

# MAINE STATE LEGISLATURE

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DOCUMENTS

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THE LEGISLATURE

OF THE

STATE OF MAINE,

DURING ITS SESSION

A. D. 1850.

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Augusta:

WILLIAM T. JOHNSON, PRINTER TO THE STATE.

1850.

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# THIRTIETH LEGISLATURE.

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No. 32.]

[SENATE.

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## STATE OF MAINE.

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IN THE YEAR OF OUR LORD ONE THOUSAND EIGHT HUNDRED AND  
FIFTY.

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AN ACT for the suppression of drinking houses and  
tippling shops.

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*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 manufacture or sell, by himself, his clerk, servant  
3 or agent, directly or indirectly, any spirituous or in-  
4 toxicating liquors, or any mixed liquors a part of which  
5 is spirituous or intoxicating, except as hereafter pro-  
6 vided.

SECT. 2. The selectmen of every town, on the first  
2 Monday of May annually, or as soon thereafter as

3 may be convenient, may appoint some suitable person,  
4 as the agent of said town, to sell at some central and  
5 convenient place within said town, spirits, wines or  
6 other intoxicating liquors, to be used for medicinal  
7 and mechanical purposes and no other; and said  
8 agent shall receive such compensation for his services  
9 as the selectmen of such town shall prescribe; and  
10 shall in the sale of such liquors, conform to such rules  
11 and regulations, as the selectmen of such town shall  
12 prescribe for that purpose. And such agent, ap-  
13 pointed as aforesaid, shall hold his situation for one  
14 year, unless sooner removed by the board from which  
15 he received his appointment, as he may be at any  
16 time, at the pleasure of said board.

SECT. 3. And such agent shall receive a certificate  
2 from the selectmen by whom he has been appointed,  
3 authorizing him as the agent of such town, to sell  
4 intoxicating liquors for medicinal and mechanical  
5 purposes only; but such certificate shall not be de-  
6 livered to the person so appointed, until he shall have  
7 executed and delivered to said board, a bond with two  
8 good and sufficient sureties, in the sum of six hundred  
9 dollars, in substance as follows:

10 Know all men that we, — as principal, and —  
 11 — as sureties, are holden and stand firmly bound  
 12 to the inhabitants of the town of — in the sum of  
 13 six hundred dollars, to be paid them, to which pay-  
 14 ment we bind ourselves, our heirs, executors and ad-  
 15 ministrators, firmly by these presents.

16 Sealed with our seals, and dated this — day of  
 17 —, A. D. —.

18 The condition of this obligation is such, that  
 19 whereas the above bounden — has been duly ap-  
 20 pointed an agent for the town of — to sell within,  
 21 and for and on account of said town, intoxicating  
 22 liquors for medicinal and mechanical purposes and no  
 23 other, until the — of —, A. D. —, unless sooner  
 24 removed from said agency.

25 Now if the said — shall in all respects conform  
 26 to the provisions of the law relating to the business  
 27 for which he is appointed, and to such rules and reg-  
 28 ulations as now are or shall be from time to time  
 29 established by the board making the appointment, then  
 30 this obligation to be void ; otherwise to remain in full  
 31 force.

SECT. 4. If any person, by himself, clerk, servant

2 or agent, shall at any time sell any spirituous or in-  
3 toxicating liquors, or any mixed liquors, part of which  
4 is intoxicating, in violation of the provisions of this  
5 act, he shall forfeit and pay on the first conviction,  
6 ten dollars and the costs of prosecution, and to stand  
7 committed until the same be paid; on the second  
8 conviction he shall pay twenty dollars and the costs  
9 of prosecution, and to stand committed until the same  
10 be paid; on the third and every subsequent convic-  
11 tion, he shall pay twenty dollars and the costs of pros-  
12 ecution, and shall be imprisoned in the common  
13 jail, not less than three months, nor more than six  
14 months, and in default of the payment of the fines and  
15 costs, an additional term of one month. And if any  
16 clerk, servant, agent or other person in the employ-  
17 ment or on the premises of another, shall violate the  
18 provisions of this section, he shall be held equally  
19 guilty with the principal, and on conviction, shall  
20 suffer the same penalty.

