

CHAPTER 35.

SALE OF INTOXICATING LIQUORS.

AN ACT to provide for and regulate the keeping and sale of intoxicating liquors for lawful purposes, and to repeal sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18 and 19 of Chapter 71 Laws of the Twenty-second General Assembly. S. F. 414.

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

SECTION 1. That Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18 and 19 of Chapter 71 laws of the Twenty-Second General Assembly, be and the same are hereby repealed, and the following enacted in lieu thereof. Sections of Chap. 71, acts 22nd G. A.

SEC. 2. That after this act takes effect no person shall manufacture for sale, sell, keep for sale, give away, exchange, barter or dispense any intoxicating liquor, for any purpose whatever, otherwise than is provided in this act. Persons holding permits, as herein provided, shall be authorized to sell and dispense intoxicating liquors for pharmaceutical and medical purposes, and alcohol for specified chemical mechanical purposes, and wine for sacramental purposes and to sell to registered pharmacists and manufacturers of proprietary medicines, for use in compounding medicines, and to permit-holders for use and resale by them, for the purposes authorized by this act, but for no other purposes whatever; and all permits must be procured, as hereinafter provided, from the district court of the proper county at any term thereof after this act takes effect, and a permit to buy and sell intoxicating liquors, when so procured shall continue in force until revoked according to law. Provided further that this section shall not be construed to prevent licensed physicians from dispensing in good faith such liquors as medicine to patients actually sick and under their treatment at the time of such dispensing. Provided further that in case of death or other disability of any Registered Pharmacist the administrator Guardian or legal Representative of such Pharmacist may continue such business subject to the provisions of this act through the Agency of any Reputable Registered Pharmacist conditioned upon their being first obtained the approval of the district court or clerk thereof provided further that before entering upon such duties such party or person shall file with the clerk of said court a bond as herein provided to be approved by the clerk of said court. Traffic forbidden except to holders of permits.

Permits, how procured.

Physicians not prevented from dispensing.

May be continued by Representative.

Bond.

Application
for permit.
Publication.

SEC. 3. Notice of an application for a permit must be published for three consecutive weeks in a newspaper regularly published and printed in the English language, and of general circulation in the city or town where the applicant proposes to keep and sell intoxicating liquors, or if there be no newspaper regularly published in such city or town such publication shall be made in one of the official papers of the county, the last of which publication shall be not less than ten days nor more than twenty days before the first day of the term; and state the name of the applicant, with the firm name under which he is doing business, the purpose of the application, the particular location or the place where the applicant proposes to keep and sell liquors, and that the petition provided for in the next section, will be on file in the clerks office, at least ten days before the first day of the term, naming it, when the application will be made, and a copy thereof shall be served personally upon the county attorney in the same manner and time as required for service of original notices in the district court.

Name, pur-
pose and loca-
tion of appli-
cant.

Copy served
on Co. Atty.

Application
filed with
clerk of court
10 days before
term.

SEC. 4. Applications for permits shall be made by petition signed and sworn to by the applicant and filed in the office of the clerk of the district court of the proper county at least ten days before the first day of the term, which petition shall state the applicant's name, place of residence, in what business he is then engaged, and in what business he has been engaged for two years previous to filing the petition; the place, particularly describing it, where the business of buying and selling liquor is to be conducted; that he is a citizen of the United States and of the State of Iowa; that he is a registered pharmacist and now is, and for the last six months has been lawfully conducting a pharmacy in the township or town wherein he proposes to sell intoxicating liquors under the permit applied for, and as the proprietor of such pharmacy, that he has not been adjudged guilty of violating the law relating to intoxicating liquors within the last year next preceding his application; and is not the keeper of a hotel, eating house, saloon, restaurant or place of public amusement; that he is not addicted to the use of intoxicating liquors as a beverage and that he desires a permit to purchase, keep and sell such liquors for lawful purposes only. And every applicant who has at any time taken out a permit under this act which said permit has been revoked shall if he again apply for a permit, file with such application the further statement under oath, that he has not within the last two years next preceding his application, been knowingly engaged employed or interested in the unlawful manufacture, sale or keeping for sale of intoxicating liquors.

Must be a
citizen of
Iowa and reg-
istered phar-
macist.

