

(As passed by the Senate and including House amendments adopted February 21, 1924.)

INTOXICATING LIQUORS

General Explanation

The present statutes relative to intoxicating liquors have no orderly arrangement whatever. In this bill they have, so far as this bill covers the subject, been arranged under the following chapters:

Chapter 1, General prohibitions.

Chapter 2, Indictment, evidence, and practice.

Chapter 3, Search warrants.

Chapter 4, Seizure and sale of vehicles.

Chapter 5, Injunction and abatement.

Chapter 6, Civil actions and liabilities.

This chapterization is based on a plan to set aside in the permanent code a title for "intoxicating liquors".

Again, many of the statutory provisions dealing with this subject have become obsolete since the adoption of the Eighteenth Amendment. In this connection attention is called to the fact that should this bill be enacted in its present form the following sections of the compiled code and supplement will disappear without any substitute being enacted therefor, to wit: 916, 917, 918, 995, 996, 997, 998, 1026, 1027.

Frequently a portion only of a section has become obsolete, but the omission of these obsolete parts has been noted at that point in the bill where the partially obsolete section has been rewritten.

Some changes are proposed for the strengthening of the present law, but these are clearly indicated under the various sections of the bill.

Lastly, it is to be noted that this bill does not cover the subject of "liquor permits".

A BILL FOR

An act to amend, revise, and codify sections nine hundred sixteen (916), nine hundred seventeen (917), nine hundred nineteen (919), nine hundred sixty-two (962), nine hundred sixty-five (965) to nine hundred sixty-seven (967), inclusive, nine hundred sixty-nine (969) to nine hun-

dred seventy-three (973), inclusive, nine hundred seventy-eight (978), nine hundred seventy-nine (979), nine hundred eighty (980), nine hundred eighty-one (981) to nine hundred ninety-seven (997), inclusive, nine hundred ninety-nine (999) to ten hundred eighteen (1018), inclusive, ten hundred twenty (1020), ten hundred twenty-three (1023), and ten hundred twenty-five (1025) to ten hundred twenty-seven (1027), inclusive, ninety-two hundred sixty-six (9266) and ninety-two hundred sixty-seven (9267), of the compiled code of Iowa, and sections nine hundred fourteen (914), nine hundred fifteen (915), nine hundred eighteen (918), nine hundred sixty-eight (968), nine hundred seventy-four-a one (974-a1) to nine hundred seventy-four-a three (974-a3), inclusive, nine hundred seventy-five (975), nine hundred seventy-six-a one (976-a1) to nine hundred seventy-six-a six (976-a6), inclusive, nine hundred seventy-seven-a one (977-a1) to nine hundred seventy-seven-a seven (977-a7), inclusive, nine hundred ninety-eight (998), ten hundred nineteen (1019), ten hundred twenty-a one (1020-a1), and ten hundred twenty-four (1024) of the supplement to said code, relating to intoxicating liquors.

Be It Enacted by the General Assembly of the State of Iowa:

That sections nine hundred sixteen (916), nine hundred seventeen (917), nine hundred nineteen (919), nine hundred sixty-two (962), nine hundred sixty-five (965) to nine hundred sixty-seven (967), inclusive, nine hundred sixty-nine (969) to nine hundred seventy-three (973), inclusive, nine hundred seventy-eight (978), nine hundred seventy-nine (979), nine hundred eighty (980), nine hundred eighty-one (981) to nine hundred ninety-seven (997), inclusive, nine hundred ninety-nine (999) to ten hundred eighteen (1018), inclusive, ten hundred twenty (1020), ten hundred twenty-three (1023), and ten hundred twenty-five (1025) to ten hundred twenty-seven (1027), inclusive, ninety-two hundred sixty-six (9266) and ninety-two hundred sixty-seven (9267), of the compiled code of Iowa, and sections nine hundred fourteen (914), nine hundred fifteen (915), nine hundred eighteen (918), nine hundred sixty-eight (968), nine hundred seventy-four-a one (974-a1) to nine hundred seventy-four-a three (974-a3), inclusive, nine hundred seventy-five (975), nine hundred seventy-six-a one (976-a1) to nine hundred seventy-six-a six (976-a6), inclusive, nine hundred seventy-seven-a one (977-a1) to nine hundred seventy-seven-a seven (977-a7), inclusive, nine hundred ninety-eight (998), ten hundred nineteen (1019), ten hundred twenty-a one (1020-a1), and ten hundred twenty-four (1024) of the supplement to said code are amended, revised, and codified to read as follows:

INTOXICATING LIQUORS

CHAPTER 1

GENERAL PROHIBITIONS

Section 1. **Rule of interpretation.**

1 Courts and jurors shall construe this title so as to prevent evasion.
C.C. 1002, entire.

Sec. 2. **Definition.**

1 The word "liquor" or the phrase "intoxicating liquor" when used
2 in this title, shall be construed to include alcohol, brandy, whiskey,
3 rum, gin, beer, ale, porter, wine, spirituous, vinous and malt liquor,
4 and all intoxicating liquor whatever.

Sec. 3. **Manufacture, sale, or keeping for sale prohibited.**

1 No one, by himself, clerk, servant, employee, or agent, shall, for
2 himself or any person else, directly or indirectly, or upon any pre-
3 tense, or by any device, manufacture, sell, exchange, barter, dispense,
4 give in consideration of the purchase of any property or of any serv-
5 ices or in evasion of the statute, or keep for sale, any intoxicating
6 liquor, except as provided in this title, or own, keep, or be in any way
7 concerned, engaged, or employed in owning or keeping, any intoxicat-
8 ing liquor with intent to violate any provision of this title, or authorize
9 or permit the same to be done, or manufacture, own, sell, or have
10 possession of any instrument intended for use and capable of being
11 used in the manufacture of intoxicating liquor; or own or have pos-
12 session of any material used exclusively in the manufacture of in-
13 toxicating liquor; or use or have possession of any material with in-
14 tent to use it in the manufacture of intoxicating liquors.

S.C.C. 914, lines 1-5, 8-19.

Note: The following clause from S.C.C. 914 has been omitted here because cov-
ered by sec. 7: "or solicit take, or accept any order for the purchase, sale, shipment,

or delivery of any such liquor, or aid in the delivery and distribution of any intoxicating liquors so ordered or shipped," The reason for such omission is that the *same offense* is embraced in S.C.C. 1019 and *there* punished more severely than in S.C.C. 915. See sec. 7.

Sec. 4. Accessories.

- 1 Any clerk, servant, employee, or agent engaged or aiding in any
- 2 violation of this title shall be charged and convicted as principal.

S.C.C. 914, lines 19-21.

Sec. 5. First conviction—penalty.

- 1 Whoever is found guilty of violating any of the provisions of the
- 2 second preceding section, shall be punished as a bootlegger as provided
- 3 in this act.

S.C.C. 915, entire.

C.C. 916, omitted. Impliedly repealed.

C.C. 917, omitted. Obsolete.

S.C.C. 918, omitted. Obsolete.

Sec. 7. "Bootlegger" defined.

- 1 Any person who shall, by himself, or his employee, servant or
- 2 agent, for himself or any person, company or corporation, keep or
- 3 carry around on his person, or in a vehicle, or leave in a place for
- 4 another to secure, any intoxicating liquor as herein defined, with intent
- 5 to sell or dispose of the same by gift or otherwise, or who shall within
- 6 this state, in any manner, directly or indirectly, solicit, take, or accept
- 7 any order for the purchase, sale, shipment, or delivery of intoxicating
- 8 liquor, in violation of law, or aid in the delivery and distribution of
- 9 any intoxicating liquor so ordered or shipped, or who shall in any
- 10 manner procure for, or sell or give any intoxicating liquors to any
- 11 minor for any purpose, or give to or in any manner procure for or sell
- 12 the same to any intoxicated person, or to one in the habit of becoming

13 intoxicated, shall be termed a bootlegger, and shall be fined not less
14 than three hundred dollars nor more than one thousand dollars or be
15 imprisoned in the county jail not less than three months nor more
16 than one year, or by both such fine and imprisonment.

S.C.C. 914, lines 8-11.

S.C.C. 1019, entire.

Note: The clause relative to "aiding" in the delivery of liquors was taken from S.C.C. 914 and added to this section. See note under sec. 3.

Sec. 8. **Venue.**

1 In case of a sale in which a shipment or delivery of such liquors
2 is made by a person or corporation, the sale thereof shall be deemed
3 to be made in the county wherein the delivery thereof is made by such
4 carrier to the consignee, his agent or employee.

S.C.C. 914, lines 21-25.

Note: "Common or other carrier" omitted and "person or corporation" inserted in lieu thereof. See State v. Wignall, 150 Iowa 650.

Sec. 9. **Nuisance.**

1 The building, erection or place, or the ground itself, in or upon
2 which the unlawful manufacture or sale or keeping with intent to sell,
3 use or give away said liquors is carried on or continued or exists, and
4 the furniture, fixtures, vessels and contents, are declared a nuisance,
5 and in addition to all other penalties provided in this title, shall be
6 abated as hereinafter provided.

C.C. 919, lines 7-12.

lines 1-6, see sec. 10.

