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 Ind. Postponed .....  
 Passed House .....  
 Failed to Pass House .....  
 Passed Senate .....  
 Failed to Pass Senate .....

House File 288

February 17, 1947.  
 Liquor Control.

By BUTLER, FIMMEN and NIELSEN.

## A BILL FOR

An Act relating to alcoholic liquor and also to beer and malt liquors, prohibiting the commission of certain acts by the holders of Class "B" permits, their servants, agents, and employees, declaring the commission of such acts to be nuisances and providing the procedure to enjoin such nuisances, for the punishment by contempt, and for the revocation of permits; creating a department of liquor and beer law enforcement under the supervision of the attorney general, charged with the specific duty to enforce all laws relative to alcoholic liquor, this Act, and Chapter 124, Code 1946, except the provisions thereof relating to the collection of taxes; imposing the duty upon the department of liquor and beer law enforcement, on peace officers and county attorneys to enforce this Act, and defining such duties; requiring reports to the department of liquor and beer law enforcement by permit holders; to provide penalties and remedies for violations of this Act.

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

- 1 Section 1. No holder of a Class "B" permit issued under the
- 2 provisions of Chapter 124, Code 1946, or any servant, agent,
- 3 or employee of the holder of such permit shall do any of the
- 4 following acts upon the licensed premises:
- 5 1. Sell or give beer to a minor.
- 6 2. Sell beer to any person while such person is in
- 7 an intoxicated condition.

8 3. Sell beer on the licensed premises, or permit beer  
9 to be consumed thereon, on any day or at any time  
10 when such sale or consumption is prohibited by the  
11 laws of the state of Iowa.

12 4. Sell, offer for sale, possess or permit the consumption  
13 on the licensed premises of any kind of alcoholic  
14 liquors, the sale or possession of which is not  
15 authorized under his permit.

16 5. Permit any known prostitute to frequent the licensed  
17 premises.

18 6. Permit on the licensed premises any disorderly conduct,  
19 breach of the peace, or any lewd or immoral entertainment,  
20 conduct, or practices.

21 The doing of any of the foregoing prohibited acts upon  
22 the licensed premises by the holder of a Class "B" permit  
23 himself, or by his servant, agent, or employee, shall constitute  
24 a nuisance, and the holder of such Class "B" permit may be  
25 restrained by temporary injunction from doing or continuing  
26 to do any of the acts above prohibited, either by himself  
27 or by means of servant, agent or employee. Any servant, agent  
28 or employee who does any of the foregoing prohibited acts upon  
29 the licensed premises may likewise be restrained by injunction  
30 from doing or continuing to do any of the acts above prohibited.

31 The court, after final hearing, if it finds that the  
32 defendant has committed any of the foregoing prohibited acts,  
33 shall permanently enjoin the defendant from doing or continuing

34 to do any of the acts as above prohibited, either by himself  
35 or by means of servant, agent, or employee. The court may  
36 further in its discretion restrain by injunction any such person  
37 from selling or offering for sale at any place within the state  
38 of Iowa beer or malt liquors for any period up to five years  
39 from the date of the granting of such injunction, and may  
40 further restrain such person from acting as the agent, servant  
41 or employee of any person in making such sales for such period  
42 of time at any place within the state of Iowa, or from being  
43 financially interested, either directly or indirectly, in  
44 the profits or income derived from the business conducted  
45 under any permit.

1     Sec. 2. The duty is hereby imposed upon the holder of  
2 the permit and his servants, agents, and employees, to operate  
3 the licensed premises in an orderly and lawful manner by  
4 refraining from doing any of the acts above prohibited. To  
5 enable compliance with such requirements, they are vested  
6 with the discretion to refuse to sell or serve beer to any  
7 person. They may also determine what persons, other than  
8 peace officers, special officers, or other public officials,  
9 may enter or remain upon the licensed premises. They shall  
10 not be required to assign any reason for their action so taken  
11 to any person affected thereby. Provided, however, that no  
12 person shall be discriminated against by reason of his race  
13 or color.

