

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

DOCUMENTS

PRINTED BY ORDER OF

THE LEGISLATURE

OF THE

STATE OF MAINE,

DURING ITS SESSION

A. D. 1846.



AUGUSTA:

WM. T. JOHNSON, PRINTER TO THE STATE.

1847.

TWENTY-SIXTH LEGISLATURE.

No. 27.

HOUSE.

STATE OF MAINE.

IN THE YEAR OF OUR LORD ONE THOUSAND EIGHT HUNDRED AND FORTY-SIX.

AN ACT to restrict the sale of intoxicating drinks.

Be it enacted by the Senate and House of Representatives in Legislature assembled, as follows :

SECTION 1. No person shall be allowed at any time, 2 to sell by himself or his clerk, servant or agent, 3 rectly or indirectly, any wine, brandy, rum or other 4 spirituous liquors, or any liquors a part of which is 5 spirituous, except as hereafter provided.

SEC. 2. The provisions of this act shall not extend 2 to wine or spirituous liquors, which shall have been 3 imported into the United States from any foreign port 4 or place, when sold in quantities of twenty-eight gal- 5 lons and over, and delivered and carried away at one 6 time.

SEC. 3. The selectmen, clerk and treasurer of ev-

2 ery town, shall annually meet on the first Monday of
3 May, or on the succeeding day, or both, and at such
4 place in said town as they may appoint, by posting up
5 notices in two or more public places therein, at least
6 seven days previously, stating the purposes of the
7 meeting, and at such meeting, shall license under
8 their hands, and under such rules and regulations as
9 they may deem necessary, one person of good moral
10 character, if any such shall appear and request it, for
11 every town having less than one thousand inhabitants,
12 two for every town having over one thousand and
13 less than three thousand, and three for every town
14 having more than three thousand inhabitants, to be
15 sellers of wine, brandy, rum or other strong liquors,
16 in said town, to be used for medical and mechanical
17 purposes, and no other; provided however that no
18 such license shall be granted, until the person to be
19 licensed shall have executed and delivered to said
20 treasurer a bond with two good and sufficient sureties,
21 in the sum of six hundred dollars, in substance as
22 follows:

23 Know all men, that we — as principal, and — as
24 sureties, are holden and stand firmly bound to the in-
25 habitants of the town of — in the sum of six hundred
26 dollars, to be paid them, to which payment well and

27 truly to be made, we bind ourselves, our heirs, exec-
28 utors and administrators, firmly by these presents.
29 Sealed with our seals, and dated this — day of —,
30 A. D. —. The condition of the foregoing obligation
31 is such, that whereas the above bounden — has been
32 duly licensed to sell within the said town, wine, bran-
33 dy, rum, and other strong liquors, to be used for
34 medical and mechanical purposes, in quantities of
35 twenty-eight gallons and under (or over, as the case
36 may be), until the first Monday of May next; now if
37 the said — shall in all respects conform to the provis-
38 ions of the law relating to the business for which he
39 is licensed, and to such rules and regulations as shall
40 be from time to time established by the board grant-
41 ing the license, in reference thereto, then this obliga-
42 tion to be void; otherwise, to remain in full force.

SEC. 4. The said licensing board may at any other
2 time, at a meeting called and notified as aforesaid,
3 grant such licenses, but in no case shall they license a
4 greater number than is allowed by the foregoing sec-
5 tion; and all such licenses shall expire on the said
6 first Monday of May, annually, and the clerk shall
7 make a record of all the licenses granted.

SEC. 5. If any person by himself, clerk, servant or
2 agent, shall at any time, sell any wine or spirituous

3 liquors, or any mixed liquors, a part of which is spir-
4 ituous, in violation of the provisions of this act, he
5 shall forfeit and pay for each offense, not less than
6 one, nor more than twenty dollars.

