

# 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 SESSIONS

A. D. 1851--2.

---

**Augusta:**

WILLIAM T. JOHNSON, PRINTER TO THE STATE.

1852.

---

---

# THIRTY-FIRST LEGISLATURE.

---

HOUSE.]

[No. 2.

---

---

## STATE OF MAINE.

---

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

---

---

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

---

*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 any town, and mayor and  
2 aldermen of any city, on the first Monday of May

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

SECT. 3. Such agent shall receive a certificate  
2 from the mayor and aldermen or selectmen by whom  
3 he has been appointed, authorizing him as the agent  
4 of such town or city, to sell intoxicating liquors for  
5 medicinal and mechanical purposes only ; but such  
6 certificate shall not be delivered to the person so  
7 appointed, until he shall have executed and delivered  
8 to said board, a bond with two good and sufficient

9 sureties, in the sum of six hundred dollars, in substance  
10 follows :

11 Know all men that we, — as principal, and —  
12 and — as sureties, are holden and stand firmly  
13 bound to the inhabitants of the town of —, (or city,  
14 as the case may be,) in the sum of six hundred dol-  
15 lars, to be paid them, to which payment we bind our-  
16 selves, our heirs, executors and administrators, firmly  
17 by these presents. Sealed with our seals, and dated  
18 this — day of —, A. D. —.

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

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

SECT. 4. If any person, by himself, clerk, servant  
2 or agent, shall at any time sell any spirituous or intox-  
3 icating liquors, or any mixed liquors, part of which is  
4 intoxicating, in violation of the provisions of this act,  
5 he shall forfeit and pay on the first conviction, ten  
6 dollars and the costs of prosecution, and shall stand  
7 committed until the same be paid; on the second  
8 conviction he shall pay twenty dollars and the costs of  
9 prosecution, and shall stand committed until the same  
10 be paid; on the third and every subsequent conviction,  
11 he shall pay twenty dollars and the costs of prosecution,  
12 and shall be imprisoned in the common jail, not less  
13 than three months, nor more than six months, and in  
14 default of the payment of the fines and costs pre-  
15 scribed by this section, for the first and second con-  
16 victions, the convict shall not be entitled to the benefit  
17 of chapter 175 of the revised statutes, until he shall  
18 have been imprisoned two months; and in default of  
19 payment of fines and costs provided for the third and  
20 and every subsequent conviction, he shall not be  
21 entitled to the benefit of said chapter 175 of the revised  
22 statutes, until he shall have been imprisoned four  
23 months. And if any clerk, servant, agent or other

24 person in the employment or on the premises of  
 25 another, shall violate the provisions of this section, he  
 26 shall be held equally guilty with the principal, and on  
 27 conviction, shall 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 may be admitted  
 9 as a witness in the trial. And if any one of the  
 10 selectmen or board of mayor and aldermen shall  
 11 approve of the commencement of any such suit, by  
 12 endorsing his name upon the writ, the defend-  
 13 ant shall in no event recover any costs; and in  
 14 all actions of debt arising under this section, the  
 15 fines and forfeitures suffered by the defendant, shall  
 16 be the same as if the actions had been by complaint.  
 17 And it shall be the duty of the mayor and aldermen  
 18 of any city, and selectmen of any town, to commence  
 19 an action in behalf of said town or city, against any

20 person guilty of a violation of any of the provisions  
21 of this act, on being informed of the same, and being  
22 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 in  
5 the sum of one hundred dollars, with two good and  
6 sufficient sureties, in every case so appealed, to  
7 prosecute his appeal, and to pay 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 or city where  
13 the 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 arising  
17 under this act, except by the justice or judge before  
18 whom the trial was had; and the defendant shall be  
19 held to advance the jury fees in every case of appeal  
20 in an action of debt; and in the event of a final



DRINKING HOUSES AND TIPPLING SHOPS. 7

21 conviction before a jury, the defendant shall pay and  
22 suffer double the amount of fines, penalties and im-  
23 prisonment awarded against him by the justice or  
24 judge from whose judgment the appeal was made.  
25 The forfeiture for all bonds and recognizances given  
26 in pursuance of this act, shall go to the town or city  
27 where the offense was committed, for the use of the  
28 poor ; and if the recognizances and bonds mentioned  
29 in this section shall not be given, within twenty-four  
30 hours after the judgment, the appeal shall not be  
31 allowed ; the defendant in the mean time to stand  
32 committed.