SECT. 5. Any forfeiture or penalty arising under  
2 the above section, may be recovered by an action of  
3 debt, or by complaint before any justice of the peace,  
4 or judge of any municipal or police court, in the

5 county where the offense was committed. And the  
6 forfeiture so recovered shall go to the town where  
7 the convicted party resides, for the use of the poor ;  
8 and the prosecutor or complainant shall be admitted  
9 as a witness in the trial. And if any one of the se-  
10 lectmen shall approve of the commencement of any  
11 such suit, by endorsing his name upon the writ, the  
12 defendant shall in no event recover any costs ; and in  
13 all actions of debt arising under this section, the  
14 fines, forfeitures and penalties suffered by the defend-  
15 ant, shall be the same as if the actions had been by  
16 complaint. And it shall be the duty of the selectmen  
17 of any town to commence an action in behalf of said  
18 town, against any person guilty of a violation of any  
19 of the provisions of this act, on being informed of  
20 the same, and being furnished with proof of the fact.

SECT. 6. If any person shall claim an appeal from  
2 a judgment rendered against him by any judge or  
3 justice on the trial of such action or complaint, he  
4 shall, before the appeal shall be allowed, recognize  
5 in the sum of one hundred dollars, with two good and  
6 sufficient sureties, in every case so appealed, to pros-  
7 ecute his appeal, and to pay and suffer all costs, fines

8 and penalties that may be awarded against him, upon  
9 a final disposition of such suit or complaint. And  
10 before his appeal shall be allowed, he shall also in  
11 every case, give a bond with two other good and  
12 sufficient sureties, running to the town where the  
13 offense was committed, in the sum of two hundred  
14 dollars, that he will not during the pendency of such  
15 appeal, violate any of the provisions of this act. And  
16 no recognizance or bond shall be taken in cases aris-  
17 ing under this act, except by the justice or judge be-  
18 fore whom the trial was had ; and the defendant shall  
19 be held to advance the jury fees in every case of ap-  
20 peal in an action of debt ; and in the event of a final  
21 conviction before a jury, the defendant shall pay and  
22 suffer double the amount of fines and penalties  
23 awarded against him by the justice or judge from  
24 whose judgment the appeal was made. The forfeit-  
25 ure for all bonds and recognizances given in pursu-  
26 ance of this act, shall go to the town where the  
27 offense was committed, for the use of the town ; and  
28 if the recognizances and bonds mentioned in this  
29 section shall not be given, within twenty-four hours  
30 after the judgment, the appeal shall not be allowed ;



31 the defendant in the mean time to stand com-  
32 mitted.

SECT. 7. The selectmen of any town, whenever  
2 complaint shall be made to them that a breach of the  
3 conditions of the bond given by any person appointed  
4 under this act, has been committed, shall notify the  
5 person complained of, and if upon a hearing of the  
6 parties it shall appear that any breach has been com-  
7 mitted, they shall revoke and make void his appoint-  
8 ment. 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 to  
11 the selectmen of said town, or in any manner come  
12 to their knowledge, they or some one of them shall,  
13 at the expense and for the use of the town, cause the  
14 bond to be put in suit in any court proper to try the  
15 same.

SECT. 8. No person shall be allowed to be a manu-  
2 facturer or common seller of any spirituous or intoxi-  
3 cating liquor, without being duly appointed as afore-  
4 said, on pain of forfeiting on the first conviction, the  
5 sum of one hundred dollars and costs of prosecution,  
6 or an imprisonment of sixty days in the common jail,

7 in default of payment ; and on the second conviction,  
8 the sum of two hundred dollars and costs of prosecu-  
9 tion, or an imprisonment of four months in the com-  
10 mon jail, in default of payment ;—and on the third  
11 and every subsequent conviction, the sum of two hun-  
12 dred dollars and an imprisonment of four months in  
13 the common jail of the county where the offense was  
14 committed ; and in default of the payment of said  
15 fines and costs, the person so convicted shall suffer an  
16 additional imprisonment of sixty days ; said penalties  
17 to be recovered before any court of competent juris-  
18 diction, by indictment. And whenever a default shall  
19 be had of any recognizance arising under this act,  
20 scire facias shall be issued, returnable at the next term,  
21 then to be definitely settled.

SECT. 9. No person engaged in the unlawful traffic  
2 in intoxicating liquors shall be competent to sit upon  
3 any jury ; and when information shall be communi-  
4 cated to the court, that any member of any panel is  
5 engaged in such traffic, or that he is believed to be so  
6 engaged, the court shall inquire of the juryman of  
7 whom such belief is entertained ; and no answer  
8 which he shall make shall be used against him in any

9 case arising under this act; but if he shall answer  
 10 falsely, he shall be incapable of serving on any jury  
 11 in this state; but he may decline to answer, in which  
 12 case he shall be discharged by the court from all fur-  
 13 ther attendance as a jurymen.