Statements in
application.

As to revoked
permits.

Provided further, when a pharmacist has procured a permit, and by reason of the expiration of his lease, or for any

other good reason he desires to change his locality to another place in the same township, town, or ward, the court may grant to him on his petition, the right to continue business under his permit in the same township, town or ward, in which the permit is granted.”

Change in location.

SEC. 5. This permit shall issue only on condition that the applicant shall execute to the State of Iowa a bond in the penal sum of one thousand dollars with good and sufficient sureties to be approved by the Clerk of the Court, conditioned that he will well and truly observe and obey the laws of Iowa, now or hereafter in force, in relation to the sale of intoxicating liquors, that he will pay all fines, penalties, damages and costs that may be assessed or recovered against him for a violation of such laws during the term for which said permit is granted. The said bond shall be deposited with the county auditor, and suit shall be brought thereon at any time by the county attorney, or any person for whose benefit the same is given, and in case the conditions thereof or any of them shall be violated, the principals and sureties therein, shall be jointly and severally liable for all civil damages, costs and judgments, that may be obtained against the principal in any civil action brought by a wife, child, parent, guardian, employer or other person, under the provisions of section fifteen hundred and fifty-six, fifteen hundred and fifty-seven and fifteen hundred and fifty-eight of the Code of Iowa, as the same is amended and now in force, and section twelve, chapter sixty-six, acts of the Twenty-first General Assembly of the State of Iowa. The clear proceeds of all other money collected for breaches of such bond shall go to the school fund of the county. Said bond shall be approved by the clerk of the district court under the rules and laws applicable to the approval of official bonds. If at any time the sureties or any of them on said bond shall become insolvent or be deemed insufficient by the clerk of the District Court said clerk shall require a new bond to be executed within a time to be fixed by him, and a failure of the person holding such permit to execute such new and sufficient bond within the time fixed by said clerk therefor shall cause said permit to become null and void. If the application for the permit is granted it shall not issue until the applicant shall make and subscribe an oath before the clerk, which shall be indorsed upon the bond to the effect and tenor following :

Condition of issue.

Bond \$1,000.

Bond deposited with Auditor.

Use of bond.

Money collected on breach of bond.

Approval of bond.

New bond may be required.

Failure to give new bond.

“I, do solemnly swear (or affirm) that I will well and truly perform all and singular the conditions of the within bond, and keep and perform the trust confided in me to purchase, keep and sell intoxicating liquors. I will not sell, give or furnish to any person any intoxicating liquors otherwise than as provided by law, and, especially, I will not sell or furnish any intoxicating liquors to any person who is

Form of oath.

Customer must be personally known.

Returns.

Returns.

Clerk shall issue permit.

Court shall hear applicant on first day of term.

Hearing prevented.

Remonstrance or objection.

Moral qualifications.

In case application is resisted.

not known to me personally, or duly identified; nor to any minor, intoxicated person or persons who are in the habit of becoming intoxicated; and I will make true, full and accurate returns of all certificates and requests made to or received by me as required by law; and said returns shall show every sale and delivery of such liquors, made by or for me during the months embraced therein, and the true signature to every request received and granted; and such returns shall show all the intoxicating liquors sold or delivered to any and every person as returned."

Upon taking said oath and filing bond as hereinbefore provided, the clerk shall issue to him a permit authorizing him to keep and sell intoxicating liquors as in this act provided; and every permit so granted, shall specify, the building, giving the street and number, or location in which intoxicating liquors may be sold by virtue of the same, and the length of time the same shall be in force.

SEC. 6. No application for a permit shall be considered or acted upon by the court until the requisite notice has been given and petition filed as provided by this act and each is in form and substance such as required. On the first day of the term, having ascertained that the application is properly presented the court shall proceed to hear the application, unless objection thereto be made, in which case the court shall appoint a day during the term, but not later, when the same shall be heard; and in doing so shall consider the convenience of the court, and the interested parties and their council so far as the state of the business and the necessities of the case will permit.

