, who shall fail or neglect to make and keep a record as herein provided of any intoxicating liquors by him sold before the same are delivered, or shall refuse any person an examination of such records or the taking of memoranda or copy therefrom at any time during business hours; or who shall

sell, barter or give away any such liquors at any place not designated in his permit, or upon any affidavit other than those herein provided; or shall make any false affidavit as to any sales made by him or his employes, or shall fail to sign the certificate to the signature of any applicant for such liquor prior to the delivery thereof, or shall sign any false certificate to any such affidavit, or shall mutilate or remove any affidavits from the book to him issued as aforesaid; or shall fail to return the same as hereinbefore provided; or shall sell any intoxicating liquor to any person whom he has reason to believe desires the same to use as a beverage, or sell liquor when he has reason to believe the liquor sold is not a remedy for the ailment described in the affidavit therefor; or shall sell, barter or give away any intoxicating liquors to any minor, any person under the influence of liquor, or who is in the habit of becoming intoxicated, or who shall allow such liquor sold as a medicine or otherwise, to be drunk on his premises, or premises under his control; or in any other manner omit any act required of him herein, or violate any of the provisions of this act, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not less than two hundred (200) dollars nor more than \$1,000, and be imprisoned in the county jail not less than ninety days nor more than one year, and shall forfeit his permit issued under the provisions of this act, and his right to obtain a permit within five years next thereafter; and in all cases when forfeitures are provided under the provisions of this act, the court shall declare the same on rendering judgment in the action.

§ 6. INTOXICATING LIQUORS DEFINED.] All spirituous, malt, vinous, fermented or other intoxicating liquors or mixtures thereof, by whatever name called, that will produce intoxication, shall be considered and held to be intoxicating liquors within the meaning of this act.

§ 7. LIFE OF LIQUOR PERMIT.] A permit to sell intoxicating liquor under this act shall continue in force for one year from the date thereof, unless sooner forfeited under the provisions of this act.

§ 8. DUTY OF ALL PEACE OFFICERS TO APPREHEND AND NOTIFY.] It shall be the duty of the sheriffs, deputy sheriffs, constables, mayors, marshals, police judges and police officers of any city or town having notice or knowledge of any violations of the provisions of this act, to notify the state's attorney of the fact of such violation and to furnish him the names of any witnesses within his knowledge by whom such violation can be proven. If any such officer shall fail to comply with the provisions of this section, he shall upon conviction be fined in any sum not less than one hundred (100) dollars nor more than five hundred (500) dollars; and such conviction shall be a forfeiture of the office held by such person; and the court before whom such conviction is had shall, in addition to the imposition of the fine aforesaid, order and adjudge the forfeiture of his said office. For a failure

or neglect of official duty in the enforcement of this act, any of the city or county officers herein referred to may be removed by civil action.

§ 9. DUTY OF STATE'S ATTORNEY—SEIZURES AND ARRESTS—POWERS OF JUSTICES OF THE PEACE.] If the state's attorney of any county shall be notified by any officer or other person, or be cognizant himself of any violation of any of the provisions of this act, it shall be his duty forthwith to diligently inquire into the facts of such violation and for such purpose he is hereby authorized and required to issue his subpoena for such person or persons as he may have reason to believe have any information or knowledge of such violation, to appear before him at a time and place designated in such subpoena, then and there to testify concerning any violation of this act; said subpoena shall be directed to the sheriff or any constable of the county, and shall be served and returned to such state's attorney in the same manner as subpoenas are served and returned in criminal cases. Each witness shall be sworn by the state's attorney to testify the truth, the whole truth, and nothing but the truth, and true answer make to all questions which may be propounded to him by such state's attorney touching any violation of the provisions of this act. The testimony of every such witness shall be reduced to writing and signed by such witness, as in the taking of depositions in civil cases. For all purposes in this section the state's attorney is hereby authorized and empowered to administer oaths or affirmation to all witnesses, and shall have power to punish any witness for contempt for or on account of any disobedience of a subpoena, a refusal to be sworn or answer as a witness, or to sign his testimony, and may compel the attendance of witnesses by attachment in the same manner and with like effect as provided in the Code of Civil Procedure. If the testimony so taken shall disclose the fact that an offense has been committed against any of the provisions of this act, the state's attorney shall forthwith file such statement, together with his information against the person having committed the offense, in some court of competent jurisdiction, and such statement or testimony, together with the information of such state's attorney when verified by him on information and belief, shall have the same effect as if such information had been verified positively. And thereupon a warrant shall issue for the arrest of the person or persons named in such information, as in other criminal cases, and in addition thereto, shall command the officer to whom it may be directed to seize and take into his custody any and all intoxicating liquors, vessels and bottles containing the same, which he may find in such person's possession, and safely keep the same, subject to the order of the court; *Provided*, The sworn statement of the witness or witnesses, as hereinbefore provided, and the information filed by the state's attorney shall particularly describe the property to be seized and the place where kept; and if upon

