

MAINE STATE LEGISLATURE

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New Draft of H. P. 1293, L. D. 1506
FIRST REGULAR SESSION

ONE HUNDRED AND TENTH LEGISLATURE

Legislative Document

No. 1592

H. P. 1452

House of Representatives, May 12, 1981

Reported by Majority from the Committee on Legal Affairs. Printed under
Joint Rules No. 2.

EDWIN H. PERT, Clerk

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED AND EIGHTY-ONE

AN ACT to Provide Greater Local Control over Liquor Licensing.

Be it enacted by the People of the State of Maine, as follows:

Sec. 1. 28 MRSA § 53, sub-§ 3, 2nd and 3rd sentences, as enacted by PL 1975, c. 741, § 4, are amended to read:

In issuing or renewing licenses, ~~the commission shall give~~ consideration **shall be given** to the character of any applicant, the location of the place of business ~~and~~, the manner in which it has been operated **and to whether the operation has endangered the safety of persons in or on areas surrounding the place of business.** The commission, ~~the municipal officers or county commissioners, as the case may be,~~ may refuse to issue licenses to corporations when any of its officers, directors or stockholders do not possess the qualifications required of unincorporated persons under this section.

Sec. 2. 28 MRSA § 53, sub-§ 8, first sentence, as enacted by PL 1975, c. 741, § 4, is amended to read:

To issue and renew all licenses **when** provided for by this Title and to hold hearings thereon.

Sec. 3. 28 MRSA § 251, 4th sentence, as amended by PL 1973, c. 303, § 3, is further amended to read:

No applicant whose application is ~~finally denied by the commission shall be~~ is eligible to apply for a liquor license of the same type again for a period of 6 months from the date of such denial, unless the commission denial is overruled by the court under appeal provided by section 403, and no license for the same premises shall be issued to the husband, wife, father, mother, child or other close relation by blood or marriage of a person whose license has been denied by the commission or revoked by the Administrative Court Judge for a period not exceeding 6 months after such denial or revocation.

Sec. 4. 28 MRS § 252, as last amended by PL 1979, c. 192, is repealed.

Sec. 5. 28 MRS § 252-A is enacted to read:

§ 252-A. Hearings; commission review; appeal

1. **Hearings.** The municipal officers or, in the case of unincorporated places, the county commissioners of the county in which the unincorporated place is located shall hold a public hearing for the consideration of applications for new licenses requiring their approval, requests for renewal of licenses and applications for transfer of location.

A. Application and request forms shall be prepared and supplied by the State Liquor Commission.

B. Prior public notice of any such hearing shall be prepared, by causing a notice, stating the name and place of hearing, to be printed:

(1) If the municipality where the premises are situated has a daily newspaper, then in that newspaper for at least 6 consecutive days prior to the date of hearing;

(2) If the municipality where the premises are situated has a newspaper, although not a daily, then in that newspaper for 2 consecutive weeks prior to the date of hearing; or

(3) If no newspaper is printed, then for at least 6 consecutive days in a daily newspaper having general circulation in the municipality in which the premises are situated or for 2 consecutive weeks prior to the date of hearing in any newspaper published in that county.

2. **Findings.** In granting or denying an application under subsection 1, the municipal officers or the county commissioners, as the case may be, shall indicate the reasons for their decision and provide a copy to the applicant.

3. **Appeal to commission.** Any person aggrieved by the decision of the municipal officers or county commissioners under this section may appeal to the commission, who shall hold a public hearing in the city, town or unincorporated place where the premises are situated.

A. If the decision appealed from was to grant the application or request, the commission may reverse the decision if it was arbitrary or based on an erroneous finding.

B. If the decision appealed from was to deny the application or request, the commission may grant the application or request only if it finds by clear and convincing evidence that the decision was without justifiable cause.

4. Restriction. In no event may a license be issued to any person who has moved a retail store or restaurant into or opened a new retail store or restaurant in an unincorporated place contiguous to any organized or unincorporated place where a local option vote has resulted in his being unable to procure a license in the place of his prior location of business for a period of one year after the local option vote.

5. Appeal to Superior Court. Any person or governmental entity aggrieved by a decision of the State Liquor Commission under this section may appeal the decision to the Superior Court.

STATEMENT OF FACT

This new draft alters the bill by changing the additional matter that the licensing body must consider from "the impact of the business of the surrounding locale" to "whether the operation of the business has endangered the safety of persons in or on areas surrounding the place of business." It also changes the standard of review imposed on the commission when reviewing a local decision to deny a license by requiring clear and convincing evidence that the decision was without justifiable cause.