SEC. 6. Any forfeiture or penalty arising under the
2 above section, may be recovered by an action of debt,
3 on complaint, before any justice of the peace or
4 judge of any municipal or police court in the county
5 where the offense was committed. And the action
6 may be brought in the name of the person prosecut-
7 ing, or the town where the offense was committed.
8 One half the forfeiture so recovered shall enure to the
9 prosecutor or complainant, and the other half to the
10 town ; and the prosecutor or complainant shall be
11 admitted as a witness at the trial. And if any two of
12 the licensing board shall approve of the commence-
13 ment of any such suit, by endorsing their names upon
14 the writ, the defendant shall in no event recover any
15 cost.

SEC. 7. And if any person shall claim an appeal
2 from a judgment rendered against him, by any such
3 judge or justice, on the trial of such action or com-
4 plaint, he shall, before the appeal shall be allowed,
5 recognize in a sum not less than fifty dollars, with two
6 good and sufficient sureties, to prosecute his appeal

7 and to pay all costs, fines or forfeitures that may be
8 recovered against him, upon a final disposition of
9 such suit or complaint. And if such appellant shall
10 not within forty-eight hours (Sunday excepted) after
11 such judgment is rendered, so recognize, the appeal
12 shall not be allowed, and the said judge or justice
13 shall enter up judgment in the same manner as though
14 no such appeal had been claimed; and the appellant
15 shall be held to advance the jury fees and all other
16 fees that may arise after the appeal.

SEC. 8. If any person, after having been once con-
2 victed of a violation of the provisions of this act,
3 shall be guilty, and upon complaint convicted, of a
4 like offense, he shall be punished by a fine of not
5 less than five dollars, nor more than twenty dollars,
6 and shall give a bond to the inhabitants of the town
7 where the offense was committed, with two good and
8 sufficient sureties, to the acceptance of the judge or
9 justice before whom the complaint may be tried, in a
10 sum not less than fifty dollars conditioned that he will
11 not, during the term of six months then next following,
12 violate the provisions of this act, and shall stand
13 committed until the sentence shall be complied with.
14 And the thirty days named in the one hundred and

15 seventy-fifth chapter of the Revised Statutes, shall not
16 begin to run till thirty days after the commitment.

SEC. 9. The licensing board of said town, when-
2 ever complaint shall be made to them that a breach
3 of the condition of the bond given by any person
4 licensed by them, has been committed, shall notify
5 the person complained of, and if upon a hearing of
6 the parties it shall appear that any breach has been
7 committed, they shall revoke and make void his li-
8 cense. And whenever a breach of any bond given
9 to the inhabitants of any town in pursuance of any
10 of the provisions of this act, shall be made known
11 to said licensing board or the town agent, or in any
12 manner come to their knowledge, they, or some one
13 of them, shall, at the expense and for the use of the
14 town, cause the bond to be put in suit, in any court
15 proper to try the same.

SEC. 10. No action shall be maintained upon any
2 claim or demand, whether it be note, account, bond,
3 order, draft, acceptance or other security or evidence
4 whatever, made, had or given in whole or in part, for
5 any wine, brandy, rum or other strong or spirituous
6 liquors, or mixed liquors, a part of which is spirituous,
7 sold in violation of the provisions of this act ; pro-

8 vided, however, that this section shall not extend to
9 negotiable paper in the hands of holders bona fide,
10 and for a valuable consideration without notice ex-
11 pressed or implied, of the illegality of the consider-
12 ation.

SEC. 11. If any payment or compensation for any
2 such liquor hereafter sold, in violation of this law,
3 shall be received by the seller, his clerk, servant, agent
4 or attorney, whether in money, labor, or other prop-
5 erty, real or personal, the amount so received, shall
6 be held and considered to have been received in vio-
7 lation of law and without consideration, and held
8 against law and equity and good conscience, and may
9 be recovered back any time within six years from
10 the receiving thereof, by the purchaser, his guardian,
11 executors or administrators, or by any of his creditors,
12 such money in an action for money had and received,
13 and such labor, goods or other property in an action
14 of trover, in special action on the case, for the value
15 thereof, in any court proper to try the same; and the
16 plaintiff in such action, shall within three days after
17 the commencement of such suit, give notice thereof,
18 by filing an abstract of the declaration, with the date
19 of his writ, in the office of the clerk of the town
20 where the defendant resides. And when such suit

21 shall be commenced by a creditor, the purchaser may
22 be a witness for the plaintiff, at the trial of the action,
23 and such actions and cause of action shall survive.