Note: "The Penalties hereinbefore affixed" changed to "all other penalties provided in this title".

Sec. 10. **Penalty for nuisance.**

1 Whoever shall erect, establish, continue or use any building, erec-
2 tion or place for any of the purposes herein prohibited, is guilty of a
3 nuisance, and upon conviction shall pay a fine of not less than three

4 hundred nor more than one thousand dollars and costs of prosecution,
5 which shall include a reasonable attorney's fee to be taxed by the
6 court, and stand committed to the county jail until such fine and costs
7 are paid, or be imprisoned in the county jail for a period of not less
8 than three (3) months nor more than one (1) year, or by both such
9 fine and imprisonment.

Sec. 11. Intoxication punished.

1 If any person shall be found in a state of intoxication, any peace
2 officer shall, without a warrant, take him into custody and detain him
3 in some suitable place until an information can be made before a
4 magistrate, and a warrant of arrest issued, under which he shall at
5 once be taken before the magistrate issuing the same, or, if for any
6 reason he can not act, to the next nearest one, where he shall be tried,
7 and, if found guilty, shall be fined in the sum of not less than five nor
8 more than twenty-five dollars and costs of prosecution, or imprisoned
9 in the county jail not more than thirty days.

C.C. 962, lines 1-10.
lines 10-17, see sec. 12.

Sec. 12. When penalty remitted.

1 The penalty, or any portion of it, imposed under the preceding
2 section, may be remitted by the magistrate before whom the trial is
3 had, and the accused discharged from custody, upon his giving infor-
4 mation in writing and under oath, stating when, where and of whom
5 he purchased or received the liquor which produced the intoxication,
6 and the kind and character of this liquor, and, in addition, giving bail
7 for his appearance before any court to give evidence in any action or
8 complaint to be commenced or preferred against such party for fur-

9 nishing the same.

C.C. 962, lines 10-17.

Sec. 13. Clubrooms.

1 Every person who shall, directly or indirectly, keep or maintain,
2 by himself or by associating or combining with others, or who shall
3 in any manner aid, assist, or abet in keeping or maintaining, any club-
4 room, or other place in which intoxicating liquors are received or kept
5 for the purpose of use, gift, barter or sale, or for distribution or divi-
6 sion among the members of any club or association by any means what-
7 ever, and every person who shall use, barter, sell or give away, or as-
8 sist or abet another in bartering, selling, or giving away, any intoxi-
9 cating liquors so received or kept, shall be punishable by a fine of not
10 less than one hundred dollars nor more than five hundred dollars, or
11 by imprisonment in the county jail not less than thirty days nor more
12 than six months.

C.C. 965, entire.

Sec. 14. False statements.

1 If any person, for the purpose of procuring the shipment, trans-
2 portation or conveyance of any intoxicating liquors within this state,
3 shall make to any company, corporation or common carrier, or to any
4 agent thereof, or other person, any false statements as to the char-
5 acter or contents of any box, barrel or other vessel or package con-
6 taining such liquors; or shall refuse to give correct and truthful infor-
7 mation as to the contents of any such box, barrel or other vessel or
8 package so sought to be transported or conveyed; or shall falsely
9 mark, brand or label such box, barrel or other vessel or package in
10 order to conceal the fact that the same contains intoxicating liquors,

11 for the purposes aforesaid; or shall by any device or concealment pro-
12 cure or attempt to procure the conveyance or transportation of such
13 liquors as herein prohibited, he shall be fined for each offense one hun-
14 dred dollars and costs of prosecution, and the costs shall include a
15 reasonable attorney fee to be taxed by the court, and be committed
16 to the county jail until such fine and costs are paid.

C.C. 981, lines 1-17.
lines 17-22, see sec. 15.

Note: 1. "Upon conviction" omitted as wholly useless. 2. "Which shall be paid into the county fund" omitted. If it means the county general fund, then it is violative of the constitution. See code, '97, page 103, sec. 4.

Sec. 15. Packages in transit—search.

1 Any peace officer of the county under process or warrant to him
2 directed shall have the right to open any box, barrel, or other vessel
3 or package for examination, if he has reasonable ground for believing
4 that it contains intoxicating liquors, either before or while the same
5 is being so transported or conveyed.

C.C. 981, lines 17-22.

Sec. 16. Labeling legal shipments.

1 It shall be unlawful for any common carrier or other person to
2 transport or convey by any means, within this state, any intoxicating
3 liquors, unless the vessel or other package containing such liquors
4 shall be plainly and correctly labeled or marked, showing the quantity
5 and kind of liquors contained therein, the name of the party to whom
6 they are to be delivered, and the name of the shipper. No person shall
7 be authorized to receive or keep such liquors unless the same be
8 marked or labeled as herein required. The violation of any provision
9 of this section by any common carrier, or any agent or employee of
10 such carrier, or by any other person, shall be punished the same as

11 provided in the second preceding section.

C.C. 982, lines 1-10.

lines 11-15, see sec. 18.

Note: "And the name of the shipper" is new.

Sec. 17. Carrying or drinking on trains.

1 Any person who shall upon any railway car, street or interurban
2 car, in service, carry upon his person, or in any hand baggage, suit
3 case or otherwise, for unlawful purposes, any intoxicating liquor, and
4 any person who shall drink any such liquors as a beverage on any
5 such car shall be guilty of a misdemeanor.

C.C. 1021, entire. Used also in C.B. 265, sec. 1.

C.C. 1023, entire.

Sec. 18. Illegally transported liquors.

1 Liquors conveyed, carried, transported, or delivered in violation
2 of either of the two last preceding sections, whether in the hands of
3 the carrier or some one to whom they shall have been delivered, shall
4 be subject to seizure and condemnation, as liquors kept for illegal sale.

C.C. 982, lines 11-15.

Sec. 19. Shipments for lawful purposes only.

1 It shall be unlawful for any person, firm, or corporation, or any
2 agent or employee thereof, to carry any intoxicating liquor into the
3 state or from one point to another within the state for the purpose of
4 delivering, or to deliver same to any person, company or corporation
5 within the state, except for lawful purposes.

C.C. 983, entire.

Note: Unnecessary verbiage omitted. See also State vs. Wignall, 150, 650.

Sec. 20. Record of shipments.

1 It shall be the duty of all common carriers, or corporations, or
2 persons who shall for hire carry any intoxicating liquor into the state,

3 or from one point to another within the state, for the purpose of de-
4 livery, and who shall deliver such intoxicating liquor to any person,
5 company, or corporation, to keep, at each station or office where it em-
6 ploys an agent or other person to make delivery of freight and keep
7 records relative thereto, a record book, wherein such carrier shall
8 promptly upon receipt, and prior to delivery, enter in ink, in legible
9 writing, in full, the name of the consignor of each shipment of intoxi-
10 cating liquor to be delivered from or through such station, from where
11 shipped, the date of arrival, the quantity and kind of liquor, so far as
12 disclosed by lettering on the package or by the carrier's records, and
13 to whom and where consigned, and the date delivered.

C.C. 984, lines 1-14.

lines 14-20, see sec. 22.

Note: "Railroad company, express company or other" and "steamboat or steam-
boat line" omitted as superfluous.

Sec. 21. **Inspection of shipping records.**

1 The record book required by the preceding section shall be kept in
2 the said local office of such carrier and shall, during business hours, be
3 open to inspection by any peace or law enforcing officer. It shall be
4 a misdemeanor to refuse such inspection.

C.C. 985, lines 8-9.

lines 1-8, see sec. 23.

lines 9-13, see sec. 24.

C.C. 986, entire.

Note: "Of the state, or of any county, town or city therein" omitted.

Sec. 22. **Delivery is conditional.**

1 No shipment billed in whole or in part as intoxicating liquor
2 shall be delivered to the consignee until such consignee upon such
3 record book enters in ink, in legible writing, his full name and resi-
4 dence or place of business, giving the name of the town or city, and

5 the street name and number where there is such, and certifies that
6 such liquor is for his own lawful purposes.

C.C. 984, lines 14-20.

Note: "Or private consumption" omitted.

Sec. 23. Unlawful delivery by carriers.

1 It shall be a misdemeanor for any corporation, common carrier,
2 person, or any agent or employee thereof:

3 1. To deliver any intoxicating liquors to any person other than
4 to the consignee, or

5 2. To deliver any intoxicating liquors without having the same
6 receipted for as heretofore provided, or

7 3. To deliver any intoxicating liquors where there is reasonable
8 ground to believe that such liquor is intended for unlawful use.

C.C. 985, lines 1-8.

Note: Much unnecessary verbiage has been omitted.

Sec. 24. Immunity from damage.

1 In no case shall any corporation, common carrier, person, or the
2 agent thereof, be liable in damages for complying with any require-
3 ment of this title.

C.C. 985, lines 9-13.

Sec. 25. Federal statutes.

1 The requirements of this title relative to the shipment and de-
2 livery of intoxicating liquors and the records to be kept thereof shall
3 be construed in harmony with federal statutes relating to interstate
4 commerce in such liquors.

C.C. 987, entire.

