

MAINE STATE LEGISLATURE

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FIRST REGULAR SESSION

ONE HUNDRED AND TENTH LEGISLATURE

Legislative Document

No. 563

S. P. 199

In Senate, February 2, 1981

Referred to the Committee on Legal Affairs. Sent down for concurrence and ordered printed.

MAY M. ROSS, Secretary of the Senate

Presented by Senator C. Sewall of Lincoln.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED AND EIGHTY-ONE

AN ACT to Permit the Sale of Dessert Wine at Retail Stores.

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

Sec. 1. 28 MRSA § 2, sub-§ 5-A is enacted to read:

5-A. Dessert wine. "Dessert wine" means any wine containing more than 14% alcohol by volume but not exceeding 20% alcohol by volume.

Sec. 2. 28 MRSA § 4, 6th ¶, last sentence, as enacted by PL 1975, c. 770, § 131, is amended to read:

Except that wholesalers of malt beverages and, table wine and dessert wine may make deliveries to licensees on the day of holding a general election or state-wide primary.

Sec. 3. 28 MRSA § 53, sub-§ 3, first sentence, as enacted by PL 1975, c. 741, § 4, is amended to read:

To adopt rules, requirements and regulations not inconsistent with this Title or other laws of the State, the observance of which shall be conditions precedent to the granting of any license to sell liquor, including malt liquor or, table wine or dessert wine.

Sec. 4. 28 MRSA § 53, sub-§ 5, first sentence, as enacted by PL 1975, c. 741, § 4, is amended to read:

To buy and have in their possession wine, except table wine and dessert wine, and spirits for sale to the public.

Sec. 5. 28 MRSA § 53, sub-§ 7, as enacted by PL 1975, c. 741, § 4, is amended to read:

7. **Sell at retail.** To sell at retail in state stores in original packages and for cash, either over the counter or by shipment to points within the State, wine, except table wine and dessert wine, and spirits of all kinds for consumption off the premises at state stores to be operated under the direction of the commission.

Sec. 6. 28 MRSA § 56, as repealed and replaced by PL 1975, c. 741, § 4, and as amended by PL 1975, c. 771, § 300, is repealed and the following enacted in its place:

§ 56. **Working capital**

The net profits of the commission shall be general revenue of the State. The commission is authorized to keep and have on hand a stock of spirits for sale, the value of which, when priced for resale, shall be computed on less carload price quotations F.O.B. warehouse filed by liquor vendors. The inventory value shall be based upon actual cost for which payment may be due and shall not at any time exceed the amount of working capital authorized. Spirits shall not be considered in the inventory until payment has been made therefor. The maximum permanent working capital of the commission is established at \$3,500,000 and permanent advances up to this amount may be authorized by the Governor upon recommendation of the commission with the approval of the Commissioner of Finance and Administration. The permanent working capital of the commission may be supplemented by temporary loans from other state funds upon recommendation of the commission and by approval of the Commissioner of Finance and Administration and the Governor.

Sec. 7. 28 MRSA § 101, sub-§§ 4 and 8 as repealed and replaced by PL 1977, c. 630, § 2, are amended to read:

4. Shall licenses be granted in this city or town for sale herein of malt liquor (beer, ale and other malt liquor) and, table wine and dessert wine not to be consumed on the premises of establishments qualified to sell malt liquor and wine for consumption off the premises?

8. Shall this municipality or unincorporated place authorize the sale on Sunday of malt liquor (beer, ale and other malt liquor) and, table wine and dessert wine to be consumed off the premises of establishments licensed to sell malt liquor and wine for consumption off the premises?

Sec. 8. 28 MRSA § 103, 4th ¶, 3rd sentence, as enacted by PL 1975, c. 24, is amended to read:

The county commissioners or the commission shall also have the authority in such unincorporated place to authorize the sale on Sunday of malt liquor and, table

wine and dessert wine for consumption off the premises by those licensees who are permitted to make such sales during the rest of the week.

Sec. 9. 28 MRSA § 204, first 3 sentences, as amended, are further amended to read:

All persons, except public service corporations operating interstate, licensed to sell spirituous or vinous liquor, except table wine and dessert wine, shall purchase all such liquor from the commission. The commission shall sell to such licensees spirituous and vinous liquor, except table wine and dessert wine, for a price of 10% less than the retail price established for the state retail store where the purchase is made, provided that such discount shall not apply to federal taxes levied on and after November 1, 1941. The commission may sell spirituous and vinous liquor, except table wine and dessert wine, to approved government instrumentalities within the State at a price to be set by the commission which shall be approved by the Governor.