the trial of such person he shall be convicted of violation of any of the provisions of this act, the court shall order as a part of his judgment, in addition to the penalty herein provided, that the officer having the custody thereof shall publicly destroy all such property used and employed for such illegal purpose; *Provided*, The court shall find and adjudge the property so seized was being used and employed by the defendant for such illegal purposes; *Provided, further*, That where the state's attorney has been notified in writing under oath, giving the name of the person violating the law, the place where the unlawful business is carried on and the names of the witness or witnesses, by whom the affiant believes that the facts can be proven and the state's attorney shall fail, neglect or refuse to make an investigation, then the affiant may make affidavit before some justice of the peace of the township, city or county wherein the crime has been committed, giving the name of the violator of the law, the location of the place and the names of the witnesses, by whom he believes the offense can be proven, and it shall be the duty of such justice of the peace, and he is hereby empowered with authority to issue his subpoena for the witnesses named or any other witnesses, whose names shall be made known by the first witnesses subpoenaed. Such subpoena shall be directed to any sheriff or constable of the county, or marshal or policeman of any city or town in the county, for service and return according to law. Such justice of the peace shall have power to fine for contempt and may compel the attendance of witnesses by attachment, and shall have all the powers for securing and taking the testimony of witnesses heretofore in this section given to the state's attorney. When the evidence is taken by the justice of the peace and reduced to writing, if it should show that a crime had been committed, it shall be certified to the state's attorney by the justice of the peace taking the same, and it shall be the duty of the state's attorney, on the receipt of such evidence to forthwith file his information in the same manner as if the evidence had been taken by himself.

§ 10. INFORMATION TO BE FILED IN CERTAIN CASES—TRIAL—PENALTY IN CASE OF GUILT.] If the statement of any witness so taken before the state's attorney or a justice of the peace, as in the last preceding section provided, shall disclose the fact that intoxicating liquors are being kept for unlawful sale or purpose, or are being sold by an unknown person or persons, particularly describing such unknown person or persons, contrary to the provisions of this act, at any place, particularly describing the place to be searched and the property to be seized, as hereinafter provided, within such county, it shall be the duty of such state's attorney to forthwith file his information, together with such statements, with some magistrate of the county having jurisdiction, against such place and the unknown keepers thereof, which information, when verified by such state's attorney upon information and belief,

together with such statements as aforesaid, shall have the same effect as if such information had been sworn to positively; and thereupon a warrant shall issue, directed to the proper officer, commanding him to search the premises described in the information and to seize all intoxicating liquors and all vessels and bottles containing the same, and arrest the keeper or keepers thereof, and said person or persons so arrested shall be examined and tried in the manner prescribed by law for the examination and trial of persons charged with an indictable offense, and if upon trial are found guilty shall be fined for the first offense not less than two hundred (200) dollars 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 be punished by imprisonment in the State's prison for a period not exceeding two years, and not less than one, and the court before whom such conviction may be had shall also order all the property seized by the officer as aforesaid to be publicly destroyed; *Provided*, Said court shall also find and adjudge such property was being used by the defendant at the time of such search and seizure for the purpose of unlawfully selling or bartering intoxicating liquors.

§ 11. FEES.] Officers shall receive the same fees and mileage for serving subpoenas issued by the state's attorney and justices of the peace under the provisions of this act as provided in criminal cases, and witnesses shall receive the same fees for attendance as provided for witnesses in cases before the justices of the peace. Such fees shall be certified to the board of county commissioners by the state's attorney or justice of the peace, and paid by the county as witness fees for attendance before a grand jury. All witnesses shall attend upon the state's attorney or justice of the peace in pursuance to his subpoena, without the payment of any fees in advance. For every conviction under this act there shall be allowed an attorney's fee of ten (10) dollars upon each count upon which the defendant shall be convicted, and the same shall be taxed as costs in the case to be paid into the county treasury as hereinafter provided. If any prosecution begun by the state's attorney, the Attorney General or his assistants; or by a citizen, with the written consent or approval of the state's attorney or Attorney General, under the provisions of this act, shall fail, the costs of such prosecution, unless otherwise specified herein, shall be paid by the county in which such prosecution or action was begun.