CHAPTER 2

INDICTMENT, EVIDENCE, AND PRACTICE

Sec. 26. **Peace officers to file information.**

1 Peace officers shall see that all provisions of this title are faith-
2 fully executed within their respective jurisdictions, and when in-
3 formed, or they have reason to believe, that the law has been violated,
4 and that proof thereof can be had, they shall file an information to
5 that effect against the offending party before a magistrate, who shall
6 thereupon proceed according to law.

C.C. 999, lines 1-6.
lines 6-9, see sec. 30.
lines 9-12, see sec. 28.
lines 12-14, see sec. 39.
lines 14-15, omitted. Specifically covered by 40 G.A., ch. 236.
lines 15-18, see sec. 31.
lines 18-22, see sec. 27.
lines 22-32, see sec. 29.

Sec. 27. **Peace officer to investigate.**

1 Any peace officer shall, whenever directed in writing so to do
2 by the county attorney, make special investigation of any alleged or
3 supposed infraction of the law within his county, and report in writ-
4 ing with reference thereto within a reasonable time to such county
5 attorney.

C.C. 999, lines 18-22.

Sec. 28. **Violation of duty.**

1 Any peace officer failing to comply with any of the provisions of
2 the two last preceding sections shall pay a fine of not less than ten nor
3 more than fifty dollars, and a conviction shall work a forfeiture of
4 his office.

C.C. 999, lines 9-12.

Sec. 29. **Services and expense.**

1 The peace officer shall file with the county auditor a detailed,

2 sworn statement of the services rendered and of his actual itemized
3 expenses incurred in connection with said investigation, accompanied
4 by the written order of the county attorney. If the officer be one who
5 is receiving a definite and fixed salary, the board of supervisors shall
6 audit and allow only so much of such expense account as it shall find
7 reasonable and necessary. If the officer be one not receiving a fixed
8 and definite salary, the board of supervisors shall allow such addi-
9 tional sum for services as it may deem reasonable and just, which al-
10 lowance shall be final.

C.C. 999, lines 22-32.

Sec. 30. Duty of county attorney.

1 Upon trials of information for violations of this title, the county
2 attorney shall appear for the state, unless some other attorney, se-
3 lected by the peace officer who filed the information, shall have pre-
4 viously appeared.

C.C. 999, lines 6-9.

Sec. 31 Attorney fee.

1 The attorney selected by a peace officer in accordance with the
2 provisions of the preceding section, shall receive, for prosecuting such
3 charge before a justice of the peace, five dollars, to be taxed as costs
4 in the case.

C.C. 999, lines 15-18.

Sec. 32. Unnecessary allegations.

1 In any indictment or information under this title, it shall not
2 be necessary :

3 1. To set out exactly the kind or quantity of intoxicating liquors
4 manufactured, sold, given in evasion of the statute, or kept for sale,

5 nor

6 2. To set out the exact time of manufacture, sale, gift, or keeping
7 for sale, nor

8 3. To negative any exceptions contained in the enacting clause
9 or elsewhere, which may be proper ground of defense.

10 But proof of the violation by the accused of any provision of this
11 title, the substance of which violation is briefly set forth, within the
12 time mentioned in said indictment or information, shall be sufficient
13 to convict such person.

C.C. 992, lines 1-11.
lines 11-14, see sec. 34.
lines 14-16, see sec. 37.
lines 16-18, see sec. 38.

Sec. 33. **Counts.**

1 Informations or indictments under this title may allege any num-
2 ber of violations of its provisions by the same party, but the several
3 charges must be set out in separate counts, and the accused may
4 be convicted and punished upon each one as on separate informations
5 or indictments, and a separate judgment shall be rendered on each
6 count under which there is a finding of guilty.

C.C. 993, lines 1-6.
lines 6-10, see sec. 35.

Note: Attention is called, at this point in the bill, to the fact that the following sections bearing on the subject of "evidence" have been omitted as obsolete, to-wit: C.C. 995, 996, 997, and S.C.C. 998.

Sec. 34. **Former conviction—pleading.**

1 In any prosecution for a second or subsequent offense, as pro-
2 vided in this title, it shall not be requisite to set forth in the indict-
3 ment or information the record of a former conviction, but it shall be
4 sufficient briefly to allege such conviction.

C.C. 992, lines 11-14.

Sec. 35. "Second conviction" defined.

1 The second or subsequent convictions provided for in this title
2 shall be convictions on separate informations or indictments, and,
3 unless shown in the information or indictment, the charge shall be
4 held to be for a first offense.

C.C. 993, lines 610.

Sec. 36. Record of former conviction.

1 On the trial of any cause, wherein the accused is charged with a
2 second or subsequent offense, a duly authenticated copy of the former
3 judgment in any court in which such judgment was so had, shall be
4 competent and prima facie evidence of such former judgment.

C.C. 1025, entire.

Note: "And may be used in evidence upon the trial of said cause" omitted as

wholly unnecessary.

Sec. 37. Proof of sale.

1 It shall not be necessary in every case to prove payment in order
2 to prove a sale within the true meaning and intent of this title.

C.C. 92, lines 14-16.

Sec. 38. Purchaser as witness.

1 The person purchasing any intoxicating liquor sold in violation
2 of this title shall in all cases be a competent witness to prove such sale.

C.C. 992, lines 16-18.

Sec. 39. Peace Officer as witness.

1 Every peace officer shall give evidence, when called upon, of any
2 facts within his knowledge tending to prove a violation of the pro-
3 visions of this title.

C.C. 999, lines 12-14.

Sec. 40. Judgment lien.

1 For all fines and costs assessed or judgments rendered of any

2 kind against any person for a violation of any provision of this title,
3 or costs paid by the county on account of such violation, the per-
4 sonal and real property, whether exempt or not, except the homestead,
5 as well as the premises and property, personal and real, occupied and
6 used for the purpose, with the knowledge of the owner or his agent,
7 by the person manufacturing, selling, or giving, contrary to the pro-
8 visions of this title, or keeping with intent to sell intoxicating liquors
9 contrary to law, shall be liable, and the same shall be a lien on such
10 real estate until paid.

C.C. 988, lines 1-10.
lines 10-14, see sec. 123.
lines 14-19, see sec. 41.
lines 19-23, see sec. 42.

Sec. 41. Enforcement of lien.

1 Costs paid by the county for the prosecution of actions or pro-
2 ceedings, civil or criminal, under this title, as well as the fines in-
3 flicted or judgments recovered, may be enforced against the property
4 upon which the lien attaches by execution, or by action against the
5 owner of the property to subject it to the payment thereof.

C.C. 988, lines 14-19.

Sec. 42. Evidence of owner's knowledge.

1 In actions under the two preceding sections, evidence of the
2 general reputation of the place kept shall be admissible on the ques-
3 tion of knowledge of the owner, and written notice given him or his
4 agent by any citizen of the county shall be sufficient to charge him
5 with the same.

C.C. 988, lines 19-23.

Sec. 42-a1. Action to subject property—attorney fee.

1 The county attorney in the name of the state, or any citizen of
2 the county in his own name, may maintain an action to subject real
3 property to the payment of the costs and fines aforesaid, and in all
4 such actions, if successful, there shall be added to the judgment, as
5 additional costs, in favor of the county attorney or citizen, as the
6 case may be, an attorney fee equal to one-fourth of the principal
7 amount adjudged against the property.

Note. New. Intended to accomplish the same result as might possibly be accomplished under the so-called mulct tax states.

Sec. 43. Second and subsequent conviction.

1 Whoever is convicted or has entered a plea of guilty, in a criminal
2 action in any district court of the state, of a violation of any provision
3 of this title or of the laws amendatory thereof, and is thereafter
4 convicted or enters a plea of guilty of a subsequent offense
5 against any provision of this title or of said amendatory laws shall
6 be punished as follows:

7 1. For his second conviction, by a fine of not less than five hundred
8 dollars (\$500.00) nor more than one thousand dollars
9 (\$1,000.00), or by imprisonment in the county jail for not less than
10 six (6) months nor more than one (1) year, or, by both such fine and
11 imprisonment.

12 2. For his third and each subsequent conviction, by imprisonment
13 in the state penitentiary for not more than three (3) years.

S.C.C. 1024, entire.

Note: "State reformatory" omitted as being covered by C.C. 2165 and 9530.

Sec. 44. Miscellaneous violations.

1 Any person who, hereafter, is four times convicted either upon
2 trial or a plea of guilty in separate civil or criminal proceedings in

3 any court of this state of violations of this title and is thereafter
4 convicted or enters a plea of guilty in the district court under an
5 indictment or trial information of a fifth violation of this title, shall
6 be imprisoned in the penitentiary for a term not exceeding three
7 years.

Note: New.

Sec. 45. Pleading former convictions.

1 The indictment or information charging a fifth violation under
2 the preceding section shall briefly refer to and identify said former
3 convictions.

Note: New.

CHAPTER 3

SEARCH WARRANTS

Sec. 46. Search warrant proceedings.

1 Search warrant proceedings authorized by this title shall be in
2 the name of the state of Iowa.

S.C.C. 974-a3, lines 14-15.

lines 1-11, omitted. Obsolete. Meaningless. Also harkens back to
the time when a person might legally possess intoxicating
liquors in his residence.

lines 11-14, see sec. 50.