If unavoidable causes prevent a hearing during the regular time allotted to the term, the same shall be heard and disposed of in vacation by the judge as soon as practicable thereafter. The county attorney or other council or any five citizens may in person or by council appear and resist the application. Any remonstrance or objection thereto must be in writing and filed on or before noon of the first day of the said term or by such later time as may be fixed by the court, and before the date fixed for hearing and such remonstrance shall state specifically the objection thereto. And whether resisted or objection be made or not the court shall not grant the permit until it shall first be made to appear by competent evidence that the applicant is possessed of the character and qualifications requisite, is worthy of confidence and to receive the trust and will be likely to execute the same with fidelity; and that the statements made in his application are all and singular true, and, considering the population of the locality and the reasonable necessities and convenience of the people such permit is proper. If the application is resisted the court or Judge shall hear controversy upon the petitions,

remonstrances and objections, and the evidence offered and grant or refuse such permit, as the public good may require.

If there be more than one permit applied for in the same locality they shall all be heard at the same time, unless for good cause otherwise directed, and the court may grant or refuse any or all of the applications as will best subserve the public interest.

Sec. 7. Permits granted under this act shall be deemed trusts reposed in the recipients thereof, and may be revoked upon sufficient showing, by order of the court or judge thereof. Complaint may be presented at any time to the district court, or one of the judges thereof, which shall be in writing and signed and sworn to by three citizens of the county in which the permit was granted, and a copy of such complaint shall, with a notice in writing of the time and place of hearing be served on the accused, five days before the hearing, and if the complaint is sufficient, and the accused appear and deny the same, the court or judge shall proceed without delay, unless continued for cause to hear and determine the controversy, but if continued or appealed at the instance of the permit-holder, his permit to buy and sell liquors may in the discretion of the court be suspended pending the controversy. The complainant and accused may be heard in person or by council or both, and submit such proofs as may be offered by the parties; and if it shall appear upon such hearing, that the accused has in any way abused the trust or that liquors are sold by the accused or his employes in violation of law or if it shall appear that any liquor has been sold or dispensed unlawfully or has been unlawfully obtained at said place from the holder of the permit or any employee assisting therein, or that he has in any proceeding civil or criminal, since receiving his permit, been adjudged guilty of violating any of the provisions of this act or the acts for the suppression of intemperance, the court or judge shall by order revoke and set aside the permit; the papers and order in such case shall be immediately returned to and filed by the clerk of the court, if heard by the judge and the order entered of record as if made in court, and if in this or any other proceeding, civil or criminal, it shall be adjudged by the court or judge that any registered pharmacist, proprietor or clerk who has been guilty of violating this act or the act for the suppression of intemperance and amendments thereto, by unlawfully manufacturing, selling, giving away or unlawfully keeping with intent to sell intoxicating liquors, such adjudication may in the discretion of the Commissioners of Pharmacy, if such violations are thereafter repeated, work a forfeiture of his certificate of registration. It shall be the duty of the clerk to forward to the Commissioners of Pharmacy such transcripts without charge therefor, as soon as practicable after final judgment or order.

More than one applicant in same locality.

Permits deemed trusts.

Complaints heard by court.

Permit may be suspended.

Permit may be revoked.

Action entered of record.

Forfeiture of registration certificate.

Permits may be granted to others not pharmacists.

Usual proceedings.

Papers filed by clerk of court.

Costs in the case.

Fees.

Witnesses' mileage.

Certificate by purchaser. Contents.

Request may be refused.

Purchaser must be known to seller.

SEC. 8. Registered pharmacists who show themselves to be fit persons and who comply with all the requirements of this act, may be granted permits, and in any township where there is a registered pharmacist conducting a pharmacy and no pharmacist obtains a permit, if found necessary the court may grant a permit to one discreet person in such township not a pharmacist, but having all other qualifications requisite under this act, upon like notice and proceedings as pertain to permitted pharmacists and subject to the same liabilities, duties, obligations and penalties.

SEC. 9. The clerk of the court granting the permit shall preserve as a part of the record and files of his office all petitions, bonds and other papers pertaining to the granting or revocation of permits and keep suitable books in which bonds and permits shall be recorded. The books shall be furnished by the county like other public records. Whether said permit be granted or refused the applicant shall pay the costs incurred in the case, and when granted he shall make payment before any permit issue, except the court may tax the cost of any witnesses summoned by private persons resisting said application, and the fees for serving such subpoenas to such persons when it is shown that such witnesses were summoned maliciously, or without probable cause to believe their evidence material. A fee of one dollar and fifty cents shall be taxed for the filing of the petition and one dollar for entering the order of the court approving bond and granting said application, and witnesses shall be entitled to mileage and per diem as in other cases. And fees for serving notices and subpoenas shall be the same as in other cases in the district court.

