

MAINE STATE LEGISLATURE

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DOCUMENTS

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THE LEGISLATURE

OF THE

STATE OF MAINE,

A. D. 1858.



AUGUSTA:

STEVENS & SAYWARD, PRINTERS TO THE STATE.

1858.

THIRTY-SEVENTH LEGISLATURE.

SENATE.]

[No. 35.

STATE OF MAINE.

AMENDMENTS TO PRINTED BILL.

- Amend section two in the second line by striking out
2 the words " in this state " ; *Adopted.*
3 Also, in the fourth line, by striking out the comma
4 after the word " him," *Adopted.*
5 Also, in the fifth line, by striking out the word
6 " agent " and insert " municipal officers " *Adopted.*
7 Also, in same line, strike out " sell " and insert
8 " purchase " *Adopted.*
9 Also, in the seventh line, by striking out the word
10 " one " and inserting " five " *Adopted.*
11 Also, in the eighth line, by inserting after the words
12 " sureties " the words " resident in this state."
13 *Adopted.*
14 Also, in same line, by striking out the comma,

15 and the words “and to be filed with” and inserting
16 the words “or his successors, and shall file the same
17 with such treasurer” after the word “established” in
18 the tenth line. *Adopted.*

19 Also, by inserting after the word “manufacture;” in
20 the fourteenth line, the words “that he will not ex-
21 port or aid in exporting or in anywise carry, send or
22 transport, or aid in carrying, sending or transporting
23 out of the state any intoxicating liquors, whether man-
24 ufactured in this state or elsewhere.” *Adopted.*

25 Also, by inserting after the word “ingredient;” in
26 the sixteenth line, the words “nor mix the same with
27 other liquor of a different kind or quality, nor with
28 liquor of any kind not manufactured by himself, nor
29 with water; that all casks and vessels containing
30 liquors sold by him shall at the time of sale be plainly
31 and conspicuously marked with the name of the man-
32 ufacturer, the place of manufacture and the name,
33 quality and strength of the liquor.” *Adopted.*

34 Also, by striking out of the twentieth line, the words
35 “in this state.” *Adopted.*

36 Also, in the twenty-first line, by striking out “sell”
37 and insert “purchase” *Adopted.*

SECT. 2. No person shall manufacture any intoxi-
2 cating liquor, for unlawful sale. Any manufacturer

3 of intoxicating liquors shall be allowed to sell intoxi-
4 cating liquors manufactured by him within this state,
5 to municipal officers authorized by this act to pur-
6 chase the same ; *provided* he shall first give a bond in
7 the sum of five thousand dollars, with good and suffi-
8 cient sureties, resident in this state, payable to the
9 treasurer of the city or town, within which the manu-
10 factory shall be established, and shall file the same
11 with such treasurer, and to the satisfaction and ap-
12 proval of the aldermen of such city, or the selectmen
13 of such town, conditioned that he will not sell any
14 intoxicating liquors except of his own manufacture ;
15 that he will not export or aid in exporting, or in any-
16 wise carry, send or transport, or aid in carrying,
17 sending or transporting out of the state any intoxi-
18 cating liquors, whether manufactured in this state or
19 elsewhere ; that he will not by himself or another, in
20 any mode adulterate such liquors, either by coloring
21 matter, or any other drug or ingredient ; nor mix the
22 same with other liquor of a different kind or quality,
23 nor with liquor of any kind not manufactured by him-
24 self, nor with water ; that all casks and vessels con-
25 taining liquors sold by him shall at the time of sale be
26 plainly and conspicuously marked with the name of the
27 manufacturer, the place of manufacture, and the name,

28 quality and strength of the liquor ; that he will not sell
29 any intoxicating liquors in quantities less than thirty
30 gallons delivered in a single vessel, and carried away
31 at one time, and that he will not sell any intoxicating
32 liquors to any person except to such persons as are
33 authorized by this act to purchase the same.

Section three. Strike out all between the word
2 “the” in the fourth line and the word “and” in the
3 sixth line, and insert the following: “preceding
4 section, shall be punished by imprisonment two months
5 in the county jail and by fine of one thousand dollars.”

Adopted.

SECT. 3. Any person who shall sell within this state
2 any intoxicating liquors manufactured by him within
3 this state, without first giving the bond provided in the
4 preceding section, shall be punished by imprisonment
5 two months in the county jail, and by fine of one
6 thousand dollars ; and if any person who has given
7 such bond, shall commit any breach of the conditions
8 thereof, it shall be the duty of the aldermen and select-
9 men, respectively, of the city or town within which
10 such manufactory shall be established, to cause the
11 same to be put in suit and prosecuted to final judg-
12 ment and satisfaction.