Sec. 47. Information for search warrant.

1 Any credible resident of this state may, before a magistrate, make
2 written information, supported by his oath or affirmation that he has
3 reason to believe and does believe that at a named place in the county
4 wherein the information is filed,

5 1. Intoxicating liquors are being unlawfully kept, or

6 2. Instruments and utensils are being kept and used in the man-

7 ufacture of intoxicating liquors, or are being kept with the intent to
8 so use them, or

9 3. Materials are being kept and used in the manufacture of in-
10 toxicating liquors, or are being kept with the intent to so use them.

S.C.C. 974-a1, lines 1-12 (in part).
lines 9-12, (in part), 19-21, see sec. 48.
line 13, omitted. Unnecessary.
line 14, see secs. 54, 57, and 59.
lines 15-24, see sec. 50.

Note: 1. "*And does believe*" has been restored. The omission of these words in the present law was manifestly unintentional. 2. "*Described as particularly as may be in said information,*" appears three times in lines 9, 10, 11, 12. The clause has been dropped at this point and clearly stated in sec. 48.

Sec. 48. **Description of person, place, and things.**

1 Said information shall, in all cases, describe with reasonable cer-
2 tainty, the place to be searched, and the liquors or instruments or
3 material kept, used or intended to be used in the manufacture of in-
4 toxicating liquors. The person in possession of said place and the
5 person keeping said liquors and things shall be designated by name,
6 if known. If the name of such person is unknown, the information
7 shall state such fact.

S.C.C. 974-a1, lines 9-12 (in part), 19-21.
S.C.C. 975, lines 1-4.
lines 5-10, see sec. 58.

Sec. 49. **Search warrant for dwelling house.**

[In redrafting this bill as provided by the fortieth general assembly, section 49 has been omitted, but in order to avoid revising the references and notes under each section the remaining sections have not been renumbered.]

Sec. 50. **Probable cause—warrant.**

1 Said magistrate shall, upon finding that complainant has prob-
2 able cause for the belief set forth in said information, issue his war-
3 rant of search. Said warrant shall be directed "To any peace officer

4 in the county”, shall designate and describe the liquors, instruments,
5 utensils, materials, place, and persons substantially as set forth in
6 said information, and shall command the said officer thoroughly to
7 search said place and to seize the said liquors and the vessels contain-
8 ing them, and said instruments, utensils, and materials, and to keep
9 the same securely until final action be had thereon.

S.C.C. 974-a1, lines 15-24.

S.C.C. 974-a3, lines 11-14.

Sec. 51. Execution of warrant.

1 The peace officer to whom such warrant shall be delivered shall
2 forthwith obey and execute, as effectually as possible, the commands
3 of said warrant, and forthwith make return of his doings, to said
4 magistrate and shall securely keep all liquors, instruments, utensils,
5 and materials so seized by him and the vessels containing them until
6 final action be had thereon.

S.C.C. 974-a2, entire.

S.C.C. 976-a1, lines 1-2.

lines 1-3, 10-19, see sec. 52.

lines 3-10, see sec. 53.

Sec. 52. Notice of hearing.

1 Said magistrate, in the event of a seizure under said warrant,
2 shall, within forty-eight (48) hours after the officer's return is filed
3 with him, issue a notice of hearing on said seizure, which notice shall:

4 1. Be addressed:

5 (a) To the person or persons named or described in said infor-
6 mation as the owner or keeper of said liquors, instruments, utensils,
7 and materials, and

8 (b) “To all persons whom it may concern”.

9 2. Describe said liquors, vessels, instruments, utensils, and ma-

10 terials with reasonable certainty, and state where, when, and why the
11 same were seized.

12 3. Summon said persons and all others whom it may concern to
13 appear before said magistrate within the county at a place and time
14 named in said notice, which time shall not be less than five nor more
15 than fifteen days after the posting and leaving of said notices, and
16 show cause, if any they have, why said instruments, materials, or
17 liquors, together with the vessels in which the same are contained,
18 should not be forfeited.

19 4. Be signed by said magistrate.

S.C.C. 976-a1, lines 1-3, 10-19.

Note: This section plainly tells the magistrate how to *draw* the notice; the following section plainly tells the officer how to *serve* the notice. These two matters are no longer confused and intermingled in the same section.

Sec. 53. Service of notice.

1 Said notice shall be served:

2 1. By posting a copy thereof in some conspicuous place on or
3 about the building or place where said liquors, vessels, instruments,
4 utensils, and materials were seized, and

5 2. If the person or persons named or described in the informa-
6 tion as owner or keeper of said liquors, articles, and things so seized
7 be resident of said county, then by leaving a copy of said notice at the
8 last known usual place of residence of said person or persons.

S.C.C. 976-a1, lines 3-10.

Sec. 54. Right to contest forfeiture.

1 At the time and place described in said notice, the person named
2 in said information, or any other person claiming an interest in said
3 liquors, vessels, instruments, utensils, or materials, or in any part

4 thereof, may appear and show cause why the same should not be for-
5 feited, providing such claimant at least three days prior to the time set
6 for the hearing:

7 1. Has filed a written claim for said liquors, vessels, instruments,
8 utensils, or materials, or for any part thereof, and has alleged therein
9 under oath that the articles claimed were not obtained by him by
10 means of unlawful transportation of the same and were not intended
11 for unlawful sale or use, and

12 2. Has entered into and filed with the magistrate a bond with
13 proper security as determined by said magistrate, conditioned to pay
14 all costs incurred in the proceeding from the beginning thereof in
15 case the liquors, vessels, instruments, utensils, or materials, or any
16 part of it so claimed, is finally ordered forfeited.

S.C.C. 974-a1, line 14.

S.C.C. 976-a2, lines 1-15.

lines 15-16, omitted. Repetition of lines 4-5.

Sec. 55. Procedure.

1 The proceeding in the trial of such case may be the same, sub-
2 stantially, as in cases of misdemeanor triable before justices of the
3 peace.

S.C.C. 976-a3, lines 1-2.

lines 3-9, see sec. 56.

lines 9-17, see sec. 59.

Sec. 56. Right to jury.

1 Any person may demand a jury, provided he has, within the time
2 and in the manner heretofore provided, acquired the right to contest
3 said condemnation.

S.C.C. 976-a3, lines 3-9.

Note: Language of present statute much condensed and simplified but no change made in meaning.

Sec. 57. Presumption.

1 It shall be presumed, on the trial of said proceeding, that all in-
2 toxicating liquors seized under said search warrant, and the vessels
3 containing such liquors have come into the possession of the holder
4 or claimant by means of unlawful transportation, and that such
5 liquors were owned and kept by claimant with the intent to sell and
6 use the same in violation of this title, and the burden to show the con-
7 trary shall rest upon the claimant.

Note: New, but see S.C.C. 974-a1, line 14.

Sec. 58. Insufficiency of description no defense.

1 When any liquors, instruments, utensils, or materials shall have
2 been seized by virtue of any such warrant, the same shall not be dis-
3 charged or returned to any person claiming the same by reason of
4 any alleged insufficiency of description in the warrant of the liquors,
5 instruments, utensils, materials or place, but the claimant shall only
6 have a right to be heard on the merits of the case.

S.C.C. 975, lines 5-10.

Sec. 59. Judgment of forfeiture.

1 If, upon the evidence presented, the said magistrate or jury, as
2 the case may be, shall, by verdict, find that said liquors, instruments
3 or materials were when seized, owned or kept by any person, whether
4 said party defendant or not for the purpose of being used or sold in
5 violation of this title or have been unlawfully transported, the said
6 magistrate shall render judgment that said liquors, instruments or
7 materials or said part thereof, with the vessels in which they are con-
8 tained are forfeited.

S.C.C. 974-a1, line 14.

S.C.C. 976-a3, lines 9-17.

Note: "Or was purchased or procured as the result of solicitation," omitted.

Sec. 60. Costs.

1 If no person be made defendant in the manner aforesaid, or if
2 judgment be in favor of all the defendants who appear and are made
3 such, then the costs of the proceeding shall be paid as in ordinary
4 criminal prosecution where the prosecution fails.

5 If the judgment shall be against only one party defendant ap-
6 pearing as aforesaid, he shall be adjudged to pay all the costs of pro-
7 ceedings in the seizure and detention of the liquors, instruments, uten-
8 sils, or materials claimed by him, and trial, up to the time of judg-
9 ment.

10 If such judgment shall be against more than one party defendant
11 claiming distinct interests in said liquor, instruments or material,
12 then the costs of said proceedings and trial shall be, according to the
13 discretion of said magistrate, equitably apportioned among said de-
14 fendants.

15 Execution shall be issued on said judgments against said defend-
16 ants for the amount of costs so adjudged against them.

S.C.C. 976-a4, entire.

Sec. 61. Appeal by claimant.

1 Any person appearing as aforesaid may appeal to the district
2 court from said judgment or forfeiture, as to the whole or any part
3 of said liquors, instruments, utensils, materials, or vessels claimed by
4 him and so adjudged forfeited.

S.C.C. 976-a5, lines 1-4.

lines 4-6, see sec. 62.

lines 6-10, see sec. 63.

