

CHAPTER 45.

LIQUOR LAW.

AN ACT for the suppression of intemperance.

Sale of intoxicating liquor prohibited.

SECTION 1. *Be it enacted by the General Assembly of the State of Iowa*, No person shall manufacture or sell by himself, his clerk, steward or agent, directly or indirectly, any intoxicating liquors, except as hereinafter provided. And the keeping of intoxicating liquor, with the intent, on the part of the owner thereof, or any person acting under his authority or by his permission, to sell the same within this State, contrary to the provisions of this act, is hereby prohibited, and the intoxicating liquors so kept, together with the vessels in which it is contained, is declared a nuisance, and shall be forfeited and dealt with as hereinafter provided; ale, porter, lager beer, cider, and all wines are included among intoxicating liquors within the meaning of this act: *Provided, however*, that nothing in this section or in this act shall be construed to forbid the making of cider from apples, or wine from grapes, currants or other fruits grown or gathered by the manufacturer, or the selling of such cider or wine, (if made in the State) by the maker thereof, *Provided, only*, that the quantity sold at any one time be not less than five gallons, and be sold and be all taken away at one time.

Declared a nuisance.

Exemption

Importer.

§ 2. Nothing in this act shall be construed to forbid the sale by the importer thereof, of foreign intoxicating liquor imported under the authority of the laws of the United States regarding the importation of such liquors, and in accordance with such laws; *Provided*, that the said liquor, at the time of said sale by said importer, remains in the original casks or packages in which it was by him imported, and in quantities not less than the quantities in which the laws of the United States require such liquors to be imported, and is sold by him in said original casks or packages, and in said quantities only; *Provided*, that nothing contained in this

Limitation.

Distilleries.

law shall prevent any person or persons from manufacturing in this State liquors for the purpose of being sold according to the provisions of this Act, to be used for mechanical or medicinal purposes.

§ 3. The county Judge of any county, on the first Monday of May annually, shall appoint some suitable person or persons, not more than two in number, residents of said county, but not both residents of the same township, to act as agent or agents of such county, for the purchase of intoxicating liquor, and for the sale thereof within such county, for medicinal, mechanical and sacramental purposes only. And the said county Judge may remove such agent at his pleasure and appoint another in his stead, at such time after such removal as shall be convenient. Every such agent shall hold his office one year unless sooner removed. He shall sell such liquor only in one place, to be designated in the written certificate, to be given him by the county Judge, and no two agents shall be allowed to sell such liquor in the same township. He shall, in the purchase and in the sale of such liquor, conform to such rules and regulations as shall be prescribed by said county Judge, not inconsistent with the provisions of this Act. He shall keep an accurate account of all his purchases and all his sales; specifying, in such account, the kind, and quantity, and price of the liquor bought by him, the date of each purchase made by him, and the name of the person of whom such purchase was made, the kind, quantity and price of liquor sold by him, the date of each sale made by him, the name of the purchaser at every such sale, and the use for which the liquor on every such sale was sold, as stated by the purchaser; which account shall be at all times open to the examination of the said county Judge, and the Grand Jurors and Prosecuting Attorney of such county. He shall, when required by said county Judge, account with him regarding all his dealings as such agent, and exhibit to him all receipts, bills, books and papers of every kind relating to such dealings, or to his accounts. He shall sell such liquor at such prices as shall be prescribed by the county Judge, not, however, to exceed twenty-five per cent upon the cost thereof, and shall, when required by the

County agents

May be removed.

Term.

Purchase and sale of liquor

Accounts, &c.

county Judge, pay over the proceeds of his sale to the county Treasurer, and he shall, at the termination of his agency on the first Monday in May, or, in case he should be sooner removed by the county Judge, he shall, as soon after such removal as may be, make a written report to the county Judge, verified by his oath or affirmation, of all his purchases and the cost thereof, and of all his sales and the proceeds thereof, specifying the number of his sales, the respective quantities and kinds sold for each of the purposes of medicinal, mechanical and sacramental uses, and the quantity, and kind, and cost of all liquor remaining on hand at the time of making such report, and said report shall be filed in the office of the County Judge. Such agent shall receive for his services a fixed and stipulated compensation, to be prescribed by the county judge; but the amount of such compensation shall not be increased by reason of any increase or diminution of the sales of such liquors by such agent, and he shall not in any way, except as one of the inhabitants of the county, be interested in said liquor, or in the purchase or sale thereof, or in the profits thereon. And if any person purchasing any intoxicating liquors of such agent shall intentionally make to such agent any false statement regarding the use to which such liquor is intended by the purchaser to be applied, such person so offending shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof, forfeit and pay a fine of ten dollars, together with the costs of prosecution, and shall stand committed until the same be paid.

