

sold and also the reasonable expense of caring for the property redeemed and interest.

Approved February 27th 1923.

PROHIBITION

CHAPTER 268.

(H. B. No. 50—Miller and Halcrow.)

PROHIBITION.

An Act to Amend and Re-enact Sections 1, 2, 9 and 13 of Chapter 97, Session Laws, 1921, Relating to Legislation 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 Penalty and defining the crime of engaging in liquor traffic.

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

Sec. 1. AMENDMENT.) Section 1 of Chapter 97, Session Laws, 1921, is hereby amended and re-enacted so as to read as follows:

Sec. 1. INTOXICATING LIQUOR AND CRIME OF ENGAGING IN LIQUOR TRAFFIC DEFINED.) The following liquors are hereby declared to be intoxicating and their intoxicating quality shall, by the Courts, be presumed, viz: alcohol, brandy, whiskey, rum, gin, beer, ale, porter and wine and in addition thereto any spirituous, vinous, malt or fermented liquor, liquids and compounds, whether medicated, proprietary, patented or not, and by whatever name called, containing one-half of 1 per centum or more of alcohol by volume which are fit for use for beverage purposes; Provided, that the foregoing definition shall not extend to sweet fruit juices or 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 per centum of alcohol by volume and is otherwise denominated than as beer, ale, or porter and is pasteurized and contained and sold in or from hermetically sealed and labeled bottles.

Sec. 1A. The word person shall mean and include natural persons, associations, copartnerships, corporations and their clerks, agents and abettors.

Sec. 1B. CRIME OF ENGAGING IN LIQUOR TRAFFIC, DEFINED.) Any person who shall within this State, manufacture, sell, bar-

ter, transport, import, export, deliver, furnish or possess any intoxicating liquor, shall be guilty of the crime of engaging in the liquor Traffic.

Sec. 2. AMENDMENT.) Section 2 of Chapter 97, Session Laws of 1921 is hereby amended and re-enacted to read as follows:

Sec. 2. PROHIBITING INTOXICATING BEVERAGES.) No person shall within this State manufacture, sell, barter, transport, import, export, deliver furnish or possess any intoxicating liquor, except as provided in this chapter. All provisions of this chapter 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 nonbeverage purposes and wine for sacramental purposes may in good faith only be used, transported, purchased and possessed as provided in this Chapter. It is further provided, that 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; vinegar; flavoring extracts and syrups that are unfit for use as a beverage, or for intoxicating beverage purposes; together with those United States Pharmacopeia and National Formulary and American Institute of Homeopathy preparations fit for beverage purposes, which can only be used by physicians and druggists for compounding purposes as hereinafter provided, may be manufactured, sold, purchased, transported, imported, exported, delivered, furnished and possessed only to be used for any legitimate nonbeverage purpose and such preparations and other alcoholic compounds and solutions shall not be sold or used for beverage purposes or sold under circumstances from which the seller may reasonably deduce an intention on the part of the purchaser to use the same for beverage purposes.

Sec. 2A. SACRAMENTAL WINE.) Wine for sacramental purposes may be purchased, transported, delivered and possessed by the heads of ecclesiastical jurisdictions, or by some minister, priest or other officer holding a federal permit to transport such wine and the same may be used in good faith only for sacramental purposes.

Sec. 2B. USE OF INTOXICATING LIQUORS BY PHYSICIANS.) No physician shall issue any prescription for Intoxicating Liquors as such, but a physician holding a federal permit therefor, may personally or under his supervision administer Intoxicating Liquors to his patients, where the immediate use of such Intoxicating Liquors is believed necessary to afford relief from some disease. Provided, that not more than one pint of such Intoxi-

ating Liquors may be administered to any one patient by a physician, during any period of ten days, and provided that no physician shall obtain for such purposes more than five gallons of Intoxicating Liquors during any calendar year. Provided, further, that physicians may procure and use those United States Pharmacopeia and National Formulary and American Institute of Homeopathy preparations fit for beverage purposes in such amount and for such purposes as may be in good faith necessary in compounding medical preparations.

Sec. 2C. USE OF ALOCOHOL BY DENTISTS, VETERINARIANS.) Dentists and Veterinarians may use pure grain or ethyl alcohol for any legitimate, nonbeverage purpose in the course of their professional practice, provided they hold federal permits therefor, and not more than two gallons of alcohol shall be obtained for that purpose during any calendar year.