1     Sec. 3. Actions to enjoin nuisances by reason of the

2 violation of any of the provisions of Section 1 of this Act,  
3 shall be brought in equity in the name of the state of Iowa,  
4 by the county attorney of the county in which the licensed  
5 premises are located, who shall prosecute the same to judgment.  
6 The petition shall in all cases contain a prayer for temporary  
7 injunction and also for a permanent injunction upon final  
8 hearing. In such actions the court, or a judge in vacation,  
9 shall, upon presentation of the petition therefor, after hearing  
10 thereon as hereinafter provided, allow a temporary writ of  
11 injunction without bond, if it shall be made to appear to the  
12 satisfaction of the court or judge by the affidavit or affidavits  
13 filed with the petition, or by other evidence, that the nuisance  
14 complained of exists by reason of the violation of Section 1  
15 of this Act. Upon filing the petition, the county attorney  
16 shall immediately present it to the court, or a judge if in  
17 vacation, who shall fix the time and place for hearing upon the  
18 application for temporary injunction which shall not be more than  
19 ten days subsequent to the date of filing the petition, unless the  
20 court finds that good cause exists for fixing the time for hearing  
21 at a later date.

1 Sec. 4. Such action shall be commenced by serving the  
2 defendant with an original notice in the manner and form required  
3 for the commencement of civil actions. Such notice shall also  
4 inform the defendant of the time and place fixed by the court,  
5 or judge, for hearing on the application for temporary injunction,  
6 and shall be served upon him at least three days prior to the

7 time fixed for hearing on such application. If hearing on the  
8 application is continued at the instance of defendant, the writ  
9 as prayed shall be granted as a matter of course. The action for  
10 permanent injunction shall be triable at the same term of court  
11 after due and timely service of the notice of the commencement  
12 thereof has been given or as soon thereafter as the business of  
13 the court shall permit. After the temporary injunction has been  
14 granted, defendant may have the time of hearing on the permanent  
15 injunction advanced and the cause then finally determined.

1     Sec. 5. Petitions to enjoin nuisances shall be filed by the  
2 county attorney when so requested in writing by a peace officer or  
3 other person as hereinafter provided. Any peace officer who  
4 knows that the holder of a permit within his jurisdiction has  
5 violated any of the provisions of Section 1 of this Act shall  
6 file with the county attorney of the county in which the licensed  
7 premises are located an affidavit specifying in detail the  
8 facts alleged to constitute said violation and requesting that  
9 a petition be filed to enjoin said nuisance. A like affidavit  
10 and request may be filed with the county attorney by any qualified  
11 elector who resides and has for at least one year prior thereto  
12 resided in the county.

13     If the facts stated in such affidavit are based on the personal  
14 knowledge of the affiant and show a violation of any of the  
15 provisions of Section 1 of this Act, then the county attorney shall  
16 immediately prepare a proper petition which need not be verified  
17 but the affidavit filed with him must be attached to the petition

18 when filed with the clerk of the district court. The execution  
19 and filing of such affidavit shall not make the person a party  
20 to the action. The county attorney shall promptly file the  
21 petition with the clerk of the district court and diligently  
22 prosecute the same without delay to final judgment.

1 Sec. 6. The failure of the county attorney, without good  
2 cause, to perform the duties imposed upon him by the preceding  
3 section of this Act shall be ground for his removal from office as  
4 provided in Chapter 66, Code 1946.

5 It shall be the duty of all peace officers to enforce within  
6 their jurisdiction the provisions of Section 1 of this Act. They  
7 shall frequently visit all licensed premises within their jurisdiction  
8 to determine whether such permit holders are complying with the law;  
9 they shall promptly investigate all complaints made to them relative  
10 to any alleged violations of Section 1 within their jurisdiction.

