

A BILL

FOR AN ACT DEFINING NUISANCES AND PROVIDING FOR THE ABATEMENT OF
AND PUNISHMENT FOR KEEPING AND MAINTAINING THE SAME.

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

SECTION 1. No person engaged in operating a mine, shall sell, by himself, his clerk,
2 steward, agent or other employe, directly or indirectly, any goods, wares or merchandise
3 within twenty miles of such mine, except as hereinafter provided. And the keeping of
4 such goods, wares or merchandise, with the intent on the part of the owner thereof, or any
5 person acting under his authority, or by his permission, to sell the same contrary to the
6 provisions of this act, is hereby declared a nuisance and the goods, wares or merchandise
7 so kept, together with the building or other place containing the same and the land on
8 which the same is situated, is declared a nuisance and shall be forfeited and dealt with as
9 hereinafter provided.

SEC. 2. The soliciting or commanding by any such person, his agent, steward, clerk or
2 other employe, or any person acting under his authority or by his permission, directly or
3 indirectly, of the employe of a person operating a mine or any member of the family of
4 such employe to purchase goods of any particular person, firm or corporation, shall be pre-
5 sumptive evidence that the said person, firm or corporation is engaged in keeping a
6 nuisance as herein defined. Also the charging of merchandise on the accounts of such
7 employes shall be presumptive evidence that the person furnishing such merchandise is
8 keeping a nuisance.

SEC. 3. In cases of violations of the provisions of this act, the building or erection of
2 whatever kind, or the ground itself in or upon which such goods, wares or merchandise is
3 sold, kept with intent to sell, use or give away and the furniture, fixtures and contents is
4 declared a nuisance. And whoever shall erect or establish, or continue or use any build-
5 ing, erection or place for any of the purposes prohibited in this act, either for himself, or
6 as the agent, employe, steward, clerk, or servant of another, shall be deemed guilty of a
7 nuisance. And any person convicted of a nuisance as defined in this act, shall be punished
8 by a fine of not less than three hundred nor more than one thousand dollars and the costs
9 of prosecution, which costs shall include an attorney fee of not less than twenty-five dollars,
10 to be assessed by the court, and any such person convicted, shall stand committed until such

11 fine and costs are paid. And the provisions of Chapter forty-seven of title Twenty-five
12 of the Code, shall not be applicable to persons committed under this act. Any citizen of
13 the county where such nuisance exists, or is kept or maintained, may maintain an action
14 in equity to abate and perpetually enjoin the same.

SEC. 4. Actions to enjoin nuisances, as authorized in this act, may be brought in the
2 name of the State of Iowa, by the county attorney, of the proper county, and it shall
3 be the duty of such county attorney where any such nuisance exists, to institute
4 and prosecute such action for the abatement thereof; *provided*, however, if after notice
5 or information given him of such nuisance, said county attorney refuse or neglect to bring
6 suit and prosecute the same with reasonable diligence, then any citizen residing in the
7 county may institute and prosecute such action in the name of the state for the abatement
8 of such nuisance. All such actions shall be triable at the first term of court, after due and
9 timely notice of the commencement thereof has been given. In addition to the presump-
10 tive evidence named in Section two (2) of this act, evidence of the general reputation of the
11 place designated in the petition shall be admissable for the purpose of proving the existence
12 of such nuisance, and if successful in the action, the plaintiff shall be entitled to an attor-
13 ney's fee of not less than twenty-five dollars, to be taxed and collected as costs in the case.

SEC. 5. In any such action, the court, if in session, or the judge thereof, in vacation shall,
2 upon the demand of the attorney or the party charged with the management of the cause
3 for the plaintiff, grant a temporary injunction without bond, if it be made to appear to the
4 satisfaction of the court or judge, by evidence in the form of affidavits or otherwise, as the
5 court or judge may order, that such nuisance actually exists, or is being maintained, and
6 when the cause is continued at the instance of the defendant, a temporary injunction
7 shall issue as a matter of course, without bond.

SEC. 6. In case of the violation of any injunction granted in such action, the court, or in
2 vacation, the judge thereof, shall have power to try summarily and punish the party or par-
3 ties guilty thereof by a fine of not less than five hundred nor more than one thousand dol-
4 lars, or by imprisonment in the county jail not more than six months, or by both such fine
5 and imprisonment, in the discretion of the court. The evidence in such proceeding or
6 trial for contempt may be in the form of affidavits, or on the demand of either party, the
7 witnesses shall be brought before the court for examination and the provisions of Section
8 three thousand, four hundred and four of the Code shall not apply to persons charged with
9 violating injunctions issued under this act.

SEC. 7. If the existence of the nuisance be established either in the criminal or civil
2 action, it shall be abated upon the judgment or order of the court, by seizing the building,
3 erection or place, and property contained therein, and selling the same in the manner pro-
4 vided for sales under executions, and by securely closing said building, erection or place as
5 against the use or occupation of the same for a nuisance, and by keeping the same closed

6 for one year, unless sooner released as hereinafter provided, and any person breaking open
7 said building, erection or place, or using the premises so ordered to be closed, shall be pun-
8 ished for contempt, as provided in this act. And the provisions of Sections five (5), six (6),
9 and seven (7) of Chapter sixty-six (66) of the laws of the Twenty-first General Assembly
10 shall be applicable to the provisions of this act. Also the provisions of Sections one (1) and
11 two (2) of Chapter 73 of the acts of the Twenty-second General Assembly shall be appli-
12 cable hereto, as to fees.

SEC. 8. The word "person" as used herein shall be so construed as to include persons,
2 firms and corporations.

SEC. 9. Nothing in this act shall be so construed as to prevent the selling to employes,
2 in and about a mine, by the person operating the same, the necessary powder, oil or other
3 material necessary to the proper working of the mine.

SEC. 10. Courts and jurors shall construe this chapter so as to prevent evasion.