SECT. 7. The mayor and aldermen of any city, and  
2 the selectmen of any town, whenever complaint shall  
3 be made to them that a breach of the conditions of the  
4 bond given by any person appointed under this act,  
5 has been committed, shall notify the person complained  
6 of, and if upon a hearing of the parties it shall appear  
7 that any breach has been committed, they shall revoke  
8 and make void his appointment. And whenever a  
9 breach of any bond given to the inhabitants of any  
10 city or town in pursuance of any of the provisions of  
11 this act, shall be made known to the mayor and alder-

12 men, or selectmen, or shall in any manner come to  
13 their knowledge, they or some one of them shall, at  
14 the expense and for the use of said city or town, cause  
15 the bond to be put in suit in any court proper to try  
16 the same.

SECT. 8. No person shall be allowed to be a manu-  
2 facturer of any spirituous or intoxicating liquor, or  
3 common seller thereof, without being duly appointed as  
4 aforesaid, on pain of forfeiting on the first conviction,  
5 the sum of one hundred dollars and costs of prose-  
6 cution, and in default of the payment thereof, the  
7 person so convicted shall be imprisoned sixty days in  
8 the common jail ; and on the second conviction, the  
9 the person so convicted shall pay the sum of two  
10 hundred dollars and costs of prosecution, and in de-  
11 fault of payment, shall be imprisoned four months in  
12 the common jail ;—and on the third and every subse-  
13 quent conviction, shall pay the sum of two hundred  
14 dollars and shall be imprisoned four months in the  
15 common jail of the county where the offense was  
16 committed ; said penalties to be recovered before any  
17 court of competent jurisdiction, by indictment, or by  
18 action of debt in the name of the city or town where

19 the offense shall be committed. And whenever a  
 20 default shall be had of any recognizance arising under  
 21 this act, scire facias shall be issued, returnable at the  
 22 next term, and the same shall not be continued, unless  
 23 for good cause satisfactory to the court.

SECT. 9. No person engaged in the unlawful traffic  
 2 in intoxicating liquors shall be competent to sit upon  
 3 any jury in any case arising under this act; and when  
 4 information shall be communicated to the court, that  
 5 any member of any panel is engaged in such traffic,  
 6 or that he is believed to be so engaged, the court  
 7 shall inquire of the juryman of whom such belief is  
 8 entertained; and no answer which he shall make shall  
 9 be used against him in any case arising under this  
 10 act; but if he shall answer falsely, he shall be inca-  
 11 pable of serving on any jury in this state; but he may  
 12 decline to answer, in which case he shall be discharged  
 13 by the court from all further attendance as a juryman.

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.

SECT. 11. If any three persons, voters in the town  
2 or city where the complaint shall be made, shall before  
3 any justice of the peace or judge of any municipal or  
4 police court, make complaint under oath or affirma-  
5 tion, that they have reason to believe, and do believe  
6 that spirituous or intoxicating liquors are kept or  
7 deposited, and intended for sale, by any person not  
8 authorized to sell the same in said city or town under  
9 the provisions of this act, in any store, shop, ware-  
10 house or other building or place in said city or town, said  
11 justice or judge shall issue his warrant of search to any  
12 sheriff, city marshal or deputy, or to any constable,  
13 who shall proceed to search the premises described in  
14 said warrant, and if any spirituous or intoxicating  
15 liquors are found therein, he shall seize the same, and  
16 convey them to some proper place of security, where  
17 he shall keep them until final action is had thereon.

18 But no dwelling house in which, or in part of which  
19 a shop is not kept, shall be searched unless at least  
20 one of said complainants shall testify to some act of  
21 sale of intoxicating liquors therein, by the occupant  
22 thereof, or by his consent or permission, within at  
23 least one month of the time of making said com-  
24 plaint. And the owner or keeper of said liquors,  
25 seized as aforesaid, if he shall be known to the officer  
26 seizing the same, shall be summoned forthwith before  
27 the justice or judge by whose warrant the liquors  
28 were seized, and if he fails to appear, or unless he  
29 can show by positive proof, that said liquors are of  
30 foreign production, that they have been imported  
31 under the laws of the United States, and in accord-  
32 ance therewith—that they are contained in the origi-  
33 nal packages in which they were imported, and in  
34 quantities not less than the laws of the United States  
35 prescribe, they shall be declared forfeited, and shall  
36 be destroyed by authority of the written order to that  
37 effect, of said justice or judge and in his presence, or  
38 in the presence of some person appointed by him to  
39 witness the destruction thereof, and who shall join  
40 with the officer by whom they shall have been des-