§ 12. STATE'S ATTORNEY TO PROSECUTE—COUNTY TREASURER TO PLACE FINES IN SPECIAL FUND—WHEN ATTORNEY GENERAL MAY PROSECUTE.] It shall be the duty of the state's attorney to diligently prosecute any and all persons violating any of the provisions of this act, in their respective counties, and to bring suit upon all bonds or recognizances forfeited, immediately after the happening of such forfeitures, to recover the penalty, and to pay all money so collected, as herein provided, into the treasury of said county, and

take the receipt of the treasurer therefor; it shall be the duty of said treasurer to credit said money temporarily, to a special fund, to be designated as the liquor prosecution fund, to be disposed of as here[*in*]after provided. Said state's attorney is hereby empowered to draw his warrants, in each case separately, upon such fund to pay the expenses actually and necessarily incurred by him in securing testimony for and in enforcing the provisions of this act; *Provided, however,* That no treasurer shall pay any of said warrants so drawn by the state's attorney as aforesaid, until he files with such treasurer an itemized statement of such expenses in each and every case, duly verified by himself to the effect that the same were actually and necessarily incurred to promote the ends above expressed, and that the same have not been paid. Said treasurer shall, by proper entries upon his books, specifically designate the action in which such money is received and paid out, and any balance remaining in each action, after the payment of the necessary expenses hereinbefore specified, shall be by such treasurer passed to the credit of the common school fund. If any state's attorney shall fail, neglect or refuse to faithfully perform any duty imposed upon by him by this act, he shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not less than one hundred (100) dollars nor more than five hundred (500) dollars and be imprisoned in the county jail not less than thirty days nor more than ninety days; and such conviction shall operate as a forfeiture of his office, and the court before whom such conviction may be had shall order and adjudge such forfeiture of office in addition to the fine imposed as herein provided. And whenever the state's attorney shall be unable, or shall neglect or refuse to enforce the provisions of this act in his county, or for any reason whatever the provisions of this act shall not be enforced in any county, it shall be the duty of the Attorney General to enforce the same in such county, and for that purpose he may appoint as many assistants as he shall see fit, and he and his assistants shall be authorized to sign, verify and file all such complaints, informations, petitions and papers as the state's attorney is authorized to sign, verify or file, and to do and to perform any act that the state's attorney might lawfully do or perform; and for such services he or his assistant shall receive a fee of ten (10) dollars upon each count upon which the defendant shall be convicted, to be taxed and collected in the same manner, except that in all cases where there shall be a conviction, and the attorney's fees as provided for in this act shall not be paid by the defendant within one month after his release from jail, the county where such conviction is had shall then become liable to the Attorney General or his assistant prosecuting such case for a fee of ten (10) dollars upon each count upon which the defendant shall have been convicted.

§ 13. NUISANCE ABATED, HOW—WHEN STOCKS OF LIQUOR TO BE DESTROYED—CONVICTION OF OWNER OR KEEPER—PENALTY—PRE-

SUMPTIVE EVIDENCE OF UNLAWFUL SALE—PROCESS.] All places where intoxicating liquors are sold, bartered or given away, in violation of any of the provisions of this act, or where persons are permitted to resort for the purpose of drinking intoxicating liquors as a beverage, or where intoxicating liquors are kept for sale, barter or delivery in violation of this act, are hereby declared to be common nuisances; and if the existence of such nuisance be established, either in a criminal or equitable action, upon the judgment of a court or judge having jurisdiction, finding such 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 place, by taking possession thereof, if he has not already done so under the provision of this act and by taking possession of all such intoxicating 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 shall, upon conviction be adjudged guilty of maintaining a common nuisance, and shall for the first offense be punished by a fine of not less than two hundred (200) dollars, nor more than \$1,000 and by imprisonment in the county jail of not less than ninety days nor more than one year, and for the second and every successive offense be punished by imprisonment in the State's Prison for a period not exceeding two years and not less than one; and said officer abating such nuisance shall securely close said building, erection or place where such nuisance was located, as against the use or occupation of the same for saloon purposes, and keep the same securely closed for the period of one year (unless sooner released as hereinafter provided), and any person breaking open said building, erection or place, or using the premises so ordered to be closed, shall be punished for contempt, as hereinafter provided, in case of violation of injunctions; *Provided, however,* That when lease-hold premises are 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 the premises shall be turned over to the owner upon the order of the court or judge. But the release of the property shall be upon 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 appear and pay all costs of the proceedings and file 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 the judge may, if satisfied of his good faith, order the premises taken and closed under the order of abatement to be deliv-