Compensation.

Purchaser under false pretenses.

Fine.

Certificate.

§ 4. Every such agent shall receive from the said county Judge a certificate authorizing him, as agent of such county, to sell, at the place mentioned in such certificate, intoxicating liquor for medicinal, mechanical and sacramental purposes only; but he shall not receive such certificate or exercise his office until he shall have executed unto said county, for the use of said county, a bond, with two good and sufficient sureties, to be approved by the county Judge, in a sum not less than one thousand dollars, conditional that if, as such agent, he shall sell intoxicating liquor for medicinal, mechanical, and sacramental purposes only, and shall in all respects con-

Bond

form to the provisions of the law in relation to his agency and to the laws of this State relating to the sale of intoxicating liquors, the said bond to be void.

§ 5. Every person who shall manufacture any intoxicating liquor, as in this act prohibited, shall be deemed guilty of a misdemeanor, and shall pay, on his first conviction for said offence, a fine of one hundred dollars and the costs of prosecution, and shall stand committed thirty days, unless the fine be sooner paid; on his second conviction, he shall pay a fine of two hundred dollars, and the costs of prosecution, and shall stand committed sixty days unless the fine be sooner paid. And on the third and every subsequent conviction for said offence, he shall pay a fine of two hundred dollars and the costs of prosecution, and shall be imprisoned in the county jail ninety days.

§ 6. If any person by himself, his clerk, servant or agent, shall for himself, or any person else, directly or indirectly, or on any pretence, or by any device, sell, or in consideration of the purchase of any other property, give to any other person any intoxicating liquor, he shall be deemed guilty of a misdemeanor, and shall pay, on his first conviction for said offence, a fine of twenty dollars and the costs of prosecution, and shall stand committed ten days, unless the same be sooner paid; on the second conviction for said offence, he shall pay a fine of fifty dollars and the costs of prosecution, and shall stand committed thirty days, unless the same be sooner paid, and on the third and every subsequent conviction for said offence, he shall pay a fine of one hundred dollars and the costs of prosecution, and shall be imprisoned in the county jail not less than three nor more than six months. And in default of the payment of the fines and costs provided for the first and second convictions under this section the person so convicted shall not be entitled to the benefit of section 3268 of the Code until he shall have been imprisoned sixty days. All clerks, servants and agents, of whatever kind, engaged or employed in the manufacture, sale or keeping for sale, in violation of this act, of any intoxicating liquor, shall be charged and convicted in the same manner as principals may be, and shall be subject to the penalties here-

Any number of violations. in provided. Indictments and informations for violations under this section may allege any number of violations of its provisions by the same party, but the various allegations must be contained in separate counts, and the person so charged may be convicted and punished for each of the violations so alleged as on separate indictments or informations; but a separate judgment must be entered on each count on which a verdict of guilty is rendered. The second and third convictions, however, mentioned, in this section, shall be construed to mean convictions on separate indictments or informations.

Owning liquor.

§ 7. No person shall own or keep, or be in any way concerned, engaged or employed in owning or keeping any intoxicating liquor with intent to sell the same in this State, (or to permit the same to be sold therein) in violation of the provisions of this act; and any person who shall so own or keep, or be concerned or engaged or employed in owning or keeping such liquor with any such intent, shall be deemed guilty of a misdemeanor, and shall, on his first conviction for said offence, pay a fine of twenty dollars and the costs of prosecution, and stand committed until the same be paid. On his second conviction for said offence, he shall pay a fine of fifty dollars and the costs of prosecution, and shall stand committed until the same be paid, and on his third and every subsequent conviction for said offence, he shall pay a fine of one hundred dollars and the costs of prosecution, and shall be imprisoned in the county jail not less than three nor more than six months. And upon the trial of every indictment or information for violations of the provisions of this section, proof of the finding of the liquor named in the indictment, or information in the possession of the accused in any place except his private dwelling house, or its dependencies, (or in such dwelling house or dependencies if the same be a tavern, public eating house, grocery, or other place of public resort,) shall be received and acted upon by the court as presumptive evidence that such liquor was kept or held for sale contrary to the provisions of this act.

Penalty

Second offence.

Third or subsequent.

Building declared a nuisance.

