

# MAINE STATE LEGISLATURE

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# 117th MAINE LEGISLATURE

## FIRST REGULAR SESSION-1995

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Legislative Document

No. 848

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S.P. 310

In Senate, March 14, 1995

**An Act to Further the Privatization of Liquor Stores within the State.**

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Reference to the Committee on Legal and Veterans Affairs suggested and ordered printed.

A handwritten signature in cursive script that reads "May M. Ross".

MAY M. ROSS  
Secretary of the Senate

Presented by Senator STEVENS of Androscoggin.  
Cosponsored by Representatives: BARTH of Bethel, BUCK of Yarmouth, KERR of Old Orchard Beach, LIBBY of Kennebunk, REED of Falmouth.

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

2           **Sec. 1. 28-A MRSA §451**, as amended by PL 1993, c. 509, §2, is  
4 further amended to read:

6           **§451. Agency liquor stores**

8           The Bureau of Liquor Enforcement may license and regulate  
10 persons any person who satisfies licensee eligibility  
12 requirements as an agency liquor stores store on an annual or  
14 temporary basis for the purposes of selling liquor in sealed  
16 bottles, containers or original packages to be consumed off the  
18 premises.

20           **Sec. 2. 28-A MRSA §451-A** is enacted to read:

22           **§451-A. License requirements**

24           The commission may issue an agency liquor store license only  
26 when the following requirements are met.

28           **1. History of operation; bureau standards.** The applicant's  
30 business has been in operation for a period of at least 3 months  
32 immediately before the date of the application or the applicant  
34 proves to the satisfaction of the bureau that all proper  
36 standards and requirements of laws and rules of the bureau have  
38 been met.

40           **2. Residency.** The applicant is a resident of the State.

42           **3. Stock of groceries or compatible merchandise required.**  
44 The applicant's business has and maintains:

46           **A. An adequate stock of groceries fit for human consumption**  
48 of at least \$1,000 wholesale value;

50           **B. A stock of merchandise reasonably compatible with a**  
stock of liquor of at least \$1,000 wholesale value; or

**C. A combination of both groceries fit for human**  
consumption and compatible merchandise of at least \$1,000  
wholesale value.

**4. Compatible merchandise.** The applicant displays the  
groceries or compatible merchandise, or both, in the general  
sales area of the business, except that foodstuffs and other  
consumable products used in the preparation of food and cut  
flowers and potted flowers are not required to be displayed if  
they are stored elsewhere on the premises. "Compatible  
merchandise" includes tobacco products; newspapers; greeting

2 cards; paper products; cut flowers and potted flowers; a stock of  
3 foodstuffs and other consumable products used on the premises in  
4 the preparation of food for consumption on or off the premises;  
5 and other items equally compatible with a stock of liquor, but  
6 does not include gasoline and oil; used or new cars, parts or  
7 accessories; or other items of stock that may be equally  
8 incompatible with a stock of liquor.

9  
10 **Sec. 3. 28-A MRSA §452**, as enacted by PL 1987, c. 45, Pt. A,  
11 §4, is amended to read:

12 **§452. Rules governing agency liquor stores**

13 The ~~commission~~ bureau shall adopt rules for the ~~selection~~  
14 and operation of agency liquor stores. These rules include, but  
15 are not limited to, the following:

16  
17 ~~1. Location. Location of agency stores, subject to section~~  
18 ~~453;~~

19  
20 2. **Storage facilities.** Storage facilities for liquor;

21  
22 3. **Handling and sale.** The handling and sale of liquor;

23  
24 4. **Hours.** The hours of operation;

25  
26 5. **Separation from other merchandise.** The separation of  
27 liquor from other merchandise in the agency liquor stores; and

28  
29 ~~6. Size and nature of facilities. The size and nature of~~  
30 ~~the facilities of agency liquor stores for different quantities~~  
31 ~~of liquor to be sold; and~~

32  
33 7. **Other.** Any other rules necessary to carry out the  
34 purposes of this chapter.

35  
36 **Sec. 4. 28-A MRSA §453**, as amended by PL 1993, c. 380, §§1 to  
37 5 and affected by §7, is further amended to read:

38  
39 **§453. Location of agency stores**

40  
41 1. **Location requirements.** The ~~commission~~ bureau may  
42 license an agency liquor store only when the following  
43 requirements are met.

44  
45 A. The proposed agency liquor store is located in a  
46 municipality or unincorporated place ~~which~~ that has voted in  
47 favor of the operation of state liquor stores under local  
48 option provisions.