11 When any peace officer has knowledge of a violation of  
12 Section 1 committed within his jurisdiction, it shall be his  
13 duty forthwith to file an affidavit with the county attorney,  
14 as above provided, requesting that a petition for injunction  
15 to enjoin such nuisance be filed.

16 The failure of any peace officer to perform the duties  
17 imposed upon him by this Act shall be grounds for his removal  
18 from office as provided by Chapter 66, Code 1946.

1 Sec. 7. After the filing of a petition for injunction, no  
2 Class "B" permit may be voluntarily surrendered to the issuing  
3 authority as provided by Section 124.6, Code, 1946.

4 If the court shall grant a permanent injunction, the clerk  
5 of the district court shall forthwith certify to the state permit  
6 board and to the city or town council, or board of supervisors  
7 which has issued the Class "B" permit covering the licensed  
8 premises involved in the action, a true copy of the order of the  
9 court granting the permanent injunction. Upon receipt of such  
10 order, the issuing authorities shall forthwith revoke the permits  
11 issued by them. When a permit is so revoked under the provisions  
12 of this Act, the holder thereof shall be ineligible for the  
13 reissuance of any permit to him for a period of five years from  
14 the date of revocation by the issuing authorities.

15 The revocation of the permits shall be final from the time of  
16 the entry of the order to that effect made by the issuing authority.  
17 Such order of revocation by the issuing authority shall not be  
18 stayed or suspended by an appeal to the supreme court from the  
19 judgment entered by the district court.

20 Any person who sells beer under a permit after it has been  
21 revoked as herein provided shall be punished as provided in  
22 section one hundred twenty-four point thirty-seven (124.37),  
23 Code 1946.

1 Sec. 8. The findings, decisions, or determinations of  
2 any authority made in any prior proceeding held before such  
3 issuing authority for the revocation of the permit of the  
4 person against whom an injunction is sought shall not be  
5 admissible in evidence or entitled to any weight or consideration  
6 by the court in the injunction proceedings against the holder

7 of such permit.

1 Sec. 9. When an injunction has been granted, it shall be  
2 binding upon the defendant, and any violation of the provisions  
3 thereof shall be punished as a contempt as provided in  
4 Chapter six hundred sixty-five (665), Code 1946. If a permanent  
5 injunction is granted against the defendant, the court may, in  
6 its discretion, tax as a part of the costs in the action an  
7 attorney fee of fifty dollars in favor of the county attorney.

1 Sec. 10. There is hereby created a department of the state  
2 government which shall be known as the department of liquor and  
3 beer law enforcement, which department shall be in the bureau  
4 of criminal investigation, and the control of said bureau shall  
5 be subject to the orders and directions of the attorney general.  
6 The department herein created shall have a designated enforcement  
7 officer who shall be known as the commissioner and it shall be  
8 his duty to devote his entire time to the department and the  
9 carrying out of the provisions of this Act. The commissioner  
10 shall be appointed by the attorney general and his salary together  
11 with the expense of the department shall be provided for by an  
12 appropriation sufficient to carry out the intent and purpose of  
13 this Act.

1 Sec. 11. It shall be the duty of the department of liquor and  
2 beer law enforcement to enforce all the laws of the state now  
3 or hereafter existing relative to alcoholic liquor, the provisions  
4 of this Act, and all the provisions of Chapter one hundred  
5 twenty-four (124), Code 1946, except those relating to the

6 collection of taxes and permit fees.

1     Sec. 12 The commissioner of public safety shall, upon  
2 requisition of the attorney general, from time to time assign  
3 for service in the department of liquor and beer law enforcement  
4 such of its officers as may be requisitioned by the attorney  
5 general for special service in the department of liquor and beer  
6 law enforcement, and when so assigned such officers shall be  
7 under the exclusive direction and control of the attorney general.

1     Sec. 13. The commissioner of liquor and beer law enforcement  
2 is authorized, with the approval of the attorney general, to  
3 appoint such clerical workers and other employees as may be required  
4 to properly discharge the duties of this department.