§ 8. In case of violation of the provisions of either of the three preceding sections, the building or erection of whatever kind, or the ground itself in or upon which such

unlawful sale or manufacture, or keeping with intent to sell, of any intoxicating liquor is carried on, or continued, or exists, is hereby declared a nuisance, and may be abated as the law provides; and in addition to the penalties prescribed in said sections, whoever shall erect, or establish, or continue, or use any building, erection, or place for any of the purposes prohibited in said sections, shall be deemed guilty of a nuisance, and may be prosecuted and punished accordingly, in the manner provided by law. And proof of the manufacture, sale, or keeping with intent to sell, of any intoxicating liquor in violation of the provisions of this act in or upon the premises described by the party accused, or by any other person under the authority or by the permission of the party accused, shall be deemed sufficient as presumptive evidence of the offence provided for in this section.

§ 9. If any three persons, residents of any county, shall, **Information** before a justice of the peace for the same county, make written information, supported by their oath or affirmation, that they have reason to believe, and do believe, that any intoxicating liquor, described as particularly as may be, in said information, is in said county, in any place, described as particularly as may be in said information, owned or kept by any person named or described in said information as particularly as may be, and is intended by him to be sold in violation of the provisions of this act, said Justice shall, (upon finding probable cause for such information), issue his warrant of search, directed to any peace officer in **Search war-** said county, describing, as particularly as may be, the liquor **rant.** and the place described in said information, and the person named or described in said information as the owner or keeper of said liquor, and commanding the said officer to search thoroughly said place, and to seize the said liquor, **Seizure.** with the vessels containing it, and to keep the same securely until final action be had thereon; whereupon the said peace officer, to whom such warrant shall be delivered, shall forthwith obey and execute, so far as he shall be able, the commands of said warrant, and make return of his doings to said Justice, and shall securely keep all liquors so seized by

Proviso.

him, and the vessels containing it, until final action be had thereon: *Provided, however,* that if the place so to be searched be a dwelling house in which any family resides, and in which no tavern, eating-house, grocery, or other place of public resort is kept, such warrant shall not be issued unless one at least of said complainants shall, on oath or affirmation, declare before said Justice, that he has reason to believe, and does believe, that within one month next before the making of said information, intoxicating liquor has been, in violation of this act, sold in said house, or in some dependency thereof, by the person accused in said information, or by his consent or permission; nor unless from the facts and circumstances disclosed by such complaint to said Justice, the said Justice shall be of opinion that said complainant has adequate reason for such belief.

Summons.

§ 10. Whenever upon such warrant such liquors shall have been seized, the Justice who issued such warrant shall within forty-eight hours after such seizure, cause to be left at the place where said liquor was seized, if said place be a dwelling house, store or shop, posted in some conspicuous place on or about said buildings, and also to be left with or at the last known and usual place of residence of the person named, or described in said information, as the owner or keeper of said liquor if he be a resident of this State, a notice summoning such person, and all others whom it may concern, to appear before said Justice at a place and time named in said notice, (which time shall not be less than five nor more than fifteen days after the posting and leaving of said notices) and show cause if any they have, why said liquor, together with the vessels in which the same is contained, should not be forfeited; and said notice shall with reasonable certainty describe said liquor and vessels, and shall state where, when and why, the same were seized. At the time and place prescribed in said notice, the person named in said information, or any other person or persons claiming an interest in said liquor and vessels, or any part thereof, may appear and show cause why the same should not be forfeited. If any person shall then and there so appear, he shall become a party defendant in said case, and said

Time and place.

Justice shall make a record thereof, whether any person shall so appear or not, said Justice shall at the prescribed time, proceed to the trial of said case, and said complainants, Trial or either of them, may, and upon their default, the officer, having such liquor in custody shall, appear before said Justice, and prosecute said information, and show cause, why such liquor should be adjudged forfeited. The proceeding in the trial of such case may be the same substantially as in cases of misdemeanor, triable before justices of the peace, and if any person shall appear and be made a party defendant as herein provided, and shall make written plea, that said liquor or the part thereof, claimed by him, was not owned or kept with intent to be sold in violation of this act, such party defendant may, at his option, demand a jury to try the issue, and if upon the evidence then, and there presented, the said justice or jury as the case may be, shall find for verdict, that said liquor was, when seized, owned or kept by any person (whether said party defendant or not) for the purpose of being sold in violation of this act, the said justice shall render judgment that said liquor or said part thereof, with the vessels in which it is contained, is forfeited. If no person be made defendant in manner aforesaid, or if judgment be in favor of all the defendants, who appear and are made such, then the costs of the proceeding shall be paid as in ordinary criminal prosecutions where the prosecution fails. If the judgment shall be against only one party defendant appearing as aforesaid, he shall be adjudged to pay all the costs of the proceedings in the seizure and detention of the liquor claimed by him up to that time, and of said trial. But if such judgment shall be against more than one party defendant claiming distinct interests in said liquor, then the costs of said proceedings and trial shall be according to the discretion of said Justice equitably apportioned among said defendants, and execution shall be issued on such judgments against said defendants for the amount of the costs so adjudged against them. And any person appearing and becoming party defendant as aforesaid, may appeal from said judgment of forfeiture as to the whole, or any part of said liquor, and vessels claimed by