ered to said owner, and said order of abatement cancelled so far as the same may relate to said property, and if the proceeding be an action in equity and bond be given and costs therein paid before judgment and order of abatement, the action shall be thereby abated; *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 other statute or law. 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, particularly describing the same, is kept for sale, or is sold, bartered, or given away on the premises, particularly describing the same, where said nuisance is located contrary to law, the court or judge must at the same time of granting the injunction issue his warrant commanding the officer serving said writ of injunction, at the time of such service to diligently search the premises 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 ten (10) dollars 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 liquors of any kind, 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 keep the same closed until such final judgment. The finding of such intoxicating liquor or liquors on such premises 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 two hundred (200) dollars 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 be punished by imprisonment in the State's Prison for a period 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 be the state's attorney such attorney's fee shall be paid into the county treasury as in Section 12 of this act provided. In contempt proceedings arising out of the violation of any injunction granted under the provisions of this act 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 indictment, in so far 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 the 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.

§ 14. LIABILITY FOR CAUSING INTOXICATION.] Every person who shall by the sale, barter or gift of intoxicating liquors cause the intoxication of any other person or persons shall be liable for and compelled to pay a reasonable compensation to any person who may take charge of and provide for such intoxicated person, and five (5) dollars a day in addition thereto for every day such intoxicated person shall be kept in consequence of such intoxication, to be recovered by civil action in any court having jurisdiction.

§ 15. RIGHT OF ACTION OF INJURED PARTIES.] Every wife, child, parent, guardian or employer or other person who shall be injured in person or property, or means of support, by any intoxicated person, or in consequence of intoxication, habitual or otherwise, of any person, such wife, child, parent or guardian, or employer shall have a right of action, in his or her own name, against any person who shall by selling, bartering or giving away intoxicating liquors, have caused the intoxication of such person, for all damages actually sustained, as well as for exemplary damages; and a married woman shall have the right to bring suits, prosecute and control the same, and the amount recovered, the same as if unmarried; and all damages recovered by a minor under this act shall be paid either to such minor, or his or her parent, guardian, or next friend, as the court shall direct; and all suits for damages under this act shall be by civil action in any of the courts of this State having jurisdiction thereof.

§ 16. CLUB HOUSES PROHIBITED—PENALTY.] Every person who shall, directly or indirectly, keep or maintain, by himself or by associating or combining with others, or who shall in any manner aid, assist or abet, in keeping or maintaining any club room, or other place in which any intoxicating liquor is received or kept for the purpose of use, gift, barter or sale as a beverage, or for distribution or division among the members of any club or association by any means whatever; and every person who shall use, barter, sell or give away, or assist or abet another in bartering, selling or giving away, any intoxicating liquors so received or kept, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall for the first offense be punished by a fine of not less than three hundred (300) dollars nor more than \$1,000, and by imprisonment in the county jail not less than ninety days nor more than one year, and for every successive offense be punished by imprisonment in the State's prison for a period not to exceed two years and not less than one.

§ 17. UNLAWFUL EVASION.] The giving away of intoxicating liquor or any shifts or device to evade the provisions of this act, shall be deemed an unlawful selling within the provisions of this act.

§ 18. FINES AND COSTS TO CONSTITUTE LIEN—PROVISO.] All fines and costs assessed against any person or persons for any violation of this act 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 or premises, or shall permit the same to be used and occupied for the sale of intoxicating liquor, contrary to the provisions of this act, the premises 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 act; and such lien may be enforced by civil action in any court having jurisdiction; *Provided*, That the person 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 fines and costs shall exceed the period of six months,

§ 19. INFORMER PROTECTED.] Whenever application is made to the county judge for a permit to sell intoxicating liquors under the provisions of this act, he shall notify the state's attorney thereof, and thereupon such state's attorney shall appear and advise with said county judge, with reference to the issuing of said permit, and the approval of the bond. No person who shall inform of offenses under this act, or make complaint thereof, shall be liable for the costs incurred in such prosecution, unless the court or jury trying the case shall find and determine that such prosecution was malicious and without probable cause.