SECT. 10. All cases arising under this act, whether  
 2 by action, indictment or complaint, which shall come  
 3 before a superior court, either by appeal or original  
 4 entry, shall take precedence in said court of all other  
 5 business, except those criminal cases in which the  
 6 parties are actually under arrest, awaiting a trial;  
 7 and the court and prosecuting officer shall not have  
 8 authority to enter a nolle prosequi, or to grant a con-  
 9 tinuance in any case arising under this act, either  
 10 before or after the verdict, except where the purposes  
 11 of justice shall require it: it being the object of this  
 12 act, to bring to condign punishment, all persons who  
 13 shall presume to traffic unlawfully in spirituous or  
 14 intoxicating liquors.

SECT. 11. If any three persons, voters in the town  
 2 where the complaint shall be made, shall before any  
 3 justice or judge of any municipal or police court,  
 4 make oath or affirmation, that they have reason to

5 believe, and do believe that spirituous or intoxicating  
6 liquors are kept or deposited, and intended for sale,  
7 by any person not authorized to sell the same in said  
8 town under the provisions of this act, in any store,  
9 shop, warehouse or other building or place, said jus-  
10 tice or judge shall issue his warrant of search to any  
11 sheriff, city marshal or deputy, or to any constable,  
12 who shall proceed to search the premises described in  
13 said warrant, and if any spirituous or intoxicating  
14 liquors are found therein, he shall seize the same, and  
15 convey them to some proper place of security, where  
16 he shall keep them until final action is had thereon.  
17 But no dwelling house in which, or in part of which  
18 a shop is not kept by the occupant thereof, shall be  
19 searched unless at least one of said complainants shall  
20 testify to some act of sale of intoxicating liquors  
21 therein, by the occupant thereof, or by his consent or  
22 permission, within at least one month of the time of  
23 making said complaint. And the owner or keeper of  
24 said liquors, seized as aforesaid, if he shall be known  
24 to the officer seizing the same, shall be summoned  
25 forthwith before the justice or judge by whose warrant  
26 the liquors were seized, and if he fails to appear, or

27 unless he can show by positive oral proof, that said  
28 liquors are of foreign production, that they have been  
29 imported under the laws of the United States, and in  
30 accordance therewith—that they are contained in the  
31 original packages in which they were imported, and  
32 in quantities not less than the laws of the United  
33 States prescribe, they shall be declared forfeited, and  
34 shall be destroyed by authority of the written order to  
35 that effect, of said justice or judge and in his pres-  
36 ence, or in the presence of some person appointed by  
37 him to witness the destruction thereof, and who shall  
38 join with the officer by whom they shall have been  
39 destroyed, in attesting that fact upon the back of the  
40 order, by authority of which it was done ; and the  
41 owner or keeper of such liquors shall pay a fine of  
42 twenty dollars and costs, or stand committed for thirty  
43 days, in default of payment, if in the opinion of the  
44 court said liquors shall have been kept or deposited  
45 for the purposes of sale. And if the owner or pos-  
46 sessor of any liquors seized in pursuance of this sec-  
47 tion, shall set up the claim that they have been regu-  
48 larly imported under the laws of the United States,  
49 and that they are contained in the original packages,

50 the custom house certificates of importation and  
51 proofs of marks on the casks or packages correspond-  
52 ing thereto, shall not be received as evidence that the  
53 liquors contained in said packages are those actually  
54 imported therein.

SECT. 12. If the owner, keeper or possessor of  
2 liquors seized under the provisions of this act, shall be  
3 unknown to the officer seizing the same, they shall  
4 not be condemned and destroyed until they shall have  
5 been advertised, with the number and description of  
6 the packages as near as may be, for two weeks, by  
7 posting up a written description of the same in some  
8 public place, that if such liquors are actually the  
9 property of any town in the state, and were so at the  
10 time of the seizure, purchased for sale by the agent of  
11 said town, for medicinal and mechanical purposes  
12 only, in pursuance of the provisions of this act, they  
13 may not be destroyed; but upon satisfactory proof of  
14 such ownership, within said two weeks, before the  
15 justice or judge by whose authority said liquors were  
16 seized, said justice or judge shall deliver to the agent  
17 of said town an order to the officer having said liquors  
18 in custody, whereupon said officer shall deliver them

19 to said agent, taking his receipt therefor upon the  
 20 back of said order, which shall be returned to said  
 21 justice or judge.

