

A BILL

FOR AN ACT AMENDATORY OF CHAPTER 143, OF THE ACTS OF THE TWENTIETH GENERAL ASSEMBLY, RELATING TO INTOXICATING LIQUORS, AND PROVIDING FOR THE MORE EFFECTUAL SUPPRESSION OF THE ILLEGAL SALE AND TRANSPORTATION OF INTOXICATING LIQUORS AND ABATEMENT OF NUISANCES.

Be it enacted by the General Assembly of the State of Iowa :

SECTION 1. That actions to enjoin nuisances as authorized by section 12, of chapter 143, of the acts of the Twentieth General Assembly, may be brought in the name of the State of Iowa, by the district or county attorney of the proper county ; and it shall be the duty of such district or county attorney where any such nuisance exists, to institute and prosecute such action for the abatement thereof ; provided, however, if after notice or information given him of such nuisance, said district or county attorney refuse or neglect to bring suit, and prosecute the same with reasonable diligence, then any citizen residing in the county may institute and prosecute such action in the name of the State for the abatement of such nuisance. But nothing in this section shall prevent any citizen of a county from instituting and maintaining in his own name an action under said section 12, of said chapter 143. And to all of such actions, whether brought under the provisions of said section 12, of said chapter 143, or of this act, the provisions contained in this act shall apply. All such actions shall be triable at the first term of court, after due and timely notice of the commencement thereof has been given. Evidence of the general reputation of the place designated in the petition shall be admissible for purpose of proving the existence of such nuisance, and if successful in the action the plaintiff shall be entitled to an attorney's fee of not less than twenty-five dollars, to be taxed and collected as costs against the defendant.

SEC. 2. In any such action, the court, if in session, or the judge thereof in vacation shall upon the demand of the attorney or party charged with the management of the cause for the plaintiff, grant a temporary injunction without bond, if it be made to appear to the satisfaction of the court or judge, by evidence in the form of affidavits or otherwise as the court or judge may order, that such nuisance actually exists, or is being maintained, and when the cause is continued at the instance of the defendant, a temporary injunction shall be issued as a matter of course without bond.

SEC. 3. In case of the violation of any injunction granted in such action, the court, or in vacation the judge thereof shall have power to try summarily, and punish the party or

3 parties guilty thereof, as required by section 12, of chapter 143, of the acts of the Twentieth
4 General Assembly ; provided, that if the penalty inflicted for such contempt, be imprison-
5 ment alone, it shall not be for less than three nor more than six months. The evidence in
6 such proceeding or trial for contempt, may be in the form of affidavits, or the witnesses
7 may be brought before the court for examination, as may be ordered, and the provisions of
8 section 3404, of the Code, shall not be held to apply to persons charged with violating in-
9 junctions issued under this act and the act to which this is amendatory.

SEC. 4. Whoever is convicted of keeping a nuisance as provided in section 12, of chapter
2 143, acts of the Twentieth General Assembly, shall pay a fine not exceeding one thousand
3 dollars, nor less than three hundred dollars, and costs of prosecution, and the cost shall in-
4 clude a reasonable attorney fee to be assessed by the court, and stand committed until the
5 fine and costs are paid, and the provisions of chapter 47, title 25, of the Code, shall not be
6 applicable to persons committed under this section.

SEC. 5. If the existence of the nuisance be established either in criminal or equitable
2 action, it shall be abated under the judgment and order of the court, by seizing and des-
3 troying the liquor therein, and removing from the building, erection or place, all fixtures,
4 furniture, vessels, and all movable property used in or about the premises in carrying on
5 the unlawful business, and selling the same in a manner provided for sale of chattels under
6 execution, and by securely closing the said building, erection or place as against the use or
7 occupation of the same for saloon purposes, and keeping the same securely closed for the
8 period of one year, (unless sooner released as hereinafter provided), and any person break-
9 ing open said building, erection or place, or using the premises so ordered to be closed, shall
10 be punished as for contempt as above provided in case of the violation of injunctions, pro-
11 vided, however, that when lease-hold premises are adjudged to be a nuisance, the owner thereof
12 shall have the right to terminate the lease by giving three days notice thereof, in writing,
13 to the tenant, and when this is done the premises shall be turned over to the owner upon
14 the order of the court or judge. But the release of the property shall be upon condition
15 that the nuisance shall not be continued, and the return of the property shall not release
16 any lien upon said property occasioned by any prosecution of the tenant.