41 troyed, in attesting that fact upon the back of the  
42 order, by authority of which it was done ; and the  
43 owner or keeper of such liquors shall pay a fine of  
44 twenty dollars and costs, or stand committed for thirty  
45 days, in default of payment, if in the opinion of the  
46 court said liquors shall have been kept or deposited  
47 for the purposes of sale. And if the owner or pos-  
48 sessor of any liquors seized in pursuance of this sec-  
49 tion, shall set up the claim that they have been regu-  
50 larly imported under the laws of the United States,  
51 and that they are contained in the original packages,  
52 the custom house certificates of importation and  
53 proofs of marks on the casks or packages correspond-  
54 ing thereto, shall not be received as evidence that the  
55 liquors contained in said packages are those actually  
56 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 city or town in the state, and were so  
10 at the time of the seizure, purchased for sale by the  
11 agent of said city or town, for medicinal and mechan-  
12 ical purposes only, in pursuance of the provisions of  
13 this act, they may not be destroyed ; but upon satis-  
14 factory proof of such ownership, within said two  
15 weeks, before the justice or judge by whose authority  
16 said liquors were seized, said justice or judge shall  
17 deliver to the agent of said city or town an order to  
18 the officer having said liquors in custody, whereupon  
19 said officer shall deliver them to said agent, taking his  
20 receipt therefor upon the back of said order, which  
21 shall be returned to said 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 to the district court, before his appeal shall be  
5 allowed, he shall give a bond in the sum of two hun-  
6 dred dollars with two good and sufficient sureties to  
7 prosecute his appeal, and to pay all fines and costs  
8 which may be awarded against him ; and in the case  
9 of any such appeal, where the quantity of liquors so

10 seized shall exceed five gallons, if the final decision  
11 shall be against the appellant, that such liquors were  
12 intended by him for sale, he shall be adjudged by  
13 the court a common seller of intoxicating liquors, and  
14 shall be subject to the penalties provided for in section  
15 eight, of this act ; and said liquors shall be destroyed  
16 as provided for in section eleven. But nothing con-  
17 tained in this act shall be construed to prevent any  
18 chemist, artist or manufacturer in whose art or trade  
19 they may be necessary, from keeping at his place of  
20 business such reasonable and proper quantity of dis-  
21 tilled liquors as he may have occasion to use in his  
22 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



DRINKING HOUSES AND TIPLING SHOPS. 15

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 or they shall be sentenced to  
18 imprisonment in the county jail for thirty days, and  
19 the liquors so seized shall be destroyed by order of  
20 said justice 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 all fines, costs and penalties  
7 which may be awarded against him. And if on such  
8 appeal the verdict of the jury shall be against him, he  
9 shall in addition to the penalty awarded by the lower  
10 court, pay a fine of twenty dollars. In all cases of  
11 appeal under this act from the judgment of a justice  
12 or judge of any municipal or police court, to the dis-  
13 trict court, except where the proceeding is by action

14 of debt, they shall be conducted in said district court  
15 by the prosecuting officer of the government—and  
16 said officer shall be entitled to receive all costs taxable  
17 to the state in all criminal proceedings under this act,  
18 in addition to the salary allowed to such officer by  
19 law—but no costs in such cases shall be remitted or  
20 reduced by the prosecuting officer or the court. In  
21 any suit, complaint, indictment or other proceeding  
22 against any person for a violation of any of the pro-  
23 visions of this act, other than for the first offense, it  
24 shall not be requisite to set forth particularly the rec-  
25 ord of a former conviction, but it shall be sufficient to  
26 allege briefly that such person has been convicted of  
27 a violation of the fourth section of this act, or as a  
28 common seller, as the case may be, and such allega-  
29 tion in any civil or criminal process in any stage of  
30 the proceedings, before final judgment, may be  
31 amended without terms and as matter of right.

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 a 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 spirituous or intoxicating liquors, 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. And no action of any  
 16 kind shall be maintained in any court in this state,  
 17 either in whole or in part for intoxicating or spiritu-  
 18 ous liquors sold in any other state or county whatever,  
 19 nor shall any action of any kind be had or maintained  
 20 in any court in this state, for the recovery or posses-  
 21 sion of intoxicating or spirituous liquors, or the value  
 22 thereof.

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 the mayor and aldermen of cities and assessors of  
 5 plantations.

SECT. 18. The act entitled "an act to restrict the

2 sale of intoxicating drinks," approved August sixth,  
3 one thousand eight hundred and forty-six, is hereby  
4 repealed, except the thirteen sections from section  
5 ten to section twenty-two inclusive, saving and reserv-  
6 ing all actions or other proceedings, which are  
7 already commenced by authority of the same; and all  
8 other acts and parts of acts inconsistent with this act  
9 are hereby repealed. This act to take effect from  
10 and after its approval by the governor.



## STATE OF MAINE.

---

HOUSE OF REPRESENTATIVES, May 27, 1851.

**ORDERED**, That 500 copies of the foregoing bill, be printed for the legislature.

E. W. FLAGG, *Clerk*.