SECT. 13. If any person claiming any liquors, seized  
 2 as aforesaid, shall appeal from the judgment of any  
 3 justice or judge by whose authority the seizure was  
 4 made, before his appeal shall be allowed, he shall give  
 5 a bond in the sum of two hundred dollars with two  
 6 good and sufficient sureties to prosecute his appeal,  
 7 and to pay all fines and costs which may be awarded  
 8 against him; and in the case of any such appeal,  
 9 where the quantity of liquors so seized shall exceed  
 10 five gallons, if the final decision shall be against the  
 11 appellant, he shall be adjudged a common seller of  
 12 intoxicating liquors, and shall be subject to the penal-  
 13 ties provided for in section eight, of this act. But  
 14 nothing contained in this act shall be construed to  
 15 prevent any chemist, artist or manufacturer in whose  
 16 art or trade they may be necessary, from keeping at  
 17 his place of business such reasonable and proper  
 18 quantity of distilled liquors as he may have occasion  
 19 to use in his art or trade, but not for sale.

SECT. 14. It shall be the duty of any mayor, alder-

2 man, selectman, assessor, city marshal or deputy or  
3 constable, if he shall have information that any intox-  
4 icating liquors are kept or sold in any tent, shanty,  
5 hut or place of any kind for selling refreshments in  
6 any public place on or near the ground of any cattle  
7 show, agricultural exhibition, military muster, or pub-  
8 lic occasion of any kind, to search such suspected  
9 place, and if such officer shall find upon the premises  
10 any intoxicating drinks, he shall seize them, and  
11 arrest the keeper or keepers of such place, and take  
12 them forthwith, or as soon as may be, before some  
13 justice or judge of a municipal or police court, with  
14 the liquors so found and seized, and upon proof that  
15 said liquors are intoxicating, that they were found in  
16 possession of the accused, in a tent, shanty or other  
17 place as aforesaid, he shall be sentenced to imprison-  
18 ment in the county jail for thirty days, and the liquors  
19 so seized shall be destroyed by the order of said justice  
20 or judge.

SECT. 15. If any person arrested under the preced-  
2 ing section and sentenced as aforesaid, shall claim an  
3 appeal, before his appeal shall be allowed, he shall  
4 give a bond in the sum of one hundred dollars, with