Sec. 62. Appeal by state.

1 Where the judgment is against the state, it shall have the same

2 right of appeal, except that no bond shall be required.

S.C.C. 976-a5, lines 4-6.

Sec. 63. Stay of proceedings.

1 If an appeal be taken by the state, the same shall operate as a
2 stay of proceedings and the liquors, instruments, utensils, or materials
3 seized under the warrant shall not be returned to any claimant there-
4 of until, upon the final determination of said appeal, he is found en-
5 titled thereto.

S.C.C. 976-a5, lines 6-10.

Sec. 64. Default judgment.

1 If no person appears and claims such liquors, instruments, uten-
2 sils, or materials, at least three days prior to the day set for the for-
3 feiture hearing, the magistrate shall enter an order of forfeiture on
4 default on the date set for the hearing.

S.C.C. 976-a6, entire.

Note: "Within" changed to "at least". This change appears to clarify the legis-
lative intent.

Sec. 65. Transcript to district court.

1 When it shall be finally decided by any other than the district
2 court that intoxicating liquors, instruments, utensils, or materials
3 seized as aforesaid are forfeited, the court rendering final judgment
4 of forfeiture shall forthwith file in the office of the clerk of the district
5 court in the county a certified transcript of such judgment.

S.C.C. 977-a1, lines 1-5.

lines 5-9, see sec. 67.

lines 9-13, see sec. 66.

Sec. 66. Judgment docketed—effect.

1 The clerk of the district court shall file the transcript as soon as
2 received and enter a memorandum thereof and the date of filing in

3 the judgment docket and from such entry it shall be treated in all
4 respects and in its enforcement as a judgment in the district court.

S.C.C. 977-a1, lines 9-13.

Sec. 67. Delivery to sheriff.

1 When a judgment of forfeiture is transcribed to the district
2 court, the officer having said liquors, instruments, utensils, or mate-
3 rials in custody shall forthwith deliver the same to the sheriff, taking
4 itemized receipts therefor. One of said receipts shall be filed with the
5 clerk of the district court and the other with the court rendering said
6 judgment.

S.C.C. 977-a1, lines 5-9.

Sec. 68. Restoration.

1 When it shall be finally decided that any liquors, instruments,
2 utensils, or materials so seized are not liable to forfeiture, the court
3 rendering such final decision shall issue a written order to the officer
4 having the same in custody or to some other peace officer, to restore
5 said liquors, instruments, utensils, or materials with the vessels con-
6 taining the same to the place where it was seized as nearly as may be
7 or to the person entitled to receive it.

S.C.C. 977-a2, lines 1-7.

lines 7-10, see sec. 69.

Note: "By whom such final decision shall be rendered", changed to "rendering such final decision".

Sec. 69. Execution, return, and costs.

1 The officer shall obey said order and make return thereon to the
2 court of his acts thereunder and the costs of the proceeding in such
3 case attending the restoration, shall be taxed to and paid by the state.

S.C.C. 977-a2, lines 7-10.

Sec. 70. Utilizing condemned liquors.

1 When a transcript has been filed or a judgment has been entered
2 in the district court, decreeing a forfeiture of any intoxicating liquors,
3 instruments, utensils, or materials, the court, or a judge thereof in va-
4 cation, may direct the disposition of such liquors, instruments, uten-
5 sils, or materials and the vessels containing the same:

6 1. By ordering the destruction thereof, or

7 2. By ordering any portion thereof consisting of alcohol,
8 brandies, wine or whiskey, to be delivered, for medical or scientific
9 purposes, to any state or reputable hospital in the county, or in ad-
10 joining counties, or to the board of control of state institutions.

S.C.C. 977-a3, lines 1-10.

lines 10-12, see sec. 71.

lines 13-18, see sec. 72.

Sec. 71. Dispensation by board of control.

1 Liquors delivered to the board of control shall be dispensed by
2 it to any state institution or reputable hospital in this state and solely
3 for medical or scientific purposes.

S.C.C. 977-a3, lines 10-12.

Sec. 72. Duty of board of control.

1 The state board of control shall issue to the said court or judge
2 a receipt stating the kind and quantity of liquor delivered to it and
3 shall keep a strict account of all liquors received and dispensed and
4 shall make a full and complete report of all such transactions each
5 year to the governor of the state.

S.C.C. 977-a3, lines 13-18.

Sec. 73. Destruction of instruments—sale of material.

1 Said court or judge shall also direct that all instruments used in

2 the manufacture of intoxicating liquors be converted by the sheriff
3 into junk in such a manner that they cannot again be used for manu-
4 facturing liquor, and shall direct the sheriff to destroy all material
5 which has no value for any other purpose than making intoxicating
6 liquor.

7 All material which may have legitimate uses and the junk re-
8 ferred to shall be sold by the sheriff as chattels under execution and
9 all moneys realized therefrom shall be turned into the treasury for
10 the benefit of the school fund of the county.

S.C.C. 977-a4, entire.

Sec. 74. Undisposed cases—duty of clerk.

1 The clerk of the district court shall call to the attention of the
2 court on the first day of each term all judgments for the forfeiture of
3 intoxicating liquors, instruments, utensils, or materials, and for the
4 disposition of which no order has been theretofore made and the court
5 shall thereupon enter an order for the disposition of such liquors, in-
6 struments, utensils, or materials.

S.C.C. 977-a5, lines 1-6.

lines 6-9, see sec. 75.

lines 9-12, see sec. 76.

Sec. 75. Writ for destruction or disposition.

1 Upon the entry of any order for the disposition of any intoxicat-
2 ing liquors, instruments or materials, which have been adjudged for-
3 feited, the clerk shall forthwith transmit a certified copy thereof to
4 the sheriff for execution.

S.C.C. 977-a5, lines 6-9.

Sec. 76. Execution and return.

1 The sheriff shall immediately take possession of such liquors, in-

2 struments, utensils, or materials and the vessels containing the same,
3 and make disposition thereof in accordance with such order, and
4 make return of his doing to the court.

S.C.C. 977-a5, lines 9-12.

Sec. 77. Transportation by carrier.

1 When any such liquor is ordered delivered or shipped, the sheriff
2 shall securely attach to the box or package containing the same, a
3 certified copy of the order of the court and thereupon any railway
4 company, express company, or other common carrier may receive,
5 transport and deliver such liquor to the consignee.

6 The cost of packing and transportation shall be paid by the con-
7 signee receiving such liquor.

S.C.C. 977-a6, lines 1-7.

lines 8-14, see sec. 78.

Sec. 78. Receipts and return.

1 The sheriff shall take receipts for any liquor disposed of under
2 the provisions of the preceding section, showing in detail the kind and
3 quantity of liquor delivered, the character of the vessels containing
4 same, the date and manner of delivery and, if delivery is made by
5 common carrier, the name of such carrier. Such receipt shall be at-
6 tached to and filed with the return of his doings as herein provided.

S.C.C. 977-a6, lines 8-14.

Sec. 79. "Destruction" defined.

1 The delivery ; for medicinal or scientific purposes, of intoxicating
2 liquors to state institutions, hospitals, or to the board of control, under
3 an order of the district court, shall be deemed a destruction thereof

4 within the meaning of any statute of this state providing for such
5 destruction.

S.C.C. 977-a7, entire.

CHAPTER 4

SEIZURE AND SALE OF VEHICLES

Sec. 80. "Conveyance" defined.

1 The term "conveyance" as used in this chapter shall embrace
2 wagons, buggies, teams, automobiles, motor vehicles, water and air
3 craft, and all other forms of conveyances except railway, street, and
4 interurban cars.

S.C.C. 1020-a1, lines 3-4, 8-9.

lines 1-9, see sec. 81.

lines 10-11, see sec. 85.

lines 11-13, see sec. 83.

lines 14-18, see sec. 84.

lines 19-20, see sec. 86.

lines 20-22, see sec. 88.

lines 22-26, see sec. 92.

lines 26-29, see sec. 90.

lines 29-30, see sec. 93.

lines 31-33, see sec. 92.

lines 33-40, see sec. 88.

lines 40-43, see sec. 89.

lines 44-47, see sec. 93.

Note: Last clause is new.

Sec. 81. Seizure under transportation.

1 A peace officer who discovers that intoxicating liquor has been,
2 or is being, transported in violation of law, shall summarily arrest
3 the offender and likewise seize said liquor and the conveyance used
4 to effect said transportation.

S.C.C. 1020-a1, lines 1-9.

Note: 1. The present law authorizes a seizure only when the offender is caught "in the act of transporting". This section materially broadens the present law. 2. For definition of "peace officer" see C.B. 250.

Sec. 82. Replevin not available.

1 A conveyance seized under the preceding section shall not be sub-
2 ject to replevin.

Note: New.

Sec. 83. Custody of conveyance.

1 Said conveyance shall be turned over to the sheriff of the county
2 in which the seizure was made, and shall be retained in his custody
3 until disposed of as hereinafter provided.

S.C.C. 1020-a1, lines 11-13.

Sec. 84. Release of conveyance.