him; and so adjudged forfeited, to the next term of the district court in said county, if on the rendition of the judgment, he, or some person for him, shall make, or cause to be made, an affidavit stating the facts, showing the alledged errors in the proceedings or judgment complained of; and if also on said rendition of judgment, he shall file with the justice a written undertaking in a sum and with sureties to be approved by said justice that said defendant will prosecute the appeal without delay, and will pay whatever sum may be adjudged against him in the further progress of the action. On the allowing of such appeal, the Justice shall file in the office of the clerk of said district court, a certified copy of the entries on his docket together with all the undertakings and papers in the cause, in the same manner as is provided in cases of appeals in misdemeanors triable before a justice of the peace. And if the party so appealing shall fail to appear before said district court at the next term thereof, and on the first day of said term to prosecute his appeal, the said court shall, without further proceedings, affirm the judgement from which such appeal was taken. But if the party so appealing shall appear, and if on trial had upon the issue or otherwise, as the case may be, it be found that said liquor, in respect to which an appeal was taken, was, when seized, owned or kept by any person for the purpose of being sold in violation of this Act, then said liquor, and the vessels containing it, shall, by said court be adjudged forfeited, and the said court shall adjudge said defendant to pay the costs arising upon said appeal in addition to the costs adjudged against him by the justice of the peace.

Bond.

Transcript.

Affirm.

Guilt.

Forfeiture.

Liquor and vessels to be destroyed.

Restoration.

§ 11. Whenever it shall be finally decided that liquor seized as aforesaid is forfeited, the justice of the peace, or other court rendering final judgment of forfeiture, shall issue to the officer having said liquors in custody, or to some other peace officer, a written order, directing him forthwith to destroy said liquor and the vessels containing the same, and immediately thereafter to make return of said order to the court, whence issued, with his doings endorsed thereon, which return shall in all cases be sworn to. Whenever it shall be finally

decided that any liquor so seized is not liable to forfeiture, the court by whom such final decision shall be rendered, shall issue a written order to the officer having the same in custody, or to some other peace officer, to restore said liquor, with the vessel containing the same, to the place where it was seized, as nearly as may be, or to the person entitled to receive it, which order the officer, after obeying the commands thereof, shall return to the said court with his doings thereon endorsed, *Returns.* and the costs of the proceedings in such case attending the restoration, as also the costs attending the destruction of such liquor in case of forfeiture, shall be taxed and paid in the same manner as is provided in cases of ordinary criminal prosecution, where the prosecution fails.

§ 12. If any person shall be found in a state of intoxication, he shall be deemed guilty of a misdemeanor, and any peace officer may, without warrant, and it is hereby made his duty to take such person into custody, and to detain him in some suitable place, till an information can be made before a magistrate, and a warrant issued in due form, upon which he may be arrested and tried, and if found guilty, he shall pay a fine of ten dollars and the costs of prosecution, and shall be imprisoned in the county jail thirty days. *Arrested.* But the magistrate before whom such person is tried and convicted may remit any portion of such penalty, and order the prisoner to be discharged, whenever he shall become satisfied that the object of this law and the good of the public and of the prisoner will be advanced thereby. *Tried.* In cases arising under this section, appeals may be allowed as in cases of ordinary misdemeanor within the jurisdiction of Justices of the peace. *Time.*

§ 13. In any indictment or information arising under this Act, it shall not be necessary to set out exactly the kind or quantity of intoxicating liquors manufactured or sold, or kept for purposes of sale, nor the exact time of the manufacture, or sale, or keeping with intent to sell, but proof of the violation by the accused of any provision of this Act, the substance of which violation is briefly set forth within the time mentioned in said indictment or information, shall be sufficient to convict such person; nor shall it be necessary in any indictment or information to negative any exceptions contained *Unnecessary to set out kind, quantity or amount.* *when* *Not negative.*

LAWS OF IOWA.

In the enacting clause or elsewhere which may be proper ground of defence; and in any prosecution for a second or subsequent offence, as provided in this Act, it shall not be requisite to set forth in the indictment or information the record of a former conviction, but it shall be sufficient briefly to allege such conviction, nor shall it be necessary in every case to prove payment in order to prove a sale within the true meaning and intent of this Act, and the person purchasing any intoxicating liquor sold in violation of this Act, shall, in all cases, be a competent witness to prove such sale.