Sec. 10. 28 MRSA § 303, 2nd ¶, 2nd sentence, as last amended by PL 1977, c. 23, § 5, is further amended to read:

No licensee, by himself, clerk, servant or agent entitled to sell malt liquor or, table wine or dessert wine not to be consumed on the premises, shall sell, furnish, give or deliver such malt liquor or, table wine or dessert wine to any person visibly intoxicated, to any mentally ill person, to a known habitual drunkard, to any pauper to persons of known intemperate habits or to any minor person under the age of 20 years.

Sec. 11. 28 MRSA § 304, last sentence, as amended by PL 1969, c. 360, § 12, is further amended to read:

This section shall not prohibit a wholesaler from receiving normal credits for the purchase of malt liquor or, table wine or dessert wine from the manufacturer thereof within or without the State.

Sec. 12. 28 MRSA § 451, first sentence, as amended by PL 1979, c. 130, § 2, is repealed and the following enacted in its place:

All spirits shall be sold by the commission at a price to be determined by the commission which will produce a state liquor tax of not more than 75% based on the less carload cost F.O.B., State Liquor Commission warehouse, except that spirits sold at wholesale under section 204 may be sold at wholesale prices established pursuant to the provisions thereof.

Sec. 13. 28 MRSA § 452, 2nd ¶, first sentence, as amended by PL 1979, c. 130, § 4, is further amended to read:

There shall be levied and imposed an excise tax of 30¢ per gallon, or its metric equivalent, or fraction or multiple thereof, on all table wine containing 14% or less alcohol by volume and 90¢ per gallon, or metric equivalent, on all dessert wine imported into this State; except the excise tax shall be 20¢ per gallon or fraction or

multiple thereof on all still wine ~~containing 14% or less alcohol by volume and 90¢~~ **per gallon, or metric equivalent, on all dessert wine** which is manufactured or bottled in this State; and an excise tax of \$1 per gallon, or its metric equivalent, or multiple or fraction thereof on all sparkling wines manufactured in or imported into this State.

Sec. 14. 28 MRSA § 452, 5th ¶, as amended by PL 1977, c. 696, § 208, is further amended to read:

The commission is authorized to give such proper credits and to make such proper tax adjustments as it may from time to time deem the wholesale licensee to be entitled to upon the filing of affidavits in such form as it may prescribe and shall refund all excise tax paid by the wholesale licensee on all malt liquor ~~or~~, table wine ~~or~~ **dessert wine** caused to be destroyed by a supplier as long as the quantity and size are verified by the Bureau of Alcoholic Beverages and the destruction is witnessed by an inspector of the bureau.

Sec. 15. 28 MRSA § 452, last ¶, last 2 sentences, as repealed and replaced by PL 1979, c. 663, § 164, is amended to read:

A credit shall be granted for the excise imposed by this State on malt beverages ~~or~~, table wines ~~or~~ **dessert wines** sold to any ship chandlers, provided the malt beverages, table wines ~~or~~ **dessert wines** are resold to vessels of foreign registry for consumption after that vessel has left port. Any wholesaler selling to such an instrumentality, training site or ship chandlers for resale to vessels of foreign registry shall present proof of that sale to the commission and shall thereupon receive from the commission a credit of all state excise taxes paid in connection with that sale.

Sec. 16. 28 MRSA § 501, 2nd ¶, 2nd sentence, as amended by PL 1969, c. 360, § 16, is further amended to read:

In the case of breweries, and wineries producing table wine ~~or~~ **dessert wine**, or ~~both~~, the license shall authorize sale to licensed Maine wholesalers.

Sec. 17. 28 MRSA § 501, last ¶, as amended by PL 1969, c. 360, § 17, is further amended to read:

Licensed Maine wine bottlers and wineries are authorized to sell to licensed Maine wholesalers, to purchasers outside of the State, and to any instrumentality of the United States, table wines ~~containing no more than 14% alcohol by volume~~ **and dessert wines**, imported into the State in sealed bottles upon the express condition that the importation of said wine in sealed bottles is authorized by the commission.