13 No person shall be allowed to export or in anywise
14 to carry, send or transport out of the state any intoxi-
15 cating liquors manufactured in this state with intent
16 to sell the same in any other state.

17 If any person shall so carry, send or transport out
18 of the state any such liquor in violation of this act, he
19 shall forfeit not less than one hundred, nor more than
20 one thousand dollars, to be recovered by indictment
21 to the use of the state.

Amend section four, by striking out all of section
2 four after the word "extend" in the second line, and
3 inserting after the said word "extend" in the second
4 line, the words, "to the manufacture of cider, or of
5 wine made from fruit grown within this state, and the
6 sale thereof by the manufacturer, nor to the sale by
7 agents appointed under this act of pure wine for
8 sacramental uses." *Adopted.*

SECT. 4. The provisions of this act respecting the
2 sale of intoxicating liquors shall not extend to the
3 manufacturer of cider or of wine made from fruit
4 grown within this state, and the sale thereof by the
5 manufacturer, nor to the sale by agents appointed
6 under this act of pure wine for sacramental uses.

Amend section five after the word “thereof,” in the
2 twenty-first line, by adding: “Such agents may sell to
3 such municipal officers intoxicating liquors, to be by
4 said officers disposed of in accordance with the pro-
5 visions of this act.” *Adopted.*

SECT. 5. The selectmen of any town, and mayor
2 and aldermen of any city, shall immediately after this
3 act shall go into effect, and on the first Monday of
4 May annually thereafter, or as soon thereafter as may
5 be convenient, purchase such quantity of intoxicating
6 liquors as may be necessary to be sold under the pro-
7 visions of this act, and shall appoint some suitable
8 person, as the agent of said town or city, to sell the
9 same at some convenient place within said town or
10 city, to be used for medicinal, mechanical and manu-
11 facturing purposes, and no other; and such agent
12 shall receive such compensation for his services and
13 in the sale of such liquors, shall conform to such
14 regulations, not inconsistent with this act, as the board
15 appointing him shall prescribe, and he shall hold his
16 situation one year, unless sooner removed by them or
17 their successors in office. Vacancies occurring during
18 the year are to be filled in the same manner as original
19 appointments are made. No such agent shall have
20 any interest in such liquors, or in the profits of the

21 sale thereof. Such agents may sell to such municipal
22 officers intoxicating liquors, to be by said officers dis-
23 posed of in accordance with the provisions of this act.

Amend section ten, line four, after the word "build-
2 ing," by inserting the words "vessel or boat."

Adopted.

Amend section ten, in the fifth line, by striking out
2 the word "allow"; also in the same line, by striking
3 out the words "to be" and insert after the word
4 "same" the word "are". *Adopted.*

SECT. 10. No person shall keep a drinking house
2 and tippling shop within this state.

3 If any person shall sell any intoxicating liquors, in
4 any building, vessel or boat, in this state, contrary to
5 the provisions of this act, and the same are there
6 drank, he shall be deemed and held to be guilty of
7 keeping a drinking house and tippling shop.

8 Any person convicted of keeping a drinking house
9 and tippling shop within this state, shall be punished
10 by a fine of one hundred dollars and costs of prosecu-
11 tion, and in default of payment thereof by imprison-
12 ment in the county jail three months.

Amend section sixteen, by striking out lines forty-
2 one and forty-two. *Adopted.*

SECT. 16. If no claimant shall appear, such magistrate shall, on proof of notice as aforesaid, declare the same forfeited to the city, town or plantation in which they were seized.

If any person shall appear and claim such liquors, or any part thereof, as having a right to the possession thereof at the time when the same were seized, he shall file with such magistrate such claim in writing, stating specifically the right so claimed, and the foundation thereof, the items so claimed, and the time and place of the seizure, and the name of the officer by whom the same were seized, and in it declare that they were not so kept or deposited for unlawful sale, as alleged in said complaint and warrant, and also state his business and place of residence, and shall sign and make oath or affirmation to the truth of the same before said magistrate.

If any person shall so make claim, he shall be admitted as a party to the process; and the said magistrate shall proceed to determine the truth of the allegations in said claim, and may hear any pertinent evidence offered by the complainants or claimants.