1 Said conveyance shall be returned to the owner upon execution
2 by him of a good and valid bond with sufficient sureties in a sum
3 double the value of the property, which said bond shall be approved by
4 the sheriff of the county and shall be conditioned to pay the value of
5 said car, when seized, to said sheriff in case a judgment of forfeiture
6 be entered against said car.

S.C.C. 1020-a1, lines 14-18.

Note: Condition of bond is here materially changed. A bootlegger's car *when seized* may be worth \$5,000. Present law allows him, by bond, to retake possession of the car and return it (or another surreptitiously substituted), say 60 days later, at which time it may be worth \$50—or less.

Sec. 85. Information—return required.

1 The officer shall at once file an information against the accused
2 before some court of the county other than the district court. In ad-
3 dition to the information, the officer shall also file with the said court
4 a written return or statement setting forth a brief description of the
5 conveyance, liquors, and vessels seized.

Sec. 86. Forfeiture.

1 The court, upon conviction of a person so arrested, shall enter an

2 order of forfeiture of the liquors, vessels, and conveyance seized and
3 forthwith file with the clerk of the district court a certified transcript
4 of such order. The district court or a judge thereof shall, on such no-
5 tice as the court or judge may prescribe, proceed to adjudicate the
6 legality and priority of all claims to and liens on said vehicle, and
7 shall proceed against said liquors and vessels as in case of transcripts
8 filed in search warrant proceedings.

Sec. 86-a1. Optional procedure as to liquors.

1 In lieu of declaring a forfeiture, under the last preceding section,
2 of said liquors and vessels, the said court may, in any case, proceed
3 against the said liquors and vessels, in the manner in which it would
4 proceed had said liquors been seized on a duly issued search warrant.

Sec. 86-a2. Optional procedure as to conveyance.

1 In lieu of declaring a forfeiture, under the second preceding sec-
2 tion, of said conveyance, the said court may, in any case, proceed as
3 provided in the first following section.

Sec. 87. Information against conveyance.

1 An information, under oath, and in substantially the following
2 form, shall be filed in the district court against a conveyance promptly
3 upon the seizure thereof, to wit:

4 "State of Iowa

5 vs.

6 One certain automobile (or other con-
7 veyance as the case may be)

8 being duly sworn do say on oath
9 that (here describe the conveyance with reasonable certainty) was, on

10 the.....day of....., 19....., in the county of....., in the
11 state of Iowa, employed in the transportation of intoxicating liquors
12 in violation of law, and, because of such unlawful use, was at said
13 time and place seized and is now in the custody of the sheriff of said
14 county; that to the best knowledge and belief of this affiant said con-
15 veyance belongs to..... Wherefore it is
16 asked that said conveyance be dealt with as provided by law.”

Note.: New. The information here provided corresponds to the written information in search warrant proceedings. Some such procedure seems necessary in order to get the *seizure of the conveyance* formally and as a matter of record before the court.

S.C.C. 1020-a1, lines 20-22.

Sec. 22. Procedure—exceptions.

1 Upon the filing of said information, the procedure for the for-
2 feiture of said conveyance shall be the same as is provided for the
3 forfeiture of intoxicating liquors seized under search warrant, except
4 in the following particulars:

5 1. *Service of notice.* The notice of hearing of forfeiture shall, in
6 addition to the service provided in section fifty-three (53) of chapter
7 three (3) of this title, be published once a week for two (2) weeks in
8 some newspaper published in the city or county in which said con-
9 veyance was seized, and if the conveyance be a motor vehicle a copy of
10 the aforesaid notice shall forthwith be mailed to the secretary of state.

11 2. *Hearing.* Said notice shall fix the day of hearing at a time not
12 less than thirty (30) days after the notice is fully served.

13 3. *Right to contest.* The written claim of the owner or other
14 claimant shall allege, under oath, that said conveyance was not being
15 employed, when seized, in the unlawful transportation of intoxicating

16 liquors, or that if it was being so employed such use was without the
17 knowledge or consent, directly or indirectly, of said claimant.

18 4. *Presumption.* If it be made to appear that any intoxicating
19 liquors were found in or on said conveyance when it was seized, it
20 shall be presumed that the conveyance was, when seized, employed
21 with the knowledge and consent of all claimants, in the unlawful
22 transportation of such liquors.

23 5. *Trial.* The trial shall be by the court.

24 6. *Judgment.* A judgment of forfeiture shall direct that said
25 conveyance be sold by the sheriff as chattels under execution, and a
26 certified copy of such order shall constitute an execution.

S.C.C. 1020-a1, lines 20-22.

lines 33-40.

Note: 1. After an article is in court under a seizure *without search warrant*, the procedure for condemnation should be practically the same as condemnation of an article seized *under search warrant*, 2. Paragraphs 3 and 4 are new.

Sec. 89. **Duty of secretary of state.**

1 The secretary of state, upon receipt of the notice aforesaid, shall
2 if the owner appears of record in his office, notify such owner of the
3 fact of seizure, and if not of record, said secretary shall mail such
4 description to the county treasurer of each county, and to the state
5 bureau of investigation.

S.C.C. 1020-a1, lines 40-43.

Sec. 90. **Permissible claimant.**

1 No conveyance shall be returned to any claimant, either as owner
2 or lien holder, nor shall any claim be established when such claimant:

3 1. Fails to establish a legal and bona fide claim, or

4 2. Knew or had reason to suspect that said conveyance was being
5 employed in the illegal transportation of intoxicating liquors, or

6 3. Fails to overcome the presumption, if established, that such
7 conveyance was being so used, with his knowledge and consent, or

8 4. Fails, in case of a motor vehicle, to establish the registration
9 of the conveyance in the name of the claimant prior to the seizure, or

10 5. Fails to establish that his lien was duly recorded prior to the
11 seizure.

Sec. 91. Priority of liens.

1 The judgment shall establish the amount and priority of all al-
2 lowable claims.

Note: New, but implied from present law.

Sec. 92. Distribution of proceeds.

1 The sheriff shall apply the proceeds of a sale, or of the forfeited
2 bond in the following order:

3 1. Expense of keeping the conveyance.

4 2. Court costs.

5 3. Liens in the order established by the court.

S.C.C. 1020-a1, lines 22-26, 31-33.

Sec. 93. Balance to school fund.

1 Any balance of said proceeds shall be paid by the sheriff to the
2 county treasurer who shall credit the same to the county school fund.

S.C.C. 1020-a1, lines 29-30, 44-47.

Sec. 94. Duplicate receipts.

1 The sheriff, in paying a balance to the county treasurer, shall
2 take duplicate receipts therefor and file one of said receipts with the
3 county auditor.

Note: New. Imperatively necessary in order to provide for proper accounting.

CHAPTER 5

INJUNCTION AND ABATEMENT

Sec. 95. **Action to enjoin.**

1 Actions to enjoin nuisances may be brought in equity in the name
2 of the state by the county attorney, who shall prosecute the same to
3 judgment, or any citizen of the proper county may institute and main-
4 tain such a proceeding in his name.

C.C. 966, lines 1-3.
 lines 3-10, see sec. 96.
 lines 10-13, see sec. 97.
 lines 13-17, see sec. 98.

C.C. 967, lines 1-4.
 lines 4-6, see sec. 99.
 lines 6-9, see sec. 100.
 lines 9-10, see sec. 101.
 lines 11-18, see sec. 102.
 lines 18-24, see sec. 103.
 lines 24-28, see sec. 104.

Sec. 96. **Temporary injunction.**

1 In such action the court, or a judge in vacation, shall, upon the
2 presentation of a petition therefor, allow a temporary writ of injunc-
3 tion without bond, if it shall be made to appear to the satisfaction of
4 the court or judge, by evidence in the form of affidavits, depositions,
5 oral testimony or otherwise, as the plaintiff may elect, unless the court
6 or judge, by previous order, shall have directed the form and manner
7 in which it shall be presented, that the nuisance complained of exists.

C.C. 966, lines 3-10.

Sec. 97. **Notice.**

1 Three days' notice in writing shall be given the defendant of the
2 hearing of the application, and, if then continued at his instance, the
3 writ as prayed shall be granted as a matter of course.

C.C. 966, lines 10-13.

Sec. 98. Scope of injunction.

1 When an injunction has been granted, it shall be binding on the
2 defendant throughout the state, and any violation of the provisions of
3 this title anywhere within the state shall be punished as a contempt,
4 as provided in this chapter.

C.C. 966, lines 13-17.

Note: "*By manufacturing, selling, or keeping for sale of intoxicating liquors*" has been omitted in order to so broaden the law as to embrace violations by means *other* than by "manufacturing, selling, or keeping for sale".

Sec. 99. Prompt trial.

1 The action when brought shall be triable at the first term of court
2 after due and timely service of notice of the commencement thereof
3 has been given.

Sec. 100. Evidence of general reputation.

1 In all actions to enjoin a nuisance or to establish a violation of
2 the injunction, evidence of the general reputation of the place de-
3 scribed in the petition or information shall be admissible for the pur-
4 pose of proving the existence of the nuisance or the violation of the
5 injunction.

Sec. 101. Attorney fees and commission.