SEC. 12. All payments received within the six years,
2 may be embraced in one general count, and shall
3 alledge that the money, or other thing, was received
4 by the defendant, for liquor sold in violation of law,
5 and amendments may be made to the writ and declar-
6 ation, as matter of right, and without terms in any
7 stage of the proceedings. And when the defendant
8 shall rely upon having had the legal license, or upon
9 the liquor sold having been imported, the burden of
10 proof shall be and continue upon him. The custom
11 house certificates of importation and proof of marks
12 on the cask corresponding thereto, may be received
13 as evidence that the liquor specified in said certificate
14 was once imported in said cask, but shall not be evi-
15 dence that the liquor sold in or from such cask, was
16 the same liquor once imported therein. And it shall
17 be no objection to the suit, that the payment was re-
18 ceived for the joint use of the defendant and any
19 other person or persons, or that the defendant was
20 under the age of twenty-one years, or a married
21 woman.

SEC. 13. When the money or other thing shall have

2 been received by any clerk, servant, agent or attorney,
3 the action may be maintained against him, if he had
4 knowledge or previous notice that it was for liquor
5 sold in violation of law. And if any action which is
6 authorized by this act, be brought in the district court,
7 and the plaintiff prevail therein, full costs shall be
8 allowed, though the amount of damages recovered
9 be less than twenty dollars.

SEC. 14. The defendant shall not be allowed, on
2 the trial of any action against him, under any of the
3 provisions of this act, any claims or demands he may
4 have against the plaintiff or person to whom the liquor
5 was sold or furnished, either in set off, payment or
6 otherwise; nor shall the action of any creditor be
7 defeated by any assignment of the claim by the pur-
8 chaser.

SEC. 15. No discharge, release, receipt, settlement
2 or admission made by a purchaser, shall defeat or
3 hinder the suit, if it appear that the claim allowed to
4 the purchaser by this act, has not been actually paid
5 in good faith, to its full value and amount; and the
6 giving a negotiable note or other obligation, shall not
7 be deemed a payment.

SEC. 16. Any plaintiff suing under the tenth sec-
2 tion of this act, may, at the trial, tender his oath in

3 writing, which shall be received as evidence, unless
4 the defendant shall in writing, make oath that he did
5 not, within six years before the commencement of
6 the suit receive any payment or compensation, for
7 any such wine or strong liquor sold to the plaintiff, or
8 to any person whom the plaintiff represents, contrary
9 to the provisions of the law, as alledged in the dec-
10 laration.

SEC. 17. When a plaintiff suing under any of the
2 provisions of this act, in order to prove the facts
3 which he has alledged, shall wish to avail himself of
4 the defendants knowledge, relating to the subject
5 matter of the suit, he may, in his declaration, ask for
6 a disclosure of the same upon the oath of the defend-
7 ant, in writing, and the disclosure, if made, may be
8 submitted to the court and jury with the other evi-
9 dence in the case; but if the defendant neglects or
10 refuses to make such disclosures, or if when made, it
11 does not absolutely and without qualification, deny
12 that he did sell the liquor and receive the money or
13 other property, therefor, as alledged in the declaration,
14 and prevails in the action he shall not receive any
15 costs.

SEC. 18. No answers or disclosures made by a de-
2 fendant under the provisions of this act, shall ever be

3 used against him in any penal action or criminal
4 prosecution.