§ 20. ASSISTANCE TO STATE'S ATTORNEY.] Any citizen may employ an attorney to assist the state's attorney to perform his

duties under this act, and such attorney shall be recognized by the state's attorney and the court as associate counsel in the proceedings, and no prosecution shall be dismissed over the objections of such associate counsel until the reasons of the state's attorney for such dismissal, together with the objections thereto of such associate counsel, shall have been filed in writing, argued by counsel, and fully considered by the court.

§ 21. SPEEDY JUDGMENT TO BE RENDERED.] The court whose duty it shall be to render judgment in any action or proceeding growing out of a violation of the provisions of this act, shall immediately upon the conviction of the defendant render judgment; *Provided*, That for prudential reasons and for the ordinary purposes of perfecting an appeal judgment and sentence may be suspended for a period not exceeding thirty days, and then only upon the court or judge thereof entering in a public docket to be kept for that purpose, in his own handwriting, the cause of such suspension.

§ 22. PRESUMPTIVE EVIDENCE ADMISSABLE—GOVERNMENT RECEIPT PRIMA FACIE EVIDENCE OF SALE.] In prosecutions under this act, by indictment or otherwise, it shall not be necessary to state the kind or quantity of liquor sold, or kept for sale, and shall not be necessary to describe the place where sold, or kept for sale, except in prosecutions for keeping and maintaining a common nuisance, and in proceedings for enjoining the same, or where a lien is sought to be established against the place where such liquors are illegally sold or kept for sale; and it shall not be necessary in the first instance for the State to prove that the party charged did not have a permit to sell intoxicating liquors for the excepted purposes; and in any prosecutions for the second or subsequent offense, it shall not be requisite to set forth in the information or affidavit or indictment the record of the former conviction, but it shall be sufficient briefly to allege such conviction; and in all cases the person or persons to whom such intoxicating liquors shall have been sold in violation of this act shall be competent witnesses to prove such fact, or any other fact tending thereto; and the members, shareholders or associates in any club or association shall be competent witnesses to prove any violation of the provisions of this act or any fact tending thereto. In actions or proceeding for the abatement of nuisances under this act evidence of the general reputation of the place designated in the complaint shall be admissable for the purpose of proving the existence of such nuisance, and in all cases, other than those where intoxicating liquor is lawfully sold by virtue of the provisions of this act, the fact that any person engaged in any kind of business has or keeps posted in or about his place of business a receipt or stamp showing payment of the special tax levied under the laws of the United States upon the business of selling distilled, malt or fermented liquor, or the holding of a license from the Government of the United States in the name of

any person, persons or corporation to sell intoxicating liquor shall be held and deemed *prima facie* evidence against such person, persons or corporation, that he, or they or it are keeping for sale and selling intoxicating liquors contrary to law. And upon trial of every indictment, information or contempt proceedings for a violation of the provisions of this act, proof of the finding of intoxicating liquor in the possession of the accused, in any place except his private dwelling house or its dependencies, or in such dwelling house if the same is a tavern, store, public eating house, grocery or other place of public resort, or in unusual quantities in the private dwelling house or its dependencies of any person keeping a tavern, store, public eating house, grocery or other place of public resort, unless in the possession of one legally authorized to sell the same, shall be received and acted upon by the court or judge as presumptive evidence that such liquor was kept for sale contrary to the provisions hereof. No person shall be excused from testifying touching any offense committed by another against any of the provisions of this act by reason of his testimony tending to criminate himself (the witness), but the testimony given by such person shall in no case be used against him.

§ 23. SPECIAL CHARGE TO GRAND JURY.] It shall be and is hereby made the duty of all courts of this State before whom a grand jury is summoned, to charge such grand jury especially concerning this act, and direct said jury to inquire particularly of all violations of any of its provisions.

§ 24. WHEN DRUGGIST PROHIBITED FROM SELLING LIQUOR UPON ANY TERMS.] Whenever the father, mother, brother, sister, wife, husband or guardian, or any relative of any person shall notify any druggist that such person, naming him, is in the habit of becoming intoxicated, and shall forbid said druggist from selling, bartering or giving to such person any intoxicating liquors, it shall be unlawful for any such druggist, after such notice, to let such person have any intoxicating liquors upon any terms or conditions whatever. Any druggist who shall violate the provisions of this section shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not less than one hundred (100) dollars nor more than five hundred (500) dollars, and shall be imprisoned in the county jail for a period of not less than thirty days nor more than six months.