49  
50

2 C. -- The proposed agency liquor store is not within 3.5 miles  
of an existing state liquor store or an existing agency  
liquor store that was licensed before May 1, 1993.

4  
6 D. -- If a state liquor store closes, the commission may grant  
more than one agency store license in a municipality when  
8 the commission considers it appropriate. -- Agency liquor  
stores licensed before May 1, 1993 that replace closed state  
10 liquor stores are exempt from the distance requirement in  
paragraph C.

12 **2. -- Replacement of state or agency liquor stores.** -- The  
commission may not replace a state or existing agency liquor  
14 store that closes with an agency liquor store if there is another  
state or existing agency liquor store within 3.5 miles. -- This  
16 subsection does not prevent the commission from locating a  
replacement agency liquor store within 3.5 miles of another  
18 replacement agency liquor store for the same town.

20 **2-A. -- Replacement of state liquor stores closed in fiscal**  
**year 1991-92.** -- The commission may replace a state liquor store  
22 closed after July 1, 1990 with 3 agency liquor stores if:

24 A. -- The agency stores are within a 10-mile radius of the  
location of the closed state liquor store; and

26  
28 B. -- The commission does not issue to a person or corporation  
more than 2 of the 3 licenses issued to replace a state  
liquor store. -- For purposes of this restriction, each  
30 partner of a partnership, each corporation that owns an  
interest in another corporation and each person who owns 20%  
32 or more of the shares or other interest in a corporation is  
deemed to own a license granted to the partnership or  
34 corporation.

36 **Sec. 5. 28-A MRSA §453-A**, as amended by PL 1993, c. 509, §§3  
and 4, is repealed.

38 **Sec. 6. 28-A MRSA §453-B**, as repealed and replaced by PL  
40 1993, c. 509, §5, is amended to read:

42 **§453-B. Annual license fee**

44 The initial license fee for an agency liquor store is  
\$2,000. The annual license renewal fee for an agency liquor  
46 store is \$300. The fee must be paid on renewal of the license.

48 **Sec. 7. 28-A MRSA §457**, as amended by PL 1987, c. 623, §6, is  
further amended to read:

2  
3 **§457. Transfer of agency liquor store license**

4 If an agency liquor store license is transferred, the new  
5 licensee transferee may operate the agency liquor store after  
6 notifying the commission bureau of the transfer until a the new  
agent transferee is selected licensed by the commission.

8 **Sec. 8. 28-A MRSA §458**, as enacted by PL 1991, c. 782, §1, is  
9 amended to read:

10 **§458. Renewal of agency liquor store license**

11  
12 **1. Application by store.** The holder of an agency liquor  
13 store license shall must apply annually to the commission bureau  
14 for renewal of that license. An application for renewal must be  
15 submitted on a form prepared by the bureau.

16  
17 **2. Review by bureau.** In reviewing applications for renewal  
18 submitted under subsection 1, the commission bureau shall  
19 consider the following criteria:

20  
21 A. ~~The applicant's sales and inventory of liquor;~~

22  
23 B. ~~The applicant's sales and inventory of groceries and  
24 related items;~~

25  
26 C. ~~Any changes in the location of or renovations to the  
27 applicant's premises;~~

28  
29 D. ~~Any customer complaints of poor service against the  
30 applicant's store;~~

31  
32 E. Any violations of liquor laws or bureau rules by the  
33 applicant; and

34  
35 F. Records of any bad checks rendered to the commission or  
36 the bureau.

37  
38 **3. Rejection of application.** ~~If the commission denies The  
39 bureau may deny~~ an application for renewal of an agency liquor  
40 store license, ~~the commission may select an alternate licensee in  
41 accordance with the criteria set forth in sections 453, 453-A and  
42 453-B if the applicant violates any bureau rules or liquor laws.~~  
43 ~~If the alternate licensee held an agency liquor store license in  
44 the past, the commission may consider any of the applicable  
45 criteria set forth in subsection 2 in considering whether to  
46 license the alternate agency liquor store.~~

47  
48 **4. Purchase of store merchandise by State.** If the  
49 commission bureau does not renew the agency liquor store license,  
50

2 the commission shall purchase from the agency liquor store all  
resalable spirits held in inventory by the agency liquor store.  
4 The purchase price is the cost at which that agency liquor store  
purchased the spirits from the commission, minus 10% of that cost.