If the magistrate shall, upon the hearing, be satisfied that the said liquors were not so kept or deposited for unlawful sale, and that the claimant is entitled to

26 the custody of any part of the same, he shall give to
27 such claimant an order in writing, directed to the
28 officer having the same in custody, commanding him
29 to deliver to said claimant the liquors to which he is
30 so found to be entitled within forty-eight hours after
31 demand.

32 If the magistrate shall find the claimant entitled to
33 no part of said liquors, he shall render judgment
34 against him for the complainants for costs, to be taxed
35 as in civil cases before such magistrate, and issue
36 execution thereon, and shall declare said liquors for-
37 feited to the city, town or plantation where seized.
38 The claimants may appeal and shall be required to
39 recognize with sureties as on appeals in civil causes
40 from said magistrate.

Strike out in section seventeen, line thirty-second,
2 the word "himself" and insert the words "any jus-
3 tice of the peace in the county" (R. S. ch. 132, sec.
4 7, 11, 12, 13.) *Adopted.*

SECT. 17. No warrant shall be issued to search a
2 dwelling-house actually occupied as such, unless it, or
3 some part of it is used as an inn or shop, or for pur-
4 poses of traffic, or unless the magistrate shall first be
5 satisfied, by the testimony of at least two witnesses,

6 that intoxicating liquor is deposited or kept in such
7 house or its appurtenances, with intent to sell the
8 same in violation of law. Before a warrant shall be
9 issued upon such testimony, the magistrate shall take
10 the testimony of the witnesses under oath or affirma-
11 tion in writing, and cause the same to be signed and
12 verified by the oath or affirmation of the witnesses
13 before himself; and if satisfied upon such evidence,
14 that intoxicating liquor is so as aforesaid deposited or
15 kept in the house described in the complaint or its
16 appurtenances, if also described in the complaint, he
17 shall so adjudge, and thereupon he shall issue a war-
18 rant for the search of such house and its appurtenan-
19 ces if described in the complaint, in the manner pro-
20 vided in the fourteenth section of this act, reciting in
21 said warrant that upon the testimony of the witnesses
22 named in the warrant which was taken under oath,
23 signed and verified by the witnesses as above required,
24 he has adjudged that he is satisfied that intoxicating
25 liquor is so kept as aforesaid in the premises described.

26 All the subsequent proceedings shall be the same as
27 those to be had by virtue of a warrant issued under
28 the provisions of the fourteenth section aforesaid.
29 When any justice of the peace shall issue any warrant
30 for the search of any premises under the provisions of

31 this act, the warrant shall be made returnable before
32 any justice of the peace in the county, except in those
33 cities and towns wherein a municipal or police court
34 is established, having exclusive jurisdiction of all
35 offenses cognizable by justices of the peace committed
36 within such city or town, in which case such warrant
37 shall be made returnable to said court.

Amend section twenty-two, by inserting after the
2 word "provided," in the first line, the words, "and
3 the vessels containing them." *Adopted.*

SECT. 22. LIQUORS seized as hereinbefore provided,
2 and the vessels containing them, shall not be taken
3 from the custody of the officer by a writ of replevin
4 or other process while the proceedings herein pro-
5 vided are pending; and final judgment in the proceed-
6 ings herein provided, shall in all cases be a bar to all
7 suits for the recovery of any liquors seized or the value
8 of the same, or for damages alleged to arise by reason
9 of the seizure and detention thereof.

Amend in the twenty-fourth section, by striking out
2 the comma after the word "pending," in the sixth
3 line, and insert a period. And strike out the words in
4 the seventh and eighth lines, and all the words in the
5 ninth line to the word "the" before jury. *Adopted.*

SECT. 24. If any party shall appeal, the proceedings in all matters shall be the same in the appellate court as they would be upon the same matters in the court of the magistrate, and said proceedings shall be conducted in said court by the attorney for the state in the county where the proceedings are pending. The jury shall find specially, under the direction of the court, on all facts necessary to determine the adjudication of the court; and if a claimant or other respondent shall fail to appear for trial in the appellate court, the judgment of the court below, if against him shall be affirmed.

In case of appeal from a sentence of imprisonment under the seventh section of this act, the penal sum of the recognizance shall be two hundred dollars; and in all other appeals from any judgment or sentence of a magistrate in proceedings under this act, the penal sum of the recognizance shall be one hundred dollars.

No portion of the penalty of any recognizance taken by virtue of the provisions of this act, shall be remitted by any court within this state in any suit thereon, nor shall any surety in any such recognizance be discharged from his liability therein by a surrender of his principal in court, after he has been defaulted upon his recognizance.