Sec. 18. 28 MRSA § 601, as amended by PL 1969, c. 360, § 18, is further amended to read:

§ 601. Manufacturer of malt liquor, table wine or dessert wine; credit; furnishing materials and equipment

No officer, director or stockholder of a corporation which is the holder of a manufacturer's certificate of approval shall in any way be interested, either directly or indirectly, as a director, officer or stockholder in any other corporation which is the holder of a wholesale license for the sale of malt liquor ~~or~~, table wine or dessert wine granted by this State; nor shall a manufacturer or holder of a certificate of approval, either directly or indirectly, loan any money, credit or equivalent thereof to any wholesaler for equipping, fitting out, maintaining or conducting, either in whole or in part, a business establishment where malt liquor ~~or~~, table wine or dessert wine is sold, excepting only the usual and customary commercial credit for malt liquor ~~or~~, table wine or dessert wine sold; excepting that a manufacturer or holder of a certificate of approval may furnish a wholesale licensee materials and equipment for the use of the wholesale licensee or his employees such as painting the wholesale licensee's vehicles, and furnishing legal advertising signs used by the wholesale licensee in the course of his business, and furnishing the wholesale licensee uniforms for his employees, excepting only the usual and customary commercial credit for malt liquor ~~or~~, table wine or dessert wine sold and delivered.

Sec. 19. 28 MRSA § 602, as amended by PL 1969, c. 360, § 19, is further amended to read:

§ 602. Purpose of regulations

The purposes of sections 602 to 605 are to regulate the importation, transportation and sale of malt liquor ~~and~~, table wine or dessert wine, and in addition thereto, to regulate and control the collection of excise taxes.

Sec. 20. 28 MRSA § 603, last sentence, as amended by PL 1969, c. 360, § 19, is further amended to read:

They shall furnish a monthly report on or before the 10th day of each calendar month in such form as may be prescribed by the commission and shall not ship or cause to be transported into this State any malt liquor ~~or~~, table wine or dessert wine until the commission has certified that the excise tax has been paid or that the Maine wholesale licensee, to whom shipment is to be made, has filed a bond to guarantee payment of the excise tax as provided in section 652.

Sec. 21. 28 MRSA § 604, first sentence, is amended to read:

No manufacturer or foreign wholesaler of malt liquor ~~or~~, table wine or dessert wine shall hold for sale, sell or offer for sale, in intrastate commerce, any malt liquor ~~or~~, table wine or dessert wine or transport or cause the same to be transported into this State for resale unless such manufacturer or foreign wholesaler has obtained from the commission a certificate of approval.

Sec. 21-A. 28 MRSA § 604, 2nd sentence, as amended by PL 1975, c. 741, § 19, is further amended to read:

The fee therefor shall be \$600 per year for malt liquor only and \$600 for table wine ~~only~~ and dessert wine, which sum shall accompany the application for such certificate.

Sec. 22. 28 MRSA § 651, first sentence, as amended by PL 1975, c. 741, § 20, is further amended to read:

Licenses for the sale and distribution of malt liquor ~~or~~, table wine or **dessert wine** at wholesale under such regulations as the commission may prescribe may be issued by the commission upon application in such form as they may prescribe and upon payment of an annual fee of \$600 for the principal place of business, and \$600 for each additional warehouse maintained by such wholesale licensee, except that the commission may issue special permits, upon application in writing, for the temporary storage of malt liquors ~~or~~, table wine or **dessert wines** under such terms and upon such conditions as the commission may prescribe.

Sec. 23. 28 MRSA § 652, first 6 paragraphs, as amended, are further amended to read:

No Maine wholesale licensee shall purchase or cause to be transported into this State any malt liquor ~~or~~, table wine or **dessert wine** from any person to whom a certificate of approval has not been granted by the commission.

All purchase order forms are to be furnished by the commission and all orders are to be executed in quintuplet for unbonded wholesalers. First, the unbonded wholesaler ordering malt liquor ~~or~~, table wine or **dessert wine** shall mail 3 copies to the commission with a check for the amount of excise taxes requires to cover the amount of the order. Thereafter, the unbonded wholesaler may mail the original copy of the order to the qualified brewery or winery or wholesaler with whom he wishes to place his order.

On receipt of the 3 copies and check for excise taxes, the commission shall promptly receipt 2 copies and return one copy to the wholesaler and send one to the brewery, winery or foreign wholesaler designated to receive the order and no brewery, winery or foreign wholesaler shall ship or release malt liquor ~~or~~, table wine or **dessert wine** for delivery in Maine until notified by the commission that the excise tax has been paid thereon in accordance with this section shall ship only to a licensed Maine wholesaler.

Bonded Maine wholesale licensees shall use a form supplied by the commission which form shall be in triplicate. The wholesalers shall submit the original copy to the qualified brewery, winery or foreign wholesaler with whom he wishes to place his order. The bonded wholesaler shall then mail to the commission one copy of the form and retain one copy for his files.

No Maine wholesale licensee shall sell any malt liquor ~~or~~, table wine or **dessert wine** to another Maine wholesale licensee, which has not been purchased from a brewery, winery or foreign wholesaler holding a certificate of approval. The Administrative 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.