SEC. 10. Before selling or delivering any intoxicating liquors to any person, a request must be printed or written, dated of the true date, stating the applicant is not a minor, and the residence of the signer, for whom and whose use the liquor is required, the amount and kind required, the actual purpose for which the request is made and for what use desired, and his or her true name and residence, and, where numbered, by street and number, if in a city, and that neither the applicant nor the person for whose use requested habitually uses intoxicating liquors as a beverage, and the request shall be signed by the applicant by his own true name and signature, and attested by the permit-holder who receives and fills the request by his own true name and signature in his own hand writing. But the request shall be refused, notwithstanding the statement made, unless the permit-holder has reason to believe said statement to be true, and in no case unless the permit-holder filling it personally knows the person applying, that he is not a minor, that he is not intoxicated, and that he is not in the habit of using intoxicating liquors as a beverage; or, if the applicant is not so personally known to

the permit-holder, before filling the said order or delivering the liquor he shall require identification, and the statement of a reliable and trustworthy person, of good character and habits, known personally to him, that the applicant is not a minor, and is not in the habit of using intoxicating liquors as a beverage, and is worthy of credit as to the truthfulness of the statements in the application, and this statement shall be signed by the witness in his own true name and handwriting, stating his residence correctly.

May require identification.

SEC. 11. On or before the 15th of January, March, May, July, September, and November of each year each permit holder shall make full returns to the county auditor of all requests filled by him and his clerks during the two preceding months and accompany the same with a written or printed oath duly taken and subscribed before the county auditor or notary public, which shall be in the following form, to-wit:

Bi-monthly returns to Co. Auditor.

"I, being duly sworn, on oath state that the requests for, liquors herewith returned are all that were received and filled at my pharmacy (or place of business) under my permit during the months of, 18. . . . ; that I have carefully preserved the same and that they were filled up, signed and attested at the date shown thereon, as provided by law; that said requests were filled by delivering the quantity and kind of liquors required and that no liquors have been sold or dispensed under color of my permit during said months except as shown by the requests herewith returned and that I have faithfully observed and complied with the conditions of my bond and oath taken by me thereon endorsed and with all the laws relating to any duties in the premises."

Oath, form of.

Faithful observance.

Every permit holder shall keep strict account of all liquors purchased or procured by him in a book kept for that purpose which shall be subject at all times to the inspection of the Commissioners of Pharmacy and the county attorney, any grand juror Sheriff or Justice of the Peace of the county and such book shall show of whom such liquors were purchased or procured, the amount and kind of liquors purchased or procured, the date of receipt and amount sold also the amount on hand of each kind for each two months, such book shall be produced by the party keeping the same, to be used as evidence on the trial of any prosecution against him or against liquors alleged to have been seized from him or his house, on notice duly served that the same will be required as evidence; and at the same time he returns requests to the county auditor he shall file a statement of such account with such auditor except that the items of sales need not be embraced therein, but the aggregate amount of each kind shall be, and such statement shall be verified, before the county auditor or a notary public. All forms necessary to carry out the provis-

Strict account of purchases to be kept.

Items of book account.

Necessary forms to be provided.

ions of this act not otherwise provided for shall be as may be provided by the Commissioners of Pharmacy.

Permit holder or clerk.

SEC. 12. Every permit holder or his clerk under this act, shall be subject to all the penalties, forfeitures and judgments and may be prosecuted by all the proceedings and actions criminal and civil, and whether at law or in equity provided for or authorized by the laws now or hereinafter in force for any violation of this act, and the act for the suppression of intemperance and any law regulating the sale of intoxicating liquors and by any or all of such proceedings applicable to complaints against such permit holder; and the permit shall not shield any person who abuses the trust imposed by it or violates the laws aforesaid, and in case of conviction in any proceeding civil or criminal all the liquors in possession of the permit holder may by order of the court be destroyed.

Permits not a shield.