Fees.

§ 14. A Justice of the Peace shall be entitled to receive for causing notices to be posted up and left pursuant to section ten, fifty cents, for issuing an order pursuant to section eleven, fifty cents, and the officer who shall make service of any warrant for the seizure of any intoxicating liquor shall be allowed for such service the sum of one dollar, for the removal and custody of such liquor his reasonable expenses, and one dollar for delivery or destruction of liquor under order of court, his reasonable expenses, and one dollar, and for posting and leaving notices pursuant to section ten, one dollar.

Payments for
Spurious liquor.

§ 15. All payments or compensation for intoxicating liquor hereafter sold in violation of this Act, whether such payments or compensation be in money, goods, land, labor, or any thing else whatsoever, shall be held to have been received in violation of law and against equity and good conscience, and to have been received upon a valid promise and agreement of the receiver in consideration of the receipt thereof, to pay on demand to the person furnishing such consideration the amount of said money or the just value of such goods, land, labor, or other things. All sales, transfers, conveyances, mortgages liens attachments, pledges and securities of every kind which either in whole or in part, shall have been made for or on account of intoxicating liquors sold in violation of this act, shall be utterly null and void against all persons in all cases, and no rights of any kind shall be acquired thereby, and no action of any kind shall be maintained in any court in this State for intoxicating liquors, or the value thereof, sold in any other State or country contrary to the law of said

Sales &c.

Void.

No action to
be maintained

State or country, or with intent to enable any person to violate any provision of this Act, nor shall any action be maintained for the recovery or possession of any intoxicating liquor, or the value thereof, except in cases where persons owning or possessing such liquor with lawful intent, may have been illegally deprived of the same. Nothing, however, in this section shall affect in any way negotiable paper in the hands of *bona fide* holders thereof for valuable consideration, without notice of any illegality in its inception or transfer, or the holder of land or other property who may have taken the same in good faith, without notice of any defect in the title of the person from whom the same was taken, growing out of a violation of the provisions of this Act, and all evidence given in actions brought by or against such *bona fide* holders, shall be in no way affected by the provisions of this section.

§ 16. The county Judge of any county may from time to time draw from the Treasury of said county such sums as his judgment shall be necessary for the purchase of intoxicating liquor, by the agent or agents of such county, to be by them sold under the provisions of this Act, and no agent appointed under this Act shall have power on behalf of any county to contract any debt for intoxicating liquor, which shall be to any extent binding upon such county.

§ 17. The 55th Chapter of the Code of Iowa is hereby repealed, which repeal shall take effect at the time when this Act shall go into operation; *Provided*, however, that all prosecutions which shall have been commenced at the time when this Act shall take effect, may be carried on to final judgment and execution irrespective of this Act, and shall be in no way affected by said repeal.

§ 18. At the April election, to be holden on the first Monday in April, A. D., 1855, the question of prohibiting the sale and manufacture of intoxicating liquor, shall be submitted to the legal voters of this State, and at said April election a poll shall be opened for that purpose at the place of election in each township of each county. The vote on said question shall be by ballot, and the voters in favor of such prohibition

shall cast a ballot whereon shall be written or printed the words "For the Prohibitory Liquor Law" and the voters opposed to such prohibition shall cast a ballot whereon shall be written or printed the words "Against the Prohibitory Liquor Law." The said ballots shall be received and canvassed by the Judges of election in the same manner as ballots for the election of officers, and a return of the same shall be made to the county Judge in the same manner and at the same time as provided for in the election of officers at the April election. Said return shall be treated by the county canvassers in the same manner as returns for the election of officers, and an abstract of said vote made upon a separate sheet, shall be forwarded to the Secretary of State in the same manner and at the same time as provided for in the cases of abstracts of votes for Superintendent and District Court Judges, elected at any April election. The returns of said vote, so returned to the office of the Secretary of State, shall be opened and examined by the Board of State Canvassers, in the same manner and at the same time as in the case of returns of election of officers had at said April election. Immediately after such examination and canvass, the said Board of State Canvassers shall make and publish an official statement of said vote; and if it shall appear from such official statement that a majority of the votes cast as aforesaid upon said question of prohibition shall be for the prohibitory liquor law, then this act shall take effect on the first day of July, A. D., 1855: Provided, however, that those portions of this Act having relation to the election provided for in this section shall be in force from and after its publication in the Iowa Capital Reporter and the Iowa Republican.

APPROVED January 22d, 1855.

I certify that the foregoing Act was published in the Iowa Capital Reporter and Iowa Republican on the 31st day of January, 1855.

GEORGE W. McLEARY, Sec'y of State.