6 **5. Aggrieved applicant.** Any agency liquor store licensee  
aggrieved by a decision of the ~~commission~~ bureau not to renew an  
8 agency liquor store license may appeal the decision by filing a  
complaint with the Administrative Court and serving a copy of  
10 that complaint on the ~~commission~~ bureau. The complaint must be  
filed and served within 15 days of notification of the agency  
12 liquor store licensee by the ~~commission~~ bureau that the license  
will not be renewed.

14 **Sec. 9. 28-A MRSA §601, sub-§2**, as amended by PL 1991, c. 158,  
16 §§ 1 to 3, is further amended to read:

18 **2. Disqualifications.** The ~~commission~~ bureau may not issue  
a license to an applicant if:

20 A. Any of the principal officers of the corporation is not  
22 personally eligible because ~~he~~ the applicant has had a  
license for sale of liquor revoked under chapter 33, if the  
24 applicant is a corporation;

26 B. The applicant held a license ~~which~~ that was revoked for  
a specific period under chapter 33 and the applicant is  
28 applying for a license within that period since revocation;

30 C. The applicant, who was not at the time of the offense  
the holder of a liquor license, was convicted of violating  
32 any laws of the State or the United States with respect to  
manufacture, transportation, importation, possession or sale  
34 of liquor within 5 years of applying for the license. For  
the purposes of this paragraph, any person who sells liquor  
36 of a greater alcohol content than authorized by ~~his~~ that  
person's license is not considered the holder of a license;

38 D. The applicant was convicted of selling liquor illegally  
40 on Sunday while an employee or agent of a licensee within 5  
years of applying for the license;

42 E. The applicant's license expired pending an appeal from  
44 conviction of illegally selling liquor on Sunday within 5  
years of applying for the license;

46 F. A law enforcement officer benefits financially either  
48 directly or indirectly;

2 G. The applicant was denied a license within the 6 months  
before the application was filed, unless the ~~commission's~~  
4 bureau's denial of the license is overruled by the court  
under an appeal provided by section 805;

6 H. The applicant is the husband, wife, father, mother,  
child or other close relation of a person whose license or  
8 application for a license for the same premises was revoked  
by the Administrative Court Judge or denied by the  
10 ~~commission~~ bureau within the 6 months before the application  
was filed;

12 I. The ~~commission~~ bureau determines that the purpose of the  
14 application is to circumvent the provisions of this section;  
or

16 J. The applicant is a golf club or a restaurant located on  
18 the property of a golf club and the Maine Human Rights  
Commission has found reasonable grounds to believe that the  
20 golf club has denied membership to a person in violation of  
Title 5, chapter 337, subchapter V, and has determined that  
22 conciliation efforts under Title 5, chapter 337, section  
4612, subsection 3 have not succeeded. The Maine Human  
24 Rights Commission shall notify the State Liquor and Lottery  
Commission when the golf club has corrected its  
26 discriminatory membership practices, after which the  
applicant ceases to be disqualified under this paragraph.

28 **Sec. 10. 28-A MRSA §602, sub-§§2 and 3**, as enacted by PL 1987,  
30 c. 45, Pt. A, §4, are amended to read:

32 **2. Bureau must notify licensee of expiration.** The  
~~commission~~ bureau shall notify the licensee by the most expedient  
34 means available that the license has expired and all sales of  
liquor must be suspended immediately and remain suspended until  
36 the license is properly renewed.

38 **3. Illegal sales after expiration of grace period or after  
notice.** A licensee that continues to make sales of liquor after  
40 having been properly notified of the expired license shall must  
be charged with illegal sales under section 2078.

42 **Sec. 11. 28-A MRSA §605**, as amended by PL 1987, c. 769, Pt.  
44 A, §113, is further amended to read:

46 **§605. Transfer of licenses; death; bankruptcy; receivership;  
48 guardianship; corporations**

50 Except as otherwise provided in this section, no license or  
any interest in a license may be sold, transferred, assigned or



2 otherwise subject to control by any person other than the  
licensee. If the business, or any interest in the business, in  
4 connection with which a licensed activity is conducted is sold,  
transferred or assigned, the license holder shall immediately  
6 send to the commission the license and a sworn statement showing  
the name and address of the purchaser. The ~~commission~~ bureau is  
8 not required to refund any portion of the licensee license fee if  
the license is surrendered before it expires.

