

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)

ONE HUNDRED AND SEVENTH LEGISLATURE

Legislative Document

No. 150

H. P. 134

House of Representatives, January 9, 1975

Referred to the Committee on Liquor Control. Sent up for concurrence and ordered printed.

EDWIN H. PERT, Clerk

Presented by Mr. Maxwell of Jay.

Cosponsor: Mr. Cote of Lewiston.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-FIVE

AN ACT Relating to Enforcement of the Statutes on Alcoholic Beverages.

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

Sec. 1. 25 MRSA, § 2901, as last repealed and replaced by PL 1973, c. 788, § 113, is amended to read:

§ 2901. Department; commissioner

There is hereby created and established the Department of Public Safety to coordinate and efficiently manage the law enforcement responsibilities of the State of Maine, to consist of the Commissioner of Public Safety, who shall be appointed by the Governor with the advice and consent of the Council to serve a term coterminous with that of the Governor, subject to removal for cause by the Governor and Council and the following as heretofore created and established: The Bureau of State Police, ~~the Enforcement Division within the Department of Public Safety~~ the State Fire Marshal and the Maine Criminal Justice Academy.

Sec. 2. 25 MRSA, § 2902, last ¶, as last repealed and replaced by PL 1973, c. 788, § 114, is amended to read:

The Commissioner of Public Safety, subject to the Personnel Law, may hire such employees as are necessary to carry out the functions of ~~the Enforcement Division of the Department of Public Safety~~ and the Office of State Fire Marshal.

Sec. 3. 28 MRSA, § 4, next to the last ¶, as last amended by PL 1973, c. 303, § 3, is further amended to read:

Any violation by a licensee of this section or commission rules and regulations related thereto, upon conviction after ~~hearing before the Administrative Court Judge~~ **hearing before the District Court**, shall be grounds for suspension or revocation, or both, of the license or right to sell on Sunday.

Sec. 4. 28 MRSA, § 9, 3rd sentence, as last amended by PL 1973, c. 788, § 123, is further amended to read:

All persons carrying on any business, except any bank or savings and loan institution, duly organized and existing by virtue of the laws of the State of Maine or of the United States of America under the common roof and having common entranceways shall in writing to the commission agree to allow reasonable inspection of their premises by authorized ~~enforcement agents of the Department of Public Safety~~ and authorized licensing inspectors of the Liquor Commission, state, county or local law enforcement officials for the purpose of enforcing this Title.

Sec. 5. 28 MRSA, § 55, sub-§ 1, is amended to read:

1. **General supervision; rules and regulations.** To have general supervision of manufacturing, importing, storing, transporting and sale of all liquors and to make such rules and regulations as they deem necessary for such purpose and to make rules and regulations for the administration, clarification, carrying out ~~enforcing~~ and preventing violation of all laws pertaining to liquor which rules and regulations shall have the force and effect of law, unless and until set aside by some court of competent jurisdiction or revoked by the commission;

Sec. 6. 28 MRSA, § 55, sub-§ 14, as last amended by PL 1971, c. 592, §§ 17 and 18, is repealed.

Sec. 7. 28 MRSA, § 251, 1st ¶, last sentence, as last amended by PL 1973, c. 303, § 3, is further amended to read:

No applicant whose application is denied by the commission shall be eligible to apply for a liquor license of the same type again for a period of 6 months from the date of such denial, unless the commission denial is overruled by the court under appeal provided by section 403, and no license for the same premises shall be issued to the husband, wife, father, mother, child or other close relation by blood or marriage of a person whose license has been denied by the commission or revoked by the ~~Administrative Court Judge~~ **District Court Judge** for a period not exceeding 6 months after such denial or revocation.

Sec. 8. 28 MRSA, § 351, 1st ¶, last sentence, as last amended by PL 1973, c. 192, § 1, is repealed and the following enacted in place thereof:

All such records shall be open to the commission or its representatives and to state, county or local officials at any time and they shall have the right to make copies thereof which may be used as evidence of violations of this section.

Sec. 9. 28 MRSA, § 351, last ¶, as last amended by PL 1973, c. 192, § 2, is repealed and the following enacted in place thereof:

No licensee shall refuse the commission, its representatives or local officials the right at any time completely to inspect the entire licensed premises or to audit the books and records of the licensee.