1 In all actions in equity against persons charged with keeping a
2 nuisance, and to abate the same, and all proceedings for a contempt
3 for violating any injunction, temporary or permanent, issued or de-
4 creed therein, the court or judge before whom the same shall be heard
5 and determined shall allow the attorney prosecuting such cause a rea-
6 sonable sum for his services, and in case a fine shall be assessed he
7 shall be allowed ten per cent of the fine collected.

C.C. 967, lines 9-10.

C.C. 1000, entire.

Sec. 102. Dismissal of action.

1 Such action, when brought by a citizen, shall not be dismissed
2 upon the motion of either the plaintiff or defendant until the county
3 attorney shall have been notified in writing of the filing of such mo-
4 tion, and until such county attorney shall have made a personal in-
5 vestigation of the place of business sought to be enjoined, and of all
6 matters set forth in said motion for dismissal, and shall have filed, in
7 writing, a report of his findings in said cause, and his recommenda-
8 tion in reference to the disposition of the same.

C.C. 967, lines 11-18.

Sec. 103. Delay in trial.

1 If any such action by a citizen shall remain upon the docket for
2 two terms of court, without trial, it shall be the duty of the judge of
3 such court to order the plaintiff and his attorney or attorneys of rec-
4 ord, to appear in open court for examination as to the reasons why
5 such cause has not been brought on for trial; and it shall be the duty
6 of the county attorney to conduct such examination, if the judge shall
7 so order.

C.C. 967, lines 13-24.

Sec. 104. Bad faith in prosecution.

1 Whenever the court shall have reason to believe that any such
2 action to enjoin has not been brought or prosecuted in good faith said
3 court shall direct the grand jury to investigate all the facts and cir-
4 cumstances connected with the bringing and prosecution of the same.

C.C. 967, lines 24-28.

Sec. 105. Violation—procedure—warrant.

1 In case of the violation of any injunction granted under the pro-

2 visions of this title, the court, or in vacation a judge thereof, may
3 summarily try and punish the offender. The proceedings shall be com-
4 menced by filing with the clerk of the court an information under oath,
5 setting out the alleged facts constituting such violation, upon which
6 the court or judge shall cause a warrant to issue, under which the
7 defendant shall be arrested.

S.C.C. 968, lines 1-7.

lines 7-9, see sec. 106.

lines 9-13, see sec. 107.

lines 13-18, see sec. 108.

Sec. 106. **Method of trial.**

1 The trial shall be as in equity and may be had upon affidavits, or
2 either party may demand the production and oral examination of the
3 witnesses.

S.C.C. 968, lines 7-9.

Sec. 107. **First conviction.**

1 A party found guilty of contempt under the provisions of the pre-
2 ceding section, shall for the first offense be punished by a fine of not
3 less than two hundred nor more than one thousand dollars, or by im-
4 prisonment in the county jail not less than three nor more than six
5 months, or by both fine and imprisonment.

S.C.C. 968, lines 9-13.

Sec. 108. **Second and subsequent convictions.**

1 A party who, having once been found guilty of contempt for vio-
2 lating the provisions of any such injunction, shall for each such sub-
3 sequent violation be punished by a fine of not less than five hundred
4 dollars nor more than one thousand dollars or by imprisonment in the
5 county jail for not less than six months nor more than one year.

S.C.C. 968, lines 13-18.

Sec. 109. Bootleggers.

1 A bootlegger, as defined in this title, may be restrained by injunc-
2 tion from doing or continuing to do any of the acts prohibited by law,
3 and all the proceedings for injunctions, temporary and permanent, and
4 for fines and costs for violation of same, as defined by law, shall be
5 applicable to such person, company or corporation, and the fact that
6 an offender has no known or permanent place of business or base of
7 supplies, or quits the business after the commencement of an action
8 shall not prevent a temporary or permanent injunction, as the case
9 may be, from issuing.

C.C. 1020, entire.

Sec. 110. Judgment of abatement.

1 If the existence of the nuisance be established in a civil or crim-
2 inal action, an order of abatement shall be entered as a part of the
3 judgment in the case; which order shall direct the destruction of the
4 liquor, the removal from the building or place of all fixtures, furniture,
5 vessels or movable property used in any way in conducting the unlaw-
6 ful business and sale thereof, in the manner provided for the sale of
7 chattels under execution, and the effectual closing of the building,
8 erection or place against its use for any purpose prohibited in this
9 title, and so keeping it for a period of one year, unless sooner released.

C.C. 969, lines 1-10.

lines 10-12, see sec. 111.

lines 12-16, see sec. 112.

Sec. 111. Use of abated premises.

1 If anyone shall break or use a building or place so directed to be
2 closed, he shall be punished as for contempt as provided in this title.

C.C. 969, lines 10-12.

Sec. 112. Fees.

1 For removing and selling the movable property, the officer shall
2 be entitled to charge and receive the same fees as he would for levying
3 upon and selling like property on execution, and for closing the prem-
4 ises and keeping them closed, a reasonable sum shall be allowed by the
5 court.

C.C. 969, lines 12-16.

Sec. 113. Proceeds—how applied.

1 The proceeds of the sale of the personal property in abatement
2 proceedings shall be applied, first, in payment of the costs of the action
3 and abatement; second, to the satisfaction of any fine and costs ad-
4 judged against the proprietor of the premises and keeper of said nui-
5 sance, and the balance, if any, shall be paid to the defendant.

C.C. 970, entire.

Note: "As provided in the preceding section" omitted and "in abatement proceed-
ings" inserted in lieu.

Sec. 114. Abatement after judgment.

1 If the owner appears and pays all costs of the proceedings, and
2 files a bond with sureties to be approved by the clerk in the full value
3 of the property, to be ascertained by the court, or, in vacation, by the
4 clerk, auditor and treasurer of the county, conditioned that he will
5 immediately abate said nuisance and prevent the same from being
6 established or kept therein within a period of one year thereafter, the
7 court, or, in vacation, the judge, may, if satisfied of his good faith,
8 order the premises closed under the order of abatement to be deliv-
9 ered to said owner, and said order of abatement canceled so far as the
10 same may relate to said property.

C.C. 971, lines 1-10.

lines 10-13, see sec. 115.
lines 13-15, see sec. 116.

Sec. 115. Abatement before judgment.

1 If the proceeding be an action in equity, and said bond be given
2 and costs therein paid before judgment and order of abatement, the
3 action shall be thereby abated as to said building only.

C.C. 971, lines 10-13.

Sec. 116. Effect of release.

1 The release of the property under the provisions of either of the
2 two preceding sections shall not release it from any judgment, lien,
3 penalty, or liability to which it may be subject by law.

C.C. 971, lines 13-15.

C.C. 972, omitted. Convictions in criminal actions are fully covered in sections 5, 7, 10, 13, 14, 16, 17, 23, 28, 43, and 44 of this bill.

Sec. 116-a1. Abatement bonds—liens on real estate.

1 Undertakings of bond for abatement, shall, immediately after
2 filing by the clerk of the district court, be docketed and entered upon
3 the lien index as required for judgments in civil cases, and, from the
4 time of such entries, shall be liens upon real estate of the persons executing the same, with like effect as judgments in civil actions.

Sec. 116-a2. Attested copies filed in proper counties.

1 Attested copies of such undertakings may be filed in the office of
2 the clerk of the district court of the county in which the real estate
3 is situated, in the same manner and with like effect as attested copies
4 of judgments, and shall be immediately docketed and indexed in the
5 same manner.

Sec. 116-a3. Forfeiture of abatement bond.

1 If the owner of the property who has filed said abatement bond

2 as in this chapter provided, fails to abate the said liquor nuisance on
3 the premises covered by the bond or fails to prevent the maintenance
4 of any liquor nuisance on said premises at any time within the period
5 of one year, the court must, after a hearing in which the said fact is
6 established, direct an entry of such violation of the terms of his said
7 bond, to be made on the record, and the undertaking of his bond is
8 thereupon forfeited.

Sec. 116-a4. Procedure.

1 The proceeding to forfeit said abatement bond shall be com-
2 menced by filing with the clerk of the court, by any citizen of the
3 county where the bond is filed, an application, under oath, to forfeit
4 said bond, setting out the alleged facts constituting the violation of
5 the terms of said bond, upon which the judge or court shall direct by
6 order attached to said application, that a notice be issued by the clerk
7 of the district court, directed to the principal and sureties on said
8 bond, to appear at a certain date fixed, to show cause, if any they
9 have, why the said bond should not be forfeited and judgment entered
10 for the penalty therein fixed.

Sec. 116-a5. Method of trial.

1 The trial shall be to the court and as in equity and be governed
2 by the same rules as to evidence as in contempt proceedings.

Sec. 116-a6. Judgment.

1 If the court, after hearing, finds that a liquor nuisance has been
2 maintained on the premises covered by the abatement bond and that
3 liquor has been sold or kept for sale on the premises contrary to law,
4 within one year from the date of the giving of said bond, then the

5 court shall order the forfeiture of the bond and enter judgment for
6 the full amount of said bond against the principal and sureties thereon
7 and the lien on the real estate heretofore created, shall be decreed
8 foreclosed and shall provide for a special and general execution for
9 the enforcement of said decree and judgment.