1     Sec. 14. The duty to enforce the provisions of all the laws  
2 of this state now or hereafter existing relative to alcoholic  
3 liquor and of this Act, and of the provisions of Chapter one hundred  
4 twenty-four (124), Code 1946, by the department of liquor and beer  
5 law enforcement shall be concurrent with that of the local peace  
6 officers within their respective jurisdictions. Such duty shall  
7 at all times be diligently performed by the commissioner of  
8 liquor and beer law enforcement, all supervisory officers, and  
9 all members thereof, without the necessity of a request from any  
10 local officer. When engaged in the investigation and enforcing  
11 of the provisions of the laws as above provided, the members of  
12 the department assigned to duty in the department of liquor and  
13 beer law enforcement shall have and exercise all the powers of any  
14 peace officer in the state insofar only as the enforcement of

15 such laws may be concerned, but for no other purpose except when  
16 so directed by the governor or requested by the local authorities,  
17 as provided in Section eighty point nine (80.9), Code 1946.

1     Sec. 15. The assignment to duty of the members of the  
2 department of liquor and beer law enforcement shall be made in  
3 writing by the commissioner. One copy of such assignment shall  
4 be delivered to the member, the other retained as a permanent  
5 record in the department. Such assignment shall describe the  
6 geographical limits of the territory in which they are assigned  
7 to operate and shall state the date of the beginning of such  
8 assignment and the date on which such assignment shall expire.  
9 during the period such assignment remains in force, the members  
10 shall be charged with the performance of all the duties  
11 imposed by the provisions of this Act within the territory  
12 assigned to them. No portion of the state shall at any time remain  
13 unassigned to some member or members of the department of liquor  
14 and beer law enforcement.

1     Sec. 16. The department of liquor and beer law enforcement  
2 shall maintain in its office a record showing the name and address  
3 of each holder of a Class "B" permit issued within the state of  
4 Iowa under the provisions of Chapter one hundred twenty-four (124).  
5 Code 1946. Such record shall also show the location of the place  
6 covered by such permit and the name, age, sex, place of birth,  
7 and address of all persons employed by the holder of such permit  
8 as agents or servants for the sale or serving of beer under such  
9 permit.

10 The holder of each such Class "B" permit shall within thirty  
11 days after the effective date of this Act, and thereafter within  
12 thirty days after a new permit is issued to him, or within  
13 thirty days from the date of the renewal thereof, make a report  
14 to the department of liquor and beer law enforcement on forms  
15 prescribed by it, setting forth all the facts and information  
16 above required relative to such permit and employees.

1 Sec. 17. In addition thereto, the holder of each such  
2 Class "B" permit shall on or before the tenth day of each month  
3 make a report to the department of liquor and beer law enforcement  
4 setting forth the name, age, sex, place of birth, and address  
5 of all persons who during the preceding calendar month were employed  
6 by the holder of the permit as agents or servants for the sale or  
7 serving of beer under such permit, and, if any such persons are  
8 not then currently employed by him, the date of the termination  
9 of their employment shall be stated.

10 The failure of the holder of any such Class "B" to make  
11 full, complete, and accurate reports within the times required  
12 shall constitute a misdemeanor punishable by fine not to exceed  
13 one hundred dollars or by imprisonment in the county jail of not  
14 to exceed thirty days.

1 Sec. 18. The clerk of the district court of each county  
2 shall immediately after its entry in that court forward to the  
3 department of liquor and beer law enforcement a true copy of the  
4 order of the court granting a permanent injunction which determines  
5 the existence of a nuisance to be established. It shall be the

6 duty of the department of liquor and beer law enforcement to  
7 investigate any violations of an injunction and to report the  
8 results of such investigation to the court ordering such injunction.