26 The appeals of claimants and complainants pro-
27 vided for in the sixteenth section of this act, shall be
28 entered as all other appeals in criminal cases, and
29 subject to the same requirements of law appertaining
30 to them.

Amend section thirty-two, by adding after the word
2 "plantations", thirty-second line, the following words :
3 "In any suit, complaint or indictment, or other pro-
4 ceeding against any person for a violation of any of
5 the provisions of this act, other than for the first
6 offense, it shall not be requisite to set forth particu-
7 larly the record of a former conviction, but it shall be
8 sufficient to allege, briefly, that such person has been
9 convicted of a violation of any particular provision
10 of this act, or as a common seller, as the case may
11 be, and such allegation in any criminal process, legally
12 amendable in any stage of the proceedings, before
13 final judgment, may be amended, without terms, and
14 as a matter of right. Any process, civil or criminal,
15 legally amendable under this act, may, in any stage
16 of the proceedings, be amended in any matter of
17 form, without costs, on motion at any time before
18 final judgment." *Adopted.*

SECT. 32. Whenever an unlawful sale is alleged,

2 and a delivery proved, it shall not be necessary to
3 prove a payment, but such delivery shall be sufficient
4 evidence of sale.

5 A partner in business shall be liable for the unlaw-
6 ful keeping or selling of his copartner, done in the
7 copartnership business, or by any other person, in any
8 shop, store, or other place of business, of such co-
9 partnership, with his knowledge and assent.

10 A principal and his agent, clerk and servant, may
11 all be included in the same complaint and process.

12 The mayor or aldermen, selectmen or assessors,
13 may cause a suit to be commenced on any bond or
14 recognizance given under this act in which his city,
15 town, or plantation is interested, and the same shall
16 be prosecuted to final judgment unless paid in full
17 with costs. If any execution or other final process,
18 issued in any civil or criminal suit instituted under
19 this act, shall be placed in the hands of any proper
20 officer to be by him executed, and he shall unreason-
21 ably neglect or refuse so to do, an action may be
22 commenced against him by any voter in the county
23 for such neglect, and prosecuted to final judgment.
24 which shall be for the full amount of the judgment
25 and interest on such execution ; and if it be a process
26 that requires him to take and commit an offender to

27 prison, the damages shall not be less than fifty dollars
28 nor more than five hundred dollars.

29 Selectmen of towns mentioned in this act shall be
30 construed to include assessors of plantations. The
31 word town shall in all cases used in this act be con-
32 strued to include plantations.

33 In any suit, complaint or indictment, or other pro-
34 ceeding against any person for a violation of any of
35 the provisions of this act, other than for the first of-
36 fense, it shall not be requisite to set forth particularly
37 the record of a former conviction, but it shall be suf-
38 ficient to allege, briefly, that such person has been
39 convicted of a violation of any particular provision
40 of this act, or as a common seller, as the case may
41 be, and such allegation in any criminal process, legally
42 amendable in any stage of the proceedings, before
43 final judgment, may be amended, without terms, and
44 as a matter of right. Any process, civil or criminal,
45 legally amendable under this act, may, in any stage
46 of the proceedings, be amended in any matter of form,
47 without costs, on motion at any time before final
48 judgment.

Amend section thirty-four, by inserting in the seventh
2 line after the word "repealed," the words, "saving

3 all actions, indictments and other processes pending,
4 and that said act shall be continued in force for the
5 punishment of all offenses committed under said act
6 up to the time when this act shall take effect, whether
7 prosecutions therefor shall then have been commenced
8 or not; but this repeal shall not revive any acts or
9 parts of acts which were repealed by that act.”

Adopted.

SECT. 34. An act entitled an act to restrain and
2 regulate the sale of intoxicating liquors and to pro-
3 hibit and suppress drinking houses and tippling shops,
4 approved the seventh day of April, one thousand eight
5 hundred and fifty-six, and all other acts and parts of
6 acts inconsistent with this act, are hereby repealed,
7 saving all actions, indictments and other processes
8 pending, and that said act shall be continued in force
9 for the punishment of all offenses committed under
10 said act up to the time when this act shall take effect,
11 whether prosecutions therefor shall then have been
12 commenced or not; but this repeal shall not revive
13 any acts or parts of acts which were repealed by that
14 act.

STATE OF MAINE.

IN SENATE, March 13, 1858.

ORDERED, That 350 copies of the amendments to the Liquor Bill, and the sections affected by them, be printed for the use of the Legislature.

ATTEST :

JOSEPH B. HALL, *Secretary.*