Sec. 2D. USE OF ALCOHOL BY DRUGGISTS.) Retail druggists holding federal permits therefor, may use such quantities of pure grain or ethyl alcohol and those United States Pharmacopeia and National Formulary and American Institute of Homeopathy preparations fit for beverage purposes in such amounts and for such purposes as may be in good faith necessary in compounding medical and other preparations.

Sec. 2E. EVIDENCE, BURDEN OF PROOF.) Any person prosecuted for a violation of the provisions of this Chapter shall be presumed to be acting without a Federal permit, and the possession of a Federal permit may be proved by the defendant as defensive material and the burden of proof shall be upon the defendant to establish such defense.

Sec. 2F. CUMULATIVE.) All portions of this Act shall be construed as cumulative in their effect to all former statutes enacted upon the subject of intoxicating liquors, and shall not be considered as repealing any former statute, unless that statute is clearly in conflict with this Act.

Sec. 2G. SWEET FRUIT CIDERS.) Sweet Fruit Ciders may be manufactured, procured, sold and possessed only when put up in sterile, closed containers and treated by the addition of benzoate of soda, or other substance which will prevent fermentation, in such proportion as to insure the alcoholic content remaining below one-half of one per centum by volume.

Sec. 2H. POSSESSION IN HOME, WHEN LAWFUL.) It shall not be unlawful to possess liquor acquired prior to February 1st, 1920, in one's private dwelling while the same is occupied and used by him as his dwelling only, provided such liquors are for use only for the personal consumption of

the owner thereof and his family residing in such dwelling; and the burden of proof shall be upon the possessor in any action concerning the same to prove that such liquor was lawfully acquired, possessed and used.

Sec. 3. AMENDMENT.) Section 9 of Chapter 97, Session Laws of 1921 is hereby amended and re-enacted to read as follows:

Sec. 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 laws, 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 any intoxicating liquors, transported or possessed illegally, shall be seized by any 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 the execution by him of a good and valid bond, with sufficient sureties, in the sum of 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 the trial to abide the judgment of the Court. The Court, upon conviction of the person so arrested, or upon his plea of guilty, or upon failure after one month of effort, to locate or arrest such person who had possession of such intoxicating liquor, vehicle or conveyance, or when so arrested fails to appear in court for trial at the appointed time and place, 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 for 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 enter its order forfeiting such property to the State of North Dakota, and for the sale of 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 condi-

tioned 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 duly filed or recorded prior to the time such conveyance was seized 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 claims, 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.

Sec. 9A. DISPOSITION OF EVIDENCE.) Whenever any sheriff, deputy sheriff, constable or police officer or any person acting under authority given in this Chapter and the laws of this State shall seize any intoxicating liquor or property designed or intended for use in the manufacture of such liquor, or any vehicle, boat, water or air craft, or other conveyance used to transport such liquor, such officer or person shall within five days after the seizing of the same file a certified inventory with the Clerk of the District Court, or County Court having increased jurisdiction, in the county in which the offense has been committed or the proceeding commenced and from and after the date of such filing, such liquor and property shall by such officer be held subject to the order of such Court, and such officer shall be accountable to such Court for the disposition of the same, and upon any violation of this section or any disposition of such liquor or property other than by the order of such Court, he shall be held to be in contempt of Court and shall be punished therefore in the manner by law provided.

Sec. 4. AMENDMENT.) Section 13 of Chapter 97, Session Laws of 1921 is hereby amended and re-enacted so as to read as follows:

Sec. 13. PENALTY.) Any person who shall within this state commit the crime of engaging in the liquor traffic or violate any of the provisions of this Chapter (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 \$200.00 nor more than \$1,000.00 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 or of the crime of bootlegging as defined in Section 10,144 of the Revised Codes of the State of North Dakota for the year 1913, and a subsequent conviction of violating any provision of this Act, whether for the first time or not. This shall not apply to Section 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.

Sec. 5. EMERGENCY.) This Act is declared to be an emergency measure and shall take effect and be in force from and after its passage and approval.

Approved February 19th, 1923.

PROPERTY, REAL

CHAPTER 269.

(S. B. No. 389—Baird.)

RESERVATION AND TRANSFER OF MINERAL RIGHTS.

An Act Regulating the Reservation of Mineral Rights and Providing for the Transfer of Same.

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

Sec. 1. That all real property deeded or transferred prior to the enactment of Sections 5518 and 5519 of the Compiled Laws of North Dakota for the year 1913, and in which transfers the grantor reserved the rights to the coal or other mineral deposits, may be deeded and transferred hereafter with such similar reservations without complying with the provisions of Sections 5518