Sec. 116-a7. Appeal.

1 Appeal may be taken as in any equity case and the cause be
2 triable de novo, except that if applicant for forfeiture appeals, he need
3 not file appeal or supersedeas bond.

Sec. 116-a8. Limitation of actions of forfeiture.

1 No application for forfeiture of abatement bond shall be consid-
2 ered or heard unless the same has been filed within one year after the
3 termination of the one year period covered by the said bond, and
4 after said period herein provided has fully elapsed the bond shall be
5 deemed absolutely void and the lien created thereby fully satisfied.

Sec. 116-a9. County attorney to prosecute.

1 It shall be the duty of the county attorney to prosecute all for-
2 feitures of abatement bonds and the foreclosure of the same.

Sec. 117. Advance payment of fees.

1 In an action brought by a citizen to enjoin a nuisance, as defined
2 in this title no officer or witness shall be entitled to receive in advance
3 fees for service or attendance.

Sec. 117-a1. Prompt service of papers by peace officers.

1 It shall be a misdemeanor for any peace officer to delay service
2 of original notice, writ of injunction, writ of abatement or precept

3 for contempt, in any equity case filed for injunction of abatement,
4 either by state or private citizen, under this chapter.

Sec. 118. Costs.

1 If a prosecution brought by a citizen fails, or the costs can not be
2 collected of the defendant, they shall be paid in the same manner as
3 in criminal causes. If, however, the court shall find that the case was
4 commenced without probable cause, or was maliciously brought, it
5 may tax the costs to the plaintiff.

C.C. 973, lines 3-7.

Sec. 118-a1. Mulct tax.

1 When a permanent injunction shall issue against any person for
2 maintaining a nuisance as herein defined or against any owner or
3 agent of the building kept or used for the purposes prohibited by this
4 title, a tax shall be imposed upon said building and upon the ground
5 upon which the same is located, and against the persons maintaining
6 said nuisance and against the owner or agent of said premises, when
7 they knew or ought, in reason, to have known of said nuisance.

C.C. 1003 to 1018, inclusive, entire.

Note: Our mulct tax statute, enacted some 30 years ago, is quite inapplicable to present conditions. It is believed that the above and the two following sections preserve all desirable provisions of the law. See C.C. 1035, 1036.

Sec. 118-a2. Amount, manner, and effect of imposition.

1 Said tax shall be in the sum of six hundred dollars (\$600.00) and
2 shall be imposed in the same manner and with the same consequences
3 as governs the imposition of a tax in injunction proceedings against
4 places used for the purpose of lewdness, assignation, or prostitution.

Note: New.

Sec. 118-a3. Evidence.

1 On the issue, whether a party knew or ought to have known of

2 such nuisance, evidence of the general reputation of the place shall be
3 admissible.

Note: New.

CHAPTER 6

CIVIL ACTIONS AND LIABILITY

Sec. 119. **Liability for care of intoxicated person.**

1 Any person who shall by the manufacture, sale or giving away
2 of intoxicating liquors, contrary to the provisions of this title, cause
3 the intoxication of any other person, shall be liable for and compelled
4 to pay a reasonable compensation to any person who may take charge
5 of and provide for such intoxicated person, and five dollars per day
6 in addition thereto for every day such intoxicated person shall be
7 kept, in consequence of such intoxication, which sums may be recov-
8 ered in a civil action before any court having jurisdiction thereof.

C.C. 978, entire.

Note: "One" changed to "five."

Sec. 120. **Civil action for damages.**

1 Every wife, child, parent, guardian, employer or other person
2 who shall be injured in person or property or means of support by any
3 intoxicated person, or in consequence of the intoxication, habitual or
4 otherwise, of any person, shall have a right of action in his or her own
5 name against any person who shall, by selling or giving to another
6 contrary to the provisions of this title any intoxicating liquors, cause
7 the intoxication of such person, for all damages actually sustained, as
8 well as exemplary damages.

C.C. 979, lines 1-8.

lines 8-10, see sec. 121.

lines 10-12, see sec. 122.

Lines 13-14, omitted. Superfluous.

Sec. 121. Married women.

1 A married woman shall have the same right, under the preceding
2 section, to bring suits, prosecute, and control the same and the amount
3 recovered, as if a single woman.

C.C. 979, lines 8-10.

Sec. 122. Damages recovered by minor.

1 All damages recovered by a minor under the second preceding
2 section shall be paid either to such minor or his parent, guardian or
3 next friend, as the court shall direct.

C.C. 979, lines 10-12.

Sec. 122-a1. Illegal transportation.

1 Any person, firm or corporation, and any agent or employee
2 thereof, who engages in the transportation of intoxicating liquors
3 shall for each act of transportation be fined in the sum of not exceed-
4 ing one thousand dollars (\$1000.00) or be imprisoned in the county
5 jail not exceeding one (1) year or be punished by both such fine and
6 imprisonment and pay the cost of prosecution, including a reasonable
7 attorney fee to be taxed by the court.

Sec. 122-a2. Defenses.

1 In any prosecution under this title for the unlawful transporta-
2 tion of intoxicating liquors it shall be a defense:

3 1. That the character and contents of the shipment or thing
4 transported were not known to the accused or to his agent or em-
5 ployee, or

6 2. That the purchase and transportation of said liquors was au-
7 thorized by a law of this state.

Sec. 122-a3. Venue.

1 In any prosecution under this title for the unlawful transporta-
2 tion of intoxicating liquors, the offense shall be held to have been com-
3 mitted in any county in the state in which the liquors are received
4 for transportation, through which they are transported, or in which
5 they are delivered.

Sec. 123. Principal and surety.

1 Where anyone is required under the provisions of this title to
2 give a bond, the principals and sureties shall be jointly and severally
3 liable for all civil damages and costs which may be adjudged against
4 the principal for any violation of any of the provisions of this title.
 C.C. 988, lines 10-14.

Sec. 124. Recovery of payments.

1 All payments or compensation for intoxicating liquor sold in vio-
2 lation of this title, whether such payments or compensation be in
3 money or anything else whatsoever, shall be held to have been re-
4 ceived in violation of law, and to have been received upon a valid
5 promise and agreement of the receiver to pay on demand to the per-
6 son furnishing such consideration the amount of said money, or the
7 just value of such other thing.

C.C. 989, lines 1-7.
 lines 7-11, see sec. 125.
 lines 11-18, see sec. 126.
 lines 18-24, see sec. 127.

Sec. 125. Contracts invalidated.

1 All sales, transfers, liens and securities of every kind which either
2 in whole or in part shall have been made for or on account of intox-
3 icating liquors sold in violation of this title shall be null and void

4 against all persons, and no rights of any kind shall be acquired thereby.
C.C. 989, lines 7-11.

Sec. 126. Action prohibited.

1 No action shall be maintained for intoxicating liquors or the value
2 thereof, sold in any other state or country, contrary to the law of said
3 state or country, or with intent to enable any person to violate any
4 provision of this title nor shall any action be maintained for the re-
5 covery or possession of any intoxicating liquor, or the value thereof,
6 except in cases where persons owning or possessing such liquor with
7 lawful intent may have been illegally deprived of the same.
C.C. 989, lines 11-18.

Sec. 127. Good faith holders.

1 Nothing in the three last preceding sections shall affect in any
2 way negotiable paper in the hands of holders thereof in good faith
3 for valuable consideration, without notice of any illegality in its in-
4 ception or transfer, or the holders of land or other property who may
5 have taken the same in good faith, without notice of any defect in the
6 title of the person from whom the same was taken, growing out of
7 a violation of the provisions of this title.
C.C. 989, lines 18-24.

Sec. 128. Attempt to collect prohibited.

1 The collection of payment, the solicitation of payment, and all at-
2 tempts directly or indirectly, to collect payment within this state for
3 intoxicating liquor sold or shipped within or into this state to be used
4 for illegal purposes within this state, is hereby prohibited and made
5 illegal, and the violation hereof is hereby made a misdemeanor.
C.C. 990, entire.

Sec. 129. Injunction to restrain collection.

1 Every person, who for himself or for another, violates any of the
2 provisions of the preceding section, may be restrained by injunction
3 from continuing to do any of the acts therein prohibited, and all the
4 proceedings for injunction, temporary and permanent, and for fines
5 and costs for violation of same, as defined by law, shall be applicable
6 to such person.

C.C. 991, entire.

Sec. 130. Termination of lease.

1 Upon a violation of any provision of this title committed upon
2 real estate occupied by a tenant, his agent, servant, clerk, employee
3 or anyone claiming under him, the landlord of such premises, by him-
4 self or agent, within thirty days after a judgment therefor is entered
5 of record in any case, civil or criminal, may, in writing, notify such
6 agent, tenant, or the person in possession of said leased premises, to
7 the effect that he has terminated such lease and demands possession
8 thereof within three days after the giving of such notice, and, after
9 the expiration of said three days, may recover possession thereof in
10 an action of forcible entry and detainer, without further notice to
11 quit, upon proof of the record of such judgment and of the giving of
12 such notice, but such termination of the lease shall not divest the
13 property of any lien which has attached by reason of said judgment.

C.C. 994, entire.