1 Sec. 19. It shall be unlawful for the holder of any permit  
2 issued under the provisions of Chapter one hundred twenty-four (124),  
3 Code 1946, or the agent, servant, or employee of such holder to,  
4 directly or indirectly, furnish, deliver or render to any peace  
5 officer, member of the department of liquor and beer law  
6 enforcement, or other officer charged with the enforcement of  
7 the provisions of this Act, any money, property, service or  
8 thing of value without being paid a full and adequate consideration  
9 by the person receiving the same. It shall also be unlawful  
10 for such peace officer, member of the department of liquor and  
11 beer law enforcement, or other officer, to accept or receive  
12 such money, property, service or thing of value without the  
13 immediate payment in cash of a full and adequate consideration. It  
14 shall be the duty of the issuing authorities to revoke the permit  
15 of any holder violating the provisions of this section, and the  
16 violation by a member of the department of liquor and beer law  
17 enforcement or other peace officer shall be ground for the  
18 removal of such person from office.

1 Sec. 20. If any section, subsection, clause, sentence or  
2 phrase of this Act or the application thereof to any person or  
3 set of circumstances is for any reason held unconstitutional or  
4 invalid, such decision shall not affect the validity of the  
5 remaining portions of this Act or its application to any other

6 person or circumstance. The legislature hereby declares that  
7 the provisions of this Act are severable, and that it would have  
8 passed this Act and each section, subsection, clause, sentence  
9 or phrase thereof, irrespective of whether any one or more of  
10 the sections, subsections, clauses, sentences, or phrases be  
11 declared unconstitutional and irrespective of whether it be  
12 declared unconstitutional or invalid to any person or  
13 set of circumstances.

#### EXPLANATION OF H. F. 288

Section 1 prescribes definite and specific rules of conduct for holders of Class "B" permits, their servants, agents and employees. The doing of any of the prohibited acts is declared to be a nuisance which will subject the holder of the permit and his employees to injunction.

Section 2 imposes the duty to operate premises in an orderly manner. To enable compliance, a discretion is vested to refuse to serve beer to any person without assigning a reason for refusal.

Sections 3 and 4 prescribe procedure for hearing on and issuance of injunctions.

Section 5 makes it the duty of peace officers to file with the county attorney affidavits relative to violations of Section 1, and request for injunction proceedings. It also authorizes like affidavits to be filed by any qualified elector of the county. Affidavits must be based on personal knowledge and when so filed with the county attorney, it is the duty of the county attorney to file petition for injunction.

Section 6 imposes the duty on peace officers to frequently visit all premises within their jurisdiction and promptly investigate all complaints. Failure so to do is ground for removal from office.

Section 7, in case of permanent injunction issuing, authorities must revoke license covering premises involved in the action.

Section 8. Findings of issuing authority on hearing for revocation of permit are not admissible in evidence of injunction proceedings.

Section 9. Violation of an injunction is punishable by contempt. Court may tax an attorney fee of \$50 in favor of the county attorney if permanent injunction is granted.

Section 10 creates a department of liquor and beer enforcement in the bureau of criminal investigation subject to the direction and control of the attorney general. A commissioner to be appointed by the attorney general shall devote his entire time to carrying out the provisions of the Act. Expenses are to be provided for by an appropriation.

Section 11 imposes the duty on the department to enforce this Act, and all beer and liquor laws except those for collection of taxes and fees.

Section 12. Attorney general may requisition from department of public safety officers for service in the department of liquor and beer law enforcement; when so assigned, they are under exclusive direction of the attorney general.

Section 13 authorizes employment of clerical help.

Section 14 imposes the duty on the department of liquor and beer law enforcement to enforce all beer and liquor laws with concurrent jurisdiction with local peace officers when engaged in investigating and enforcing such laws but for no other purpose.

Section 15 requires written assignment to duty of members of the department with statement of geographical area to be covered.

Sections 16, 17 and 18 relate to records to be kept by the department.

Section 19 makes it unlawful for holder of a Class "B" permit to furnish money or service to officers without full consideration being paid.

Section 20 is separability clause.