10 **1. Transfer within same municipality.** Upon receipt of a  
written application, the ~~commission~~ bureau may transfer any  
12 retail liquor license from one place to another within the same  
municipality. If the approval of the municipal officers was  
14 required for the original license, the transfer ~~can~~ may be made  
only with the approval of the municipal officers. No transfer  
16 may be made to premises for which the license could not have been  
originally legally issued.

18 **2. Death, bankruptcy or receivership.** In the case of  
20 death, bankruptcy or receivership of any licensee, the executor  
or administrator of the deceased licensee or the trustee or  
22 receiver of the bankrupt licensee or licensee in receivership may  
retain the license for the remaining term of the license or  
24 transfer the license without additional fee.

26 A. Personal representatives, receivers or trustees may  
operate the ~~premise~~ premises themselves or through a manager  
28 for a year from the date of their appointment for the  
benefit of the estate.

30 (1) The license must be renewed upon the expiration  
32 date at the regular license fee.

34 (2) If the license or renewed license is not  
transferred within one year from the date of  
36 appointment, it becomes void and must be returned to  
the ~~commission~~ bureau for cancellation.

38 (3) Any suspension or revocation of the license by the  
40 Administrative Court Judge for any violation applies  
against both the manager and the personal  
42 representative, receiver or trustee.

44 (4) No personal representative, receiver, trustee or  
duly appointed manager may operate under the license  
46 unless approved by the ~~commission~~ bureau.

48 B. If a licensee dies, the following persons, with the  
written approval of the ~~commission~~ bureau, may continue the

2 operation of the license for not more than 60 days pending  
3 appointment of a personal representative of the estate:

4 (1) The surviving spouse;

6 (2) A person who has filed a petition for appointment  
7 as executor or administrator for the estate of the  
8 deceased licensee;

10 (3) Any sole heir of the deceased licensee; or

12 (4) Any person designated by all of the heirs of the  
13 deceased licensee.

14 C. When no administration of the estate of a deceased  
16 licensee is contemplated, the surviving spouse or person  
17 designated by all of the heirs of the deceased licensee may  
18 take over the license under the same conditions as are  
19 provided for operation and transfer by executors and  
20 administrators.

22 **3. Guardians and conservators.** Duly appointed and  
23 qualified guardians and conservators of the estate of a licensee  
24 may take over, operate and renew licenses of their wards during  
25 their term of office if they or their managers are approved by  
26 the ~~commission~~ bureau.

28 A. Guardians and conservators, except in the case of  
29 off-premise retail licensees approved by the municipal  
30 officers in their municipality, may not transfer their  
31 wards' licenses and must renew licenses each year.

32 B. Penalties for violations apply to both guardians or  
33 conservators and their managers in the same manner as  
34 executors or administrators and their managers in subsection  
35 2.

38 **4. Sale of stock of a corporate licensee.** Any sale or  
39 transfer of stock of a corporate licensee which that results in  
40 the sale or transfer of more than 10% of the shares of stock of  
41 the corporate licensee shall must be considered a transfer within  
42 the meaning of this section and a new license must be purchased.

44 **5. Incorporation of licensee's business.** The incorporation  
45 of a licensee's business or a change in the form of incorporation  
46 of a licensee's business ~~are-transfers~~ is a transfer within the  
47 meaning of this section. This subsection does not apply to  
48 agency liquor stores as long as the licensed agent retains  
49 control of the corporate stock.  
50

2           **6. Change in partnership.** Addition or deletion of a  
3 partner in a partnership is a transfer within the meaning of this  
4 section.

6           **7. Corporate merger or acquisition.** The merger or  
7 acquisition of a licensee which that is incorporated is a  
8 transfer within the meaning of this section.

10           **8. Application.** This section does not apply to certificate  
11 of approval holders.

12           **Sec. 12. 28-A MRSA §607,** as enacted by PL 1987, c. 45, Pt. A,  
13 §4, is amended to read:

14           **§607. Licensees closed in case of riots, hurricanes or floods**

16           The Governor or the ~~commission~~ bureau may, in cases of  
18 riots, hurricanes and floods, order any or all licensees not to  
19 sell any liquor.

22                           **STATEMENT OF FACT**

24           This bill opens up the agency liquor store licensing process  
25 by eliminating certain selection guidelines, including the  
26 location requirements of agency liquor stores and the  
27 license-bidding process. The Bureau of Liquor Enforcement may  
28 issue a license to any applicant who satisfies basic requirements  
29 and rules set by the bureau and who pays the annual \$2,000  
30 license fee or \$300 license renewal fee.