On conviction liquor to be destroyed.

Failure to report to Auditor.

On the trial of any action or proceeding against any person for manufacturing, selling, giving away or keeping with intent to sell intoxicating liquors in violation of law, or for any failure to comply with the conditions or duties imposed by this act, the requests for liquors and returns made to the auditor as herein required, the quantity and kinds of liquors sold or kept, purchased or disposed of, the purpose for which liquors were obtained by or from him and for which they were used, the character and habits of sobriety or otherwise, shall be competent evidence and may be considered so far as applicable to the particular case with any other recognized, competent and material facts and circumstances bearing on the issues involved in determining the ultimate facts. In any suit, prosecution or proceeding for violations of this act or the acts for the suppression of intemperance, and acts amendatory thereof, the court may compel the production in evidence of any books or papers required by this act to be kept, and may compel any permit holder, his clerk or any person who has purchased liquors of either of them to appear and give evidence, and the claim that any such testimony or evidence will tend to criminate the person giving such evidence shall not excuse such person or witness from testifying or producing such books or papers in evidence; but such oral evidence shall not be used against such person or witness, on the trial of any criminal proceeding against him. Any number of distinct violations of this act may be charged in one indictment or information in different counts and all tried in the same action, the jury specifying the counts, if any, on which the defendant is found guilty.

Evidence.

Books in evidence.

Tendency to criminate no excuse.

All counts tried in one action.

May be purchased for compound.

SEC. 13. Registered pharmacists, conducting pharmacies and not holding permits, and manufacturers of proprietary medicines are hereby authorized to purchase of permit holders intoxicating liquors (not including malt) for the purpose of compounding medicines, tinctures and extracts that cannot be

used as a beverage. Such purchasers, shall keep a record of uses to which the same are devoted, giving the kind and quantity so used.

Purchaser must keep record.

And on or before the 15th day of January, March, May, July, September, and November of each year they shall make and file with the county auditor sworn reports for the two preceding calendar months, giving full and true statements of the quantity and kinds of such liquors purchased and used, the uses to which the same have been devoted. The Commissioners of Pharmacy are hereby empowered to make such further rules and regulations with respect to the purchase, use and keeping of such liquors as they may deem proper for the prevention of the abuses of the trusts reposed in such purchasers, and if the said registered pharmacist sell, barter, give away, exchange or in any manner dispose of said liquors, or use the same for any purpose other than authorized in this section he shall, upon conviction before any district court thereof, be liable to all the penalties, prosecutions and proceedings at law or in equity provided against persons selling without a permit, and upon any such conviction the clerk of the district court shall within ten days after said judgment or order transmit to the Commissioners of Pharmacy the certified record thereof, upon receipt of which the Commission may strike his name from the list of pharmacists and cancel his certificate. Provided, that nothing herein contained shall be construed to authorize the manufacture or sale of any preparation or compound under any name, form or device, which may be used as a beverage and which is intoxicating in its character.

Bi-monthly report to Co. Auditor.

Pharmacy Com. may make rules.

Penalty for violation.

Certificate may be cancelled.

SEC. 14. Every permit-holder is hereby authorized to ship to registered pharmacists and manufacturers of proprietary medicines, intoxicating liquors to be used by them for the purposes authorized by this act.

Permit holder may ship.

And all railway transportation and express companies, and other common carriers, are authorized to receive and transport the same upon presentation of a certificate from the Clerk of the District Court of the county where the permit-holder resides, that such person is permitted to ship intoxicating liquors, under the provision of this act.

Common carriers authorized to transport.

SEC. 15. A permit-holder may employ one or more registered pharmacists as clerks, to sell intoxicating liquors in conformity to the permit and provisions of this act, but in such case the acts of his clerks in conducting the business shall be deemed the acts of the permit-holder who shall be liable therefor as if he had personally done the acts, and in making returns the verification of such requests as may have been received, attested and filled by a clerk must be made by such clerk, and the clerk who transacted any of the business under the permit must join in the general oath required of the

Acts of clerks deemed acts of principal.

Clerk must join in oath.

employer so far as relates to his own connection therewith. If for any cause a registered pharmacist who holds a permit shall cease to hold a valid and subsisting certificate of registration or renewal thereof his permit shall thereby be forfeited and be null and void.