Sec. 10. 28 MRSA, c. 9, sub-c. V, is repealed and the following enacted in place thereof:

SUBCHAPTER V REVOCATION

§ 401. Procedure and grounds

1. District Court. The District Court shall conduct hearings on all matters concerning violations by licensees of any federal or state law or regulation relating to intoxicating liquor or infractions of any rule or regulation issued by the commission after notice of such violation or infraction has been reported to him on a signed complaint by state, county or local law enforcement officials for the purpose of enforcing this Title. In lieu of a signed complaint, the state, county or local law enforcement officials may issue warnings to licensees. The District Court shall thereupon notify the licensee by serving on him a copy of the complaint and a notice stating the time and place of hearing and that he may appear in person or by counsel at the hearing. Service of such complaint and notice shall be sufficient if sent by registered or certified mail to the address given by the licensee at the time of his application for a license, 7 days at least before the date of hearing. The District Court Judge shall thereupon conduct a hearing limited to the facts and law, and rules and regulations of the commission, as specified in said complaint. The District Court Judge is authorized to subpoena and examine witnesses, to administer oaths and to subpoena and compel the attendance of parents and legal guardians of unemancipated minors. In the conducting of hearings, no hearsay testimony shall be admissible and the licensees named in the complaint shall have the right to have all witnesses testify in person at the hearing. The District Court Judge shall state in writing his findings and decision in each case, based upon the facts and the law, and the rules and regulations of the commission. Said findings shall specify the facts found and the law, rules or regulations found to be violated. The District Court Judge shall conduct hearings in such designated place or places as may be most convenient and economical for all parties concerned in said hearing. The District Court shall have sole and exclusive jurisdiction of all violations by licensees and their agents of the liquor laws in this Title, when no criminal penalty is provided.

The District Court Judge may suspend or revoke licenses. Except as provided by subsection 2, paragraph C, suspensions must be for a definite period of time. If the District Court Judge revokes a license, he shall specify that no license shall issue to the person whose license is revoked for a period of not less than one nor more than 5 years from the date of such revocation.

2. Causes for revocation and suspension of licenses. Licenses may be revoked or suspended by the District Court Judge for the following causes:

A. Violation of any federal or state law or regulation relating to intoxicating liquor or substantial infraction of any rule or regulation issued by the commission; except that licensees selling to minors furnishing fraudulent proof of age may be held not administratively liable by the District Court Judge;

B. Knowingly making a false material statement of fact in the application for the license;

C. Failure to have and maintain throughout the entire license period all of the requirements of definitions, laws, rules and regulations, necessary to qualify for a license. For this particular offense, the District Court Judge shall be authorized to suspend licenses for an indefinite period of time until he is satisfied that the licensee has conformed to all qualifications required for licensing.

3. License subsequent to violation. Whenever violations by licensees occur in one year's license period and remain undiscovered or carry over into the next license year pending investigation or final disposition either in criminal courts or before the District Court Judge, any license issued subsequent to violation for a new license year may be suspended or revoked by the District Court Judge.

4. Warnings. After hearing, the District Court Judge may suspend the operation of a penalty or in lieu of imposing any penalty at all he may place a case on file. Upon the written recommendation of a state, county or local law enforcement official, the District Court Judge, in lieu of notifying a licensee against whom a complaint is pending to appear for hearing, may send such licensee a warning. Warnings shall be sent by registered or certified mail and contain a copy of the complaint. A licensee to whom a warning is sent may demand a hearing by so notifying the District Court Judge by registered or certified mail within 10 days from the date the warning was mailed.

In cases of ownership, direct or indirect, in more than one license, suspensions shall apply only to the premise where the violation occurs. The District Court Judge may order that a revocation shall apply to any premises in which the licensee is, directly or indirectly, interested.

In cases of corporations, the officers, directors and substantial stockholders shall be treated in the same manner as though they were partners in a partnership.

5. Application. Notwithstanding any other provision of this section, the District Court Judge may impose a fine or suspend any liquor license. Such fine shall not exceed \$1,000 for any one offense.

§ 402. Appeal from decision of District Court Judge

A full and complete record shall be kept of all proceedings had before the District Court Judge on the revoking and suspending of any license issued by the commission, but the District Court Judge need not have a transcript of the testimony prepared unless required for rehearing or appeal.