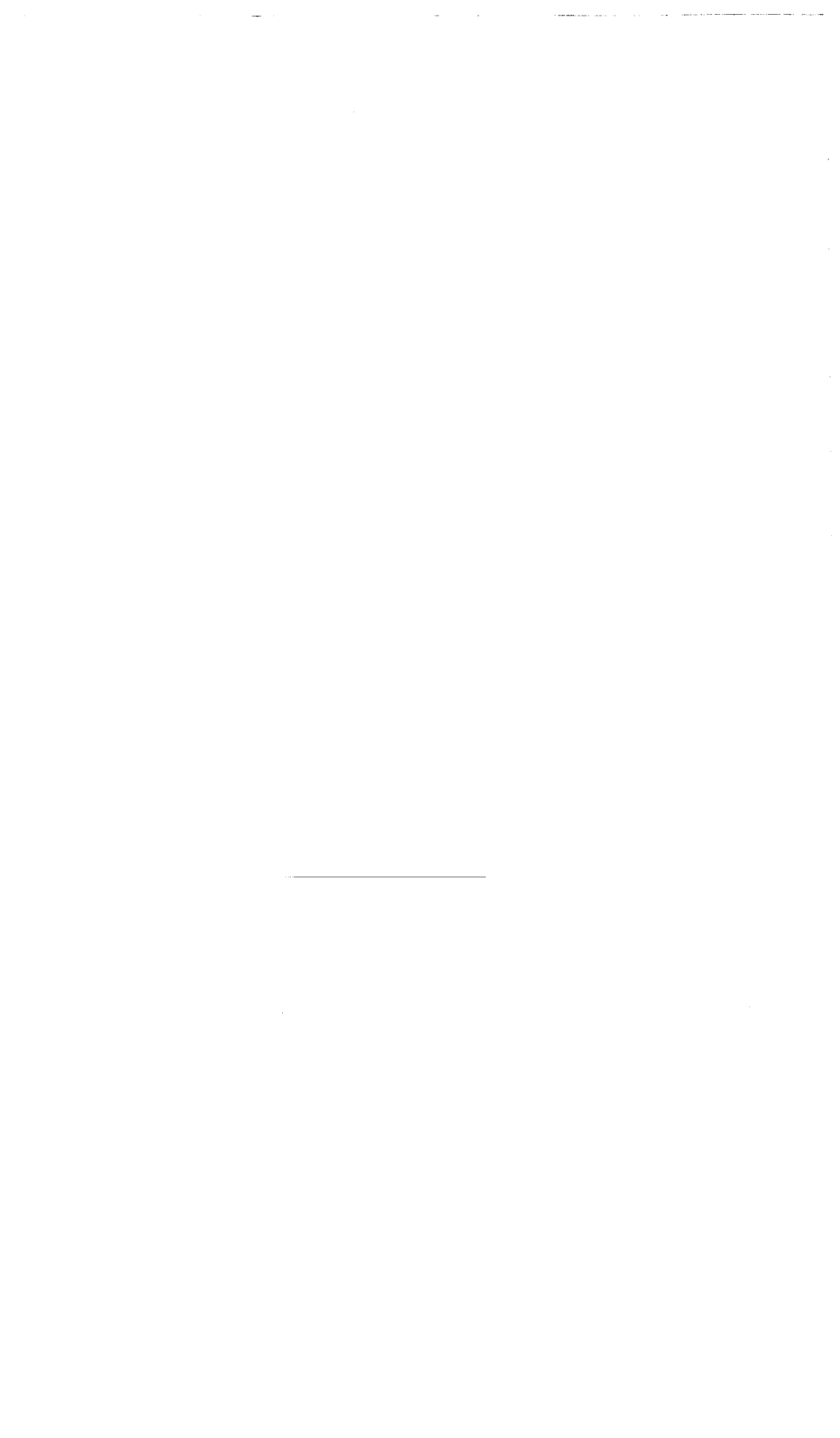
5 two good and sufficient sureties, that he will prose-  
6 cute his appeal and pay and suffer all fines, costs and  
7 penalties which may be awarded against him. And  
8 if on such appeal the verdict of the jury shall be  
9 against him, he shall in addition to the penalty  
10 awarded by the lower court, pay a fine of twenty dol-  
11 lars. In all cases arising under this act of appeal  
12 from the judgment of a justice or judge of any mu-  
13 nicipal or police court, to a higher court, except  
14 where the proceeding is by action of debt, they shall  
15 be conducted in said higher court by the prosecuting  
16 officer of the government—and said officer shall be  
17 entitled to receive all costs taxable to the state in all  
18 criminal proceedings under this act, in addition to the  
19 salary allowed to such officer by law—but no costs in  
20 such cases shall be remitted or reduced by the prose-  
21 cuting officer or the court.

SECT. 16. All payments or compensations for liquors  
2 sold in violation of law, whether in money, labor or  
3 other property, either real or personal, shall be held  
4 and considered to have been received in violation of  
5 law, and without consideration, and against law,  
6 equity and good conscience, and all sales, transfers

7 and conveyances, mortgages, liens, attachments,  
8 pledges and securities of every kind, which either in  
9 whole or in part shall have been for or on account of  
10 liquors sold in violation of law, shall be utterly null  
11 and void against all persons and in all cases, and no  
12 rights of any kind shall be acquired thereby ; and in  
13 any action either at law or equity, touching such real  
14 or personal estate, the purchaser of such liquors may  
15 be a witness for either party.

SECT. 17. All the provisions of this act relating to  
2 towns shall be applicable to cities and plantations ;  
3 and those relating to selectmen shall also be applied  
4 to aldermen of cities and assessors of plantations.

SECT. 18. The act entitled “an act to restrict the  
2 sale of intoxicating drinks,” approved August sixth, in  
3 the year of our Lord one thousand eight hundred and  
4 forty-six, is hereby repealed, except the thirteen sec-  
5 tions from section ten to section twenty-two inclusive,  
6 saving and reserving all actions or other proceedings,  
7 which are already commenced by authority of the  
8 same ; and all other acts and parts of acts inconsis-  
9 ent with this act, are hereby repealed.



## STATE OF MAINE.

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IN SENATE, Aug. 9, 1850.

ORDERED, That 500 copies of the foregoing bill, (reported by Mr. Marston, from the joint select committee to which was referred the petitions of Neal Dow et als.,) be printed for the use of the Legislature.

A. H. SMALL, *Secretary.*