Maine wholesale licensees shall furnish to the commission, in such form as may be prescribed, a monthly report, on or before the 10th day of each calendar month, of all malt liquor ~~or~~, table wine or dessert wine purchased and sold during the preceding month.

By filing the bond hereafter required, a Maine wholesale licensee may pay monthly the excise tax imposed by section 452 on all malt liquor ~~or~~, table wine or dessert wine shipped into this State as shown by invoice of the shipment by the out-of-state wholesaler or holder of certificate of approval. The tax shall be paid by the wholesale licensee on or before the 10th day of the calendar month following that in which shipment occurs. Each Maine wholesale licensee shall, at the time of payment of the excise tax on or before the 10th day of each month, furnish to the commission in such form as may be prescribed a verified monthly report of all malt liquor ~~or~~, table wine or dessert wine purchased or imported based on the date of shipment invoice during the preceding calendar month and all such additional information as may be deemed necessary to compute and assure the accuracy of the excise tax payment accompanying the report.

Sec. 24. 28 MRSA § 701, sub-§§ 4, 5 and 6, as enacted by PL 1975, c. 741, § 21 are amended to read:

4. Fees for full-year licenses. Fees for full-year licenses for the sale of malt liquor and, table wine and dessert wine to be consumed off the premises shall be as follows:

- A. Class VI license, malt liquor only.....\$125
 - (1) Class VI-A license—optional license—for retail stores and retail service organizations without a stock of groceries worth \$1,000 in wholesale value\$225
- B. Class VII license, table wine ~~only~~ and dessert wine.....\$125
 - (1) Class VII-A license—optional license—for retail stores or retail service organizations without a stock of groceries worth \$1,000—wholesale value .225

5. Fees for part-time licenses. Fees for part-time licenses for the sale of malt liquor and, table wine and dessert wine to be consumed off the premises shall be 1/2 the full-time license fee.

6. Fees for license extensions. Fees for bimonthly extension of part-time licenses for the sale of malt liquor and, table wine and dessert wine to be consumed off the premises shall be as follows:

- A. Class VI license, malt liquor only..... \$30
 - (1) Class VI-A license—optional license—for retail stores and retail service organizations without a stock of groceries worth \$1,000 in wholesale value . \$45
- B. Class VII license—table wine ~~only~~ and dessert wine..... \$30

(1) Class VII-A license—table wine ~~only~~ and dessert wine—for retail stores and retail service organizations without a stock of groceries worth \$1,000 in wholesale value \$45

Sec. 25. 28 MRSA § 701-A, sub-§ 7, as enacted by PL 1975, c. 741, § 22, is amended to read:

7. **Class VII License.** The following premises shall be eligible for a Class VII License:

A. Retail stores and retail service organizations—sale of table wine and dessert wine for off-premises consumption only.

Sec. 26. 28 MRSA § 751, as last amended by PL 1977, c. 292, § 4, is further amended to read:

§ 751. **Issuance of licenses; stock of merchandise**

Licenses for sale and distribution of malt liquor ~~or~~, table wine ~~or both~~ or dessert wine, or any combination thereof, in retail stores may be issued by the commission upon application and under such regulations as the commission may prescribe. No such license or licenses shall be issued to any person who is not engaged in a bona fide retail business other than the sale of malt liquors ~~or~~, table wine or dessert wine, or any combination thereof, at retail and no person licensed to sell malt liquor ~~or~~, table wine or dessert wine, or any combination thereof, under this section shall sell malt liquor ~~or~~, table wine or dessert wine, or any combination thereof, for consumption on the premises where sold.

Licenses in an unincorporated place, where no local option vote is taken under section 103, shall require the approval of the county commissioners of the county.

No licenses shall be issued to any new retail premise under this section unless it has been in operation as such for a period of at least 3 months next prior to the date of the application, or unless such applicant proves to the satisfaction of the commission that all proper standards and requirements of laws and rules and regulations of the commission have been met and said applicant has been a resident of the State for at least 6 months prior to filing his application.

All retail store licensees must have and maintain an adequate stock of groceries in no case less than \$1,000 wholesale value or a stock of merchandise reasonably compatible with a stock of malt liquor ~~or~~, table wine or dessert wine in no case less than \$1,000 wholesale value, or a combination of both in no case less than \$1,000 wholesale value. No merchandise shall be considered to be reasonably compatible with a stock of malt liquor ~~or~~, table wine or dessert wine, or any combination thereof, for the purpose of licensing a retail store, which consists of gasoline and oil; used or new cars, parts or accessories, or such other items of stock that may be equally incompatible in nature. Compatible merchandise shall consist exclusively of tobacco products, newspapers, greeting cards and paper products.