§ 403. Additional appeals

If any person is aggrieved by the decision of the District Court Judge in revoking or suspending any license issued by the commission or by refusal of the commission to issue any license applied for, he may within 30 days thereafter appeal to the Superior Court, by filing a complaint therefor. The 30-day period for appeal shall commence on the effective date of any suspension or revocation of a license, and, in the case of refusal of the commission to issue license, on the day when the commission sends by registered or certified mail notice to the applicant at the address of his business given in his application for license. Filing appeal in the Superior Court shall stop the running of the limitation period. The court shall forthwith fix a time and place for immediate hearing and cause notice thereof to be given to the District Court Judge. After hearing, the court may affirm, modify or reverse the decision of the District Court Judge. Pending judgment of the court, the decision of the District Court Judge in revoking or suspending any license shall be suspended, if notice of appeal is given to the District Court Judge within 7 days of the sending of the decision of the District Court Judge by registered or certified mail to the address given by the licensee at the time of his application for a license. Appeal by such aggrieved person to the law court from such decision may be taken. Upon such appeal, the law court may, after consideration, reverse or modify any decree so made by the court based upon an erroneous ruling or finding of law.

Sec. 11. 28 MRSA, § 604, last sentence, as last amended by PL 1973, c. 303, § 3, is further amended to read:

Any violation of such rules and regulations shall be grounds for suspension or revocation of such certificate at the discretion of the ~~Administrative Hearing Commissioner~~ District Court.

Sec. 12. 28 MRSA, § 652, 3rd ¶, last sentence, as last amended by PL 1973, c. 303, § 3, is further amended to read:

The ~~Administrative Court Judge~~ District Court Judge shall revoke the license of any Maine wholesale licensee who shall make it a condition in selling malt liquor or wine to another Maine wholesale licensee that such Maine wholesale licensee shall not sell other brand names of malt liquor or wine.

Sec. 13. 28 MRSA, § 702, 2nd sentence, as last amended by PL 1973, c. 303, § 3, is further amended to read:

Any violation of this section or commission rules and regulations related thereto, upon conviction after hearing before the ~~Administrative Court Judge~~ District Court, shall be grounds for suspension or revocation of license, or suspension or revocation of the amusement permit, or both.

Sec. 14. 28 MRSA, § 752, last ¶, as enacted by PL 1973, c. 749, § 6, is amended to read:

Licenses granted to municipal auditoriums may only be used in conjunction with a function or event held on the licensed premises and the licensee must notify the ~~Bureau of Liquor Enforcement~~ state, county or local law enforcement officials at least 24 hours in advance of such a function or event.

Sec. 15. 28 MRSA, § 801, last ¶, as enacted by PL 1973, c. 749, § 8, is amended to read:

Licenses granted to municipal auditoriums may only be used in conjunction with a function or event held on the licensed premises and the licensee must notify ~~the Liquor Commission~~ state, county or local law enforcement officials at least 24 hours in advance of such a function or event.

Sec. 16. 28 MRSA, § 805, 1st sentence, is amended to read:

Every club shall keep and maintain a register which shall disclose the name, identity and address of each member of the club and shall be open for inspection at all reasonable times to ~~any inspector or other authorized agent of the commission~~ state, county or local law enforcement officials and to any authorized agent of the commission.

Sec. 17. 28 MRSA, § 903, is amended to read:

§ 903. Revocation of license

Licenses so issued by the commission shall be revoked by the District Court for the violation of the liquor laws or any rule or regulation promulgated by the commission.

Sec. 18. 28 MRSA, § 1155, as last repealed and replaced by PL 1965, c. 431, § 17, is amended to read:

§ 1155. Power of police officers to stop vehicles; restrictions

Any sheriff, deputy sheriff, constable, municipal or state police officer, ~~or liquor enforcement officer~~ if he has probable cause to believe that a violation of the liquor laws has taken or is taking place, may, at any time, stop any motor vehicle, boat, vessel, airplane or conveyance of any kind for the purpose of arresting or questioning the operator or occupant thereof or for the purpose of searching said motor vehicle, boat, vessel, airplane or conveyance of any kind.

STATEMENT OF FACT

This Act, by abolishing the Enforcement Division of the Department of Public Safety will result in a savings of approximately \$260,000 annually to the State and will eliminate duplication in enforcement of the liquor laws. This Act will also take hearings concerning revocation of liquor licenses away from Administrative Court Judge and place them in the District Court.