§ 25. TREATING, PENALTY FOR.] The treating or giving of any intoxicating liquors to any minor by any person other than the father, mother, or guardian of such minor, or any physician for medical purposes, shall be unlawful, and any person violating the provisions of this section shall for the first offense be deemed guilty of a misdemeanor, and for the second and each succeeding offense be deemed guilty of a felony, and upon conviction thereof shall be punished therefor as provided in the last preceding section of this act for unlawfully selling intoxicating liquors.

§ 26. LIABILITY OF COMMON CARRIERS.] Any officer, agent or employe of a railroad company, express company, or other common carrier who shall within this State knowingly receive, carry, or deliver any intoxicating liquors to or for any person to be sold in violation of this act shall be deemed guilty of a misdemeanor, and on conviction thereof shall be fined not less than one hundred (100) dollars nor more than five hundred (500) dollars and be imprisoned in the county jail not less than thirty nor more than sixty days.

§ 27. IN CASE OF SURRENDER OF BOND.] In case any person has been arrested for any violation of this act and given a bond and the bond has been forfeited, and before the determination of the suit on the bond the defendant has been surrendered to the sheriff by his bondsmen, the defendant shall stand committed until all costs to that date accrued on the criminal suit be paid; and if he fails to pay the same the bondsmen are required to pay such costs in addition to the costs of the suit on the bond and a reasonable attorney's fee, to be fixed by the court, for the prosecution of both the criminal charge and the suit on the bond; *Provided*, That no defendant shall be imprisoned for a longer period by virtue of this section than is prescribed for the first offense in Section 4 of this act.

§ 28. PENALTY FOR NEGLIGENCE OF DUTY OF ATTORNEY, JUDGE OR AUDITOR.] Every state's attorney, county auditor or county judge, who shall neglect or refuse to perform any duty required of him under this act, the punishment for which is not hereinbefore provided by this act, shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than five hundred (500) dollars nor more than \$1,000, and in addition thereto shall forfeit his right to longer hold his office, and the court before whom such conviction is had shall order and adjudge such forfeiture.

§ 29. STATE'S ATTORNEY CONSTRUED.] Whenever the words state's attorney shall be used in this act, they shall be construed to designate the legal officer of the county, whether he may be known under the name state's, county or district attorney.

§ 30. OBLIGATIONS TO PAY FOR LIQUOR FOR UNLAWFUL SALE NULL AND VOID—INNOCENT HOLDERS OF NEGOTIABLE PAPER NOT AFFECTED.] All payments or compensation for intoxicating liquors sold in violation of this chapter, whether such payments or compensation be in money, goods, land, labor or anything else whatsoever, shall be held to have been received in violation of law and against equity and good conscience, and to have been received upon a valid promise and agreement of the receiver in consideration of the receipt thereof, to pay on demand to the person furnishing such consideration the amount of said money, or the just value of such goods, and labor or other thing. All sales, transfers, conveyances, mortgages, liens, attachments, pledges and securities of every kind, which either in whole or in part shall have been

made for, or on account of intoxicating liquors sold in violation of this act, shall be utterly null and void against all persons in all cases, and no rights of any kind shall be acquired thereby, and no action of any kind shall be maintained in any court in this State for intoxicating liquors, or the value thereof, sold in any other State or country contrary to the law of said state or country, or with intent to enable any person to violate any provision of this act, nor shall any action be maintained for the recovery, or possession of any intoxicating liquors, or the value thereof, except in cases where persons owning or possessing such liquor, with lawful intent may have been illegally deprived of the same. Nothing, however, in this section, shall effect in any way negotiable paper, in the hands of holders thereof, in good faith for valuable consideration, without notice of any illegality in its inception or transfer, or the holder of land or other property, who may have taken the same in good faith without notice of any defect in the title of the person from whom the same was taken, growing out of a violation of the provisions of this act, and all evidence given in actions brought by or against such holders, shall be in no way affected by the provisions of this act.

§ 31. WHEN ACT TO TAKE EFFECT.] The absence, in the present laws of North Dakota of speedy and adequate remedies for the enforcement of Article 20 of the Constitution, creates an emergency, which calls for the immediate taking effect of this act; therefore, the same shall take effect and be in force from and after July 1, 1890.

§ 32. All laws, acts and parts of acts in conflict with the provisions of this act, are hereby repealed.

Approved December 19, 1889.