SEC. 19. Moneys which are by this act, to be re-
2 covered back, may when recovered by a guardian,
3 executor or administrator, be applied at the discretion
4 of the guardian, executor or administrator, in whole
5 or in part, to meet the debts of the purchaser, or to
6 relieve his wife or widow and children, and parents,
7 in such proportions as the guardian, executors or ad-
8 ministrators may deem suitable, and when recovered
9 by a creditor, it shall be appropriated to the payment
10 of his debt against the purchaser and his costs; and
11 if any balance remains, one moiety thereof to accrue
12 to the plaintiff, and the other to be paid to the pur-
13 chaser, his guardian, executor or administrator, to be
14 appropriated by them, in the same manner as moneys
15 recovered under this act by them. And if any guar-
16 dian, executor or administrator, neglect to pay all
17 said moneys, he and his sureties shall be liable for the
18 same in his official bond.

SEC. 20. Whenever a judgment shall be recovered
2 against any person on account of a violation of this
3 act, the execution which shall be issued thereon, shall
4 run against the body of the execution debtor, whether
5 the amount recovered, exclusive of costs, be more or

6 less than ten dollars ; and the justice or clerk issuing
7 said execution, shall note on its margin that it was
8 issued on a judgment obtained on account of intoxi-
9 cating liquors sold in violation of law.

SEC. 21. If such execution debtor shall be arrested
2 on such execution, he shall be committed to prison,
3 and shall not be permitted to give any of the bonds
4 provided in the one hundred and forty-eight chapter
5 of the Revised Statutes for the liberation of his per-
6 son. And in case he shall apply to take the oath
7 described in the twenty-eighth section of said chap-
8 ter, no notice to the creditor shall be issued until fif-
9 teen days after the commitment. Provided, however,
10 that no person shall be imprisoned on more than one
11 warrant issued upon any judgment, recovered on ac-
12 count of a violation of the provisions of this act, at
13 the same time.

SEC. 22. The keepers of the prisons shall be enti-
2 tled to receive the same compensation now allowed
3 by law, for the support of poor debtors imprisoned
4 for the support of persons committed on execution
5 recovered under the provisions of this act, to be al-
6 lowed and paid by the treasurer of the county where
7 such person stands committed, under the direction of
8 the county commissioners.

SEC. 23. All the provisions of this act, relating to
2 towns and their treasurers and clerks, shall be appli-
3 cable to cities and plantations, and the treasurers
4 and clerks thereof; and those relating to selectmen
5 shall also be applied to aldermen of cities and asses-
6 sors of plantations.

SEC. 24. If any person shall sell, give, or in any
2 manner, directly or indirectly furnish any person, *non*
3 *compos* or any Indian, or any person named in the
4 seventh section of the one hundred and tenth chapter
5 of the Revised Statutes, any wine, brandy, rum or other
6 spirituous liquors, or any mixed liquors a part of which
7 is spirituous, for any purpose whatever, unless in case
8 of sickness, under the direction of a regular practis-
9 ing physician, he shall be subject to all the liabilities,
10 forfeitures and penalties, provided by this act.

SEC. 25. So much of the seventeenth section of
2 the thirty-sixth chapter of the Revised Statutes as af-
3 fixes a penalty for being a common seller of liquors
4 by retail, and all other parts of said thirty-sixth chap-
5 ter, and all other acts and parts of acts, so far as they
6 are inconsistent with the provisions of this act, are
7 hereby repealed, saving and reserving all indictments,
8 prosecutions and suits which have been already com-
9 menced.

STATE OF MAINE.

HOUSE OF REPRESENTATIVES, July 11, 1846.

Ordered, That 500 copies of the foregoing bill, reported by Mr. Davis of Stow, from the Joint Select Committee to which were referred sundry petitions for the suppression of drinking houses and tipping shops, be printed for the use of the Legislature. Also 500 additional copies for the use of the House.

SAMUEL BELCHER, *Clerk*.

IN SENATE, July 13, 1846.

Ordered, That 500 additional copies of the foregoing bill be printed for the use of the Senate.

DANIEL T. PIKE, *Secretary*.