Old permits
expire Jan.
1891.

SEC. 16. Any person holding a permit in force when this act takes effect may continue to purchase, keep and sell intoxicating liquors (according to law) for the time provided in such permit, unless sooner revoked. But all such permits shall expire not later than January 1st, 1891.

Convictions.

SEC. 17. If any person shall be convicted of violating any of the provisions of this act or acts regulating the practice of pharmacy or any acts for the suppression of intemperance, or amendments thereto by reason of a prosecution by the Commissioners of Pharmacy, the clear proceeds of all fines so imposed and collected shall be paid into the county treasury of the proper county for the use of the school fund, and the Commissioners of Pharmacy shall be entitled to draw from the state treasury an amount not exceeding 50 per cent of the amount of the fines so collected, to be used solely in prosecutions instituted by them for failure to comply with the provisions of this act or of the acts regulating the practice of pharmacy. And the court or clerk thereof before whom any prosecution is instituted and prosecuted by the Commissioners of Pharmacy shall certify to the Auditor of State, all cases in which they have appeared as prosecutors, either in person or by their attorney, and the amount of fines imposed and collected in such cases. And the Commissioners of Pharmacy shall have the power to revoke the certificate of registration of pharmacists for repeated violation of this act. Said amount to be drawn from time to time upon the warrants of the State Auditor, which shall issue for the payment of expenses actually incurred in said prosecution after said expenses shall have been audited by the Executive Council.

Fines paid to
Co. Treas.

Pharmacy
Com. may
draw 50 per
cent of fines.

Phar. Com.
may revoke
certificate.

False state-
ments to ob-
tain liquors.

Penalty.

False oath by
permit hold-
er.

SEC. 18. If any person shall make any false or fictitious signature or sign any name other than his or her own to any paper required to be signed by this act or make any false statement in any paper or application signed to procure liquors under this act, the person so offending shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not less than twenty (20) dollars nor more than one hundred (100) dollars and cost of prosecution, and shall be committed until said fine and costs are paid, or be imprisoned not less than ten nor more than thirty days. If any permit-holder or his clerk shall make false oath touching any matter required to be sworn to under the provisions of this act, the person so offending shall upon conviction thereof be punished as provided by law for perjury. If any person holding a permit under this law shall purchase or procure any

intoxicating liquor otherwise than authorized by this act, or make any false return to the county auditor, or use any request for liquors for more than one sale, in any of such cases he shall be deemed guilty of a misdemeanor, and upon conviction punished accordingly. False returns to Co. Auditor.

SEC. 19. Nothing in this act shall be construed to abate any action or proceeding now pending in any court in this State for a violation of the provisions of the sections hereby repealed, or to operate to bar any prosecutions hereafter brought for any such violations committed prior to the passage and taking effect of this act. Proceedings already begun not abated.

SEC. 20. The Superior Courts of this State and the Judges and Clerks thereof shall have and exercise the same powers and duties as are in this act specified for district Courts their Judges and Clerks as to granting and revoking permits. Superior Courts have jurisdiction.

SEC. 21. This act being deemed of immediate importance shall take effect and be in force from and after its publication in the Iowa State Register and the Des Moines Leader, newspapers published in Des Moines, Iowa. Publication.

Approved April 18, 1890.

I hereby certify that the foregoing act was published in the *Iowa State Register* April 23, and *Des Moines Leader* April 22, 1890.

FRANK D. JACKSON, *Secretary of State.*

CHAPTER 36.

PHARMACISTS REGISTERED WITHOUT EXAMINATION.

AN ACT to amend section one of chapter one hundred and thirty seven (137) Acts of the nineteenth (19th) general assembly relating to pharmacists registered without examination. S. F. 313.

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

SECTION ONE (1). That section one (1) of chapter one hundred and thirty seven (137) Acts of the 19th General Assembly be amended by inserting after the word "examination" in the fifth (5th) line the words "shall not" and by striking out the words "who has thus forfeited his registration" in the ninth (9th) line and by striking out the word "is" in the tenth (10th) line and inserting in lieu thereof "will not be."

Certain pharmacists do not forfeit registration when parting with business.

Approved April 15, 1890.