SEC. 6. The proceeds of the sale of the personal property as provided in the preceding
2 section, shall be applied, *first:* in payment of the costs of the action and abatement. *Sec-*
3 *ondly:* to the satisfaction of any fine and costs adjudged against the proprietor of the prem-
4 ises and keepers of said nuisance, and the balance, if any, shall be paid to the defendant.

SEC. 7. If the owner appear and pay all costs of the proceeding and file a bond with sure-
2 ties to be approved by the clerk, in the full value of the property, to be ascertained by the
3 court or in vacation by the clerk, auditor and treasurer of the county, conditioned that he
4 will immediately abate said nuisance and prevent the same from being established or kept

5 therein within the period of one year thereafter, the court, or in vacation the judge may, if
6 satisfied of his good faith, order the premises taken and closed under the order of abate-
7 ment, to be delivered to said owner, and said order of abatement cancelled so far as the
8 same may relate to said property, and if the proceeding be an action in equity, and said
9 bond be given and costs therein paid before judgment and order of abatement, the action
10 shall be thereby abated; *provided, however*, that the release of the property under the pro-
11 visions of this section shall not release it from any judgment, lien or penalty, or liability to
12 which it may be subject under any other statute or law.

SEC. 8. In all actions, prosecutions and proceedings under the laws of this State prohib-
2 iting the illegal manufacture and sale of intoxicating liquors, the finding of such liquors,
3 except in the possession of one legally authorized to sell the same or except in a private
4 dwelling house, which does not include, or is not used in connection with a tavern, public
5 eating house, restaurant, grocery or other place of public resort, shall be presumptive evi-
6 dence that such liquors were kept for illegal sale; and proof of actual sale shall be pre-
7 sumptive evidence of illegal sale.

SEC. 9. Any person who shall have been convicted of keeping a nuisance under the laws
2 prohibiting the illegal sale of intoxicating liquors, or who shall have been enjoined under
3 the provisions of this act or the act to which this is amendatory, and shall again directly or
4 indirectly engage in such unlawful business, of keeping a nuisance or selling such liquors
5 in violation of law, in the same or any other county in this State, shall upon conviction
6 thereof be punished by imprisonment in the county jail not less than three months or more
7 than one year. But no equitable proceeding, order or judgment shall be construed as a con-
8 viction under the provisions of this section.

SEC. 10. That section 1553 of the Code, as amended and substituted by chapter 143, of
2 the acts of the Twentieth General Assembly, be and the same is hereby repealed, and the
3 following enacted in lieu thereof:

4 Section 1553. If any express company, railway company, or any agent or person in
5 the employ of any express company or railway company, or if any common carrier, or
6 any person in the employ of any common carrier, or if any other person knowingly
7 bring within this State for any other person or persons, or corporation, or shall know-
8 ingly transport or convey between points or from one place to another within this
9 State, for any other person or persons or corporation, any intoxicating liquors, without
10 first having been furnished with a certificate from and under the seal of the county
11 auditor of the county to which said liquor is to be transported, or is consigned for
12 transportation, or within which it is to be conveyed from place to place, certifying that
13 the consignee or person to whom said liquor is to be transported, conveyed or delivered,
14 is authorized to sell such intoxicating liquors in such county. Such company, corpora-

15 tion, or person so offending, and each of them, and any agent of such company, cor-
16 poration, or person so offending, shall, upon conviction thereof, be fined in the sum of
17 one hundred dollars for each offense, and pay costs of prosecution, and the costs shall
18 include a reasonable attorney fee, to be assessed by the court, which shall be paid into
19 the county fund, and stand committed to the county jail until such fine and costs of
20 prosecution are paid, and one-half of the fine shall go to the informer and the other
21 half shall go to the school fund of the county. The offense herein defined shall be
22 held to be complete, and shall be held to have been committed in any county of the
23 State through or to which said intoxicating liquors are transported, or in which the
24 same unloaded for transportation, or in which said liquors are conveyed from place to
25 place, or delivered. It shall be the duty of the several county auditors of this State, to
26 issue the certificate herein contemplated, to any person having such permit, and the cer-
27 tificate so issued shall be truly dated when issued, and shall specify the date at which
28 the permit expires, as shown by the county records.

