

in his office and are open to public inspection. If the owners of a majority of the property abutting on any street or streets where said lighting, heating and power system or gas works is constructed or is to be installed, shall not within ten days after the last publication of said notice protest against such lighting, heating and power system or gas works, or improvements, then the majority of such owners shall be deemed to have consented thereto, and such city may proceed to provide for the purchase or construction of such improvement through its proper officials and assess so much of the cost of such improvement as relates and refers to the placing, erection and construction of poles, cables, electrical conductions, street lamps, mains and conduits and all other instrumentalities and appurtenances thereto belonging, necessary to conduct and connect the means of lighting, heating, by electricity or gas as the case may be, and to transmit power to the street and premises benefitted thereby, including the necessary engineer's expenses thereof, against the abutting property in the same manner and with the same notice and according to the same forms and procedure as now provided by statute for the construction and assessment of street paving; and upon such proceedings being taken and completed, the cost of such construction, purchase price, or such part thereof as the council or commission shall deem proper, shall be assessed against the abutting property in the same manner and according to the same form and procedure as now provided by law for the assessment of the cost of street paving.

Sec. 2. EMERGENCY.) This act 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 24th, 1923.

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## NARCOTICS

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### CHAPTER 257.

(S. B. No. 115—Ployhar.)

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#### PEYOTE AND MESCAL.

An Act Entitled, An Act Relating to *Lophophora Williamsii* or Peyote (Pellote) and *Agave Americana* (Commonly known as Mescal); Prohibiting the Use or Possession Thereof, Traffic Therein, and Providing Penalties for the Violation of This Act.

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

Sec. 1. That it shall be unlawful for any person, firm, corporation, or association to sell, furnish, or give away, or offer to

sell, furnish, or give away, or to have in his or its possession Peyote (Pellote), botanically known as *Lophophora Williamsii*; or *Agave Americana*, commonly known as the Mescal button, or any compound, derivative, or preparation thereof.

Sec. 2. Any person who shall violate any of the provisions of this act shall be guilty of a misdemeanor and upon conviction thereof shall be fined not to exceed \$500.00 or imprisoned in the county jail for a period of not to exceed six months, or by both such fine and imprisonment.

Sec. 3. Whereas there is no adequate law relating to Peyote (Pellote) and this law is necessary for the immediate preservation of the public peace, health and safety, an emergency is hereby declared to exist and this act shall be in force and effect from and after its passage and approval.

Approved February 24th, 1923.

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## CHAPTER 258.

(H. B. No. 239—Dougherty.)

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### NARCOTICS.

An Act to Amend Section 10177 of the Compiled Laws for the year 1913 Relating to the Selling and Smoking of Opium, and the Sale and Use of other Narcotics, and By Making More Definite the Procedure in Cases of Lease Hold Premises Held under an Injunction; Providing a Means Whereby Innocent Owners may Cancel a Lease thereof and Further Providing the Breadth of the Operation in such Injunction by Making it Personal and Apply to Clerks, Servants and Agents, and to Include any Place within the State.

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

Sec. 1. AMENDMENT.) That Section 10177 of the Compiled Laws for the year 1913 be, and the same is, hereby amended and re-enacted to read as follows:

Sec. 10177. PLACE FOR SMOKING OPIUM AND PLACES WHERE OTHER NARCOTICS ARE SOLD DEEMED A NUISANCE.) Every room, building, cellar or other place or premises used or permitted to be used for the smoking of opium or any of its preparations and all places where morphine, opium, cocaine, heroin or other narcotics are sold, bartered or given away in violation of the provisions of this chapter, or where persons are permitted to resort for the purposes of smoking opium, using morphine, cocaine, heroin and other narcotics, or where morphine, opium cocaine, heroin and other narcotics are kept for sale, barter or delivery, except as hereinafter provided, or where opium, cocaine, morphine, heroin or other-narcotics are possessed, except as here-

inafter provided, used for medical purposes in violation of this chapter, are 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 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 provisions of this Chapter and by taking possession of all such narcotics 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 place for the illegal purposes forbidden herein, or otherwise aids, abets, or assists in any violation of this Section or Chapter, 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 building, erection or place where such nuisance was located, as against the use or occupation of the same, for such illegal 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 injunction; provided, however, that when lease hold premises 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 shall be turned over to the owner upon the order of the court or judge as hereinafter set forth. But the release of the 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 injunctive order, if in an equity case, or the closing of the premises if in a criminal case; in the meantime and in either form of action the premises where such nuisance was 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; Provided, that this section shall not apply to any room, building, cellar or other place or premises where said narcotic drugs are possessed, or possessed for sale, barter or delivery for medical purposes when the owner or keeper, or other person legally in charge and possession of such place or premises shall have registered and paid the special tax as required by the Federal Narcotic Drug Act of the United States. Provided, further, that it shall not be necessary to negative any of the aforesaid exemptions in any complaint, information, indictment or proceedings laid or brought under this act, and the burden of the proof of any such exemption shall be upon the defendant.

(Cumulative.) This Act shall be held by the Courts to be cumulative to other laws already provided and shall repeal only such acts or parts of acts as are clearly in conflict with this Act.

Sec. 3. An emergency having arisen in the fact that the law is insufficient to afford adequate relief when agents violate law and in case of persons owning lease hold premises, and also in cases where parties under injunctive order continue their violation of the law elsewhere than as in the place specifically mentioned in the injunctive proceedings, therefore, this Act shall take effect and be in force from and after its passage and approval.

Approved March 1st, 1923.