SEC. 11. If any person for the purpose of procuring the shipment, transportation, or con-
2 veyance of any intoxicating liquors from point to point or from one place to another within
3 this State, shall make to any company, corporation or common carrier, or to any agent of
4 such company, corporation or common carrier, or other person, any false statements as to
5 the character or contents of any box, barrel or other vessel or package containing such
6 liquors, or shall refuse to give correct and truthful information as to the contents of any
7 such box, barrel, or other vessel or package so sought to be transported or conveyed; or
8 shall falsely mark, brand, or label such box, barrel, or other vessel or package, in order to
9 conceal the fact that the same contains intoxicating liquors, for the purpose aforesaid; or
10 shall by any device or concealment procure or attempt to procure the conveyance or trans-
11 portation of such liquors as herein prohibited, he shall, upon conviction, be fined for each
12 offense one hundred dollars and costs of prosecutions, and the costs shall include a reasona-
13 ble attorney fee, to be assessed by the court, which shall be paid into the county fund, and
14 be committed to the county jail until such fine and costs are paid. One-half of the fine
15 shall go to the informer and the other half to the school fund of the county. Any peace
16 officer of the county shall have the right to open any box, barrel, or other vessel or package,
17 for examination if he has reasonable grounds for believing that it contains intoxicating
18 liquors, either before or while the same is being so transported or conveyed.

SEC. 12. That section 1558 of the Code, be, and the same is hereby repealed, and the fol-
2 lowing enacted in lieu thereof, viz:

3 Section 1558. For all fines and costs assessed, or judgments rendered, of any kind,
4 against any person for any violation of the provisions of this chapter, or costs paid by
5 the county on account of such violations, the personal and real property, except the

6 homestead and the personal property of such person which is exempt from execution, as
7 well as the premises and property, personal or real, occupied and used for the purpose,
8 with the knowledge of the owner thereof or his agent, by the person manufacturing or
9 selling or keeping, with intent to sell intoxicating liquors contrary to law, shall be
10 liable ; and all such fines, costs and judgments shall be a lien on such real estate until
11 paid. And where any person is required by section fifteen hundred and twenty-eight
12 (1528) and fifteen hundred and twenty-nine (1529) of this chapter to give bond with
13 sureties, the principal and sureties on such bond, shall be jointly and severally liable
14 for all civil damages, costs and judgments that may be adjudged against the principal
15 in any civil action authorized to be brought against him for any violation of the provis-
16 ions of this chapter ; costs paid by any county for the prosecution or on account of any
17 violation of the law prohibiting the illegal sale of intoxicating liquors, that would be a
18 lien on the property under the foregoing provisions and including costs paid in seizure
19 and condemnation proceedings, may be recovered by such county, by the enforcement
20 of such lien by execution, or by action against the owner to subject the property to sale
21 for the payment thereof. And evidence of the general reputation of the place shall be
22 admissable on the question of knowledge and written notice given him or his agent by
23 any citizen of the county shall be sufficient to charge the owner with knowledge under
24 the provisions of this section.

SEC. 13. All acts and parts of acts, inconsistent with this act, are hereby repealed ; *pro-*
2 *vided, however,* that this repeal shall not affect any act done, or right accruing or accrued,
3 or which has been established, nor any action or proceeding commenced before the time
4 this repeal takes effect, nor any offense committed or penalty or forfeiture incurred ; and
5 any suit or proceeding pending when the repeal takes effect, or thereafter brought, for any
6 offense committed, or for recovery of a forfeiture or penalty incurred prior thereto, shall be
7 maintained and prosecuted under the law as in force prior to the taking effect of this act.

SEC. 14. This act being deemed of immediate importance, shall take effect and be in force
2 from and after its publication in the " Iowa State Register " and " Des Moines Leader," news-
3 papers published at Des Moines, Iowa.