Sec. 27. 28 MRSA § 751-A, as last amended by PL 1971, c. 598, § 60, is further amended to read:

§ 751-A. Payment for sales in retail stores

For the purpose of receiving payment at the check-out counters for the sale of malt liquor ~~or~~, table wine or dessert wine in retail stores, the age of such employee receiving the payment shall not be under 17 years of age, provided that in any event an employee who is 18 years of age or older is present in the retail store in a supervisory capacity.

Sec. 28. 28 MRSA § 755, first ¶, as amended by PL 1969, c. 360, § 26, is further amended to read:

No licensee shall advertise or hold out for sale any malt liquor ~~or~~, table wine or dessert wine by trade name or other designation which would indicate the manufacturer or place of manufacture of malt liquor ~~or~~, table wine or dessert wine unless he actually has on hand and for sale a sufficient quantity of the particular malt liquor ~~or~~, table wine or dessert wine so advertised to meet requirements to be normally expected as the result of such advertisement or announcement.

Sec. 29 28 MRSA § 756, first sentence, as repealed and replaced by PL 1969, c. 590, § 53, is amended to read:

It shall be unlawful for any wholesale or retail licensee of malt liquor ~~or~~, table wine or dessert wine, either directly or indirectly, by any agent or employee, to go from town to town, or from place to place in the same town selling, bartering or carrying for sale or exposing for sale any malt liquor ~~or~~, table wine or dessert wine from any vehicle, except all sales of such malt liquor ~~or~~, table wine or dessert wine where transportation and delivery are required shall be made only upon orders actually received at the principal place of business or warehouse or distributing center, if licensed, of the seller prior to shipment thereof, and an invoice stating the names of the purchaser and the seller and the kind and quantity of malt liquor ~~or~~, table wine or dessert wine ordered by the sale, together with the date of the sale, shall be carried by the driver or any other employee of the seller; and except that a wholesale licensee, his agent or employee may go from town to town or from place to place in the same town selling or carrying for sale or exposing for sale malt liquor ~~or~~, table wine or dessert wine from its vehicle, provided the licensee, his agent or employee has in his possession on said vehicle a manifest bearing a detailed description of the total amount of malt liquor ~~or~~, table wine or dessert wine on the vehicle, and invoices as required as well as invoices drawn up at the time of delivery.

Sec. 30. 28 MRSA § 1052, first sentence, as amended by PL 1969, c. 360, § 28, is further amended to read:

No person, other than the commission, shall import spirituous or vinous liquor into this State, except wholesalers of table wine or dessert wine may import ~~table such wine containing not more than 14% alcohol by volume.~~

Sec. 31. 28 MRSA § 1053, sub-§ 1, first sentence, as amended by PL 1979, c. 130, § 7, is further amended to read:

No person shall knowingly transport from place to place in this State any intoxicating liquor with intent to sell the same in this state in violation of law, or with intent that the same shall be sold by any person, or to aid any person in such sale, and no person shall transport or cause to be transported any spirituous ~~or vinous~~ liquor ~~containing more than 14% alcohol by volume~~ in this State in a greater quantity than 4 quarts, or its metric equivalent, unless such liquor was purchased from a state store or the commission.

Sec. 32. 28 MRSA § 1053, sub-§ 2, as amended by PL 1979, c. 130, §§ 8 and 9, is further amended to read:

2. Malt liquor, table wine and dessert wine. No person, other than a wholesale licensee of the commission under and subject to this Title, shall transport or cause to be transported malt liquor ~~or~~, table wine ~~or~~ dessert wine into this State in a greater quantity than one case for malt liquor and 4 quarts, or its equivalent, for table wine ~~or~~ dessert wine, unless said beverages were legally purchased in the State. All shipments of malt liquor ~~or~~, table wine ~~or~~ dessert wine transported or caused to be transported by wholesale licensees into this State shall be accompanied by an invoice with the wholesale licensee's name and purchase number thereon. No person, other than a licensee of the commission, shall transport malt liquor in a quantity greater than one case, and table wine ~~or~~ dessert wine in quantities greater than 4 quarts, or its equivalent, from place to place in this State unless the same is purchased from a retail store licensee of the commission. It shall be lawful for common carriers and contract carriers, duly authorized as such by the Public Utilities Commission, to transport malt liquor ~~or~~, table wine ~~or~~ dessert wine both into and within the State to licensees of the State Liquor Commission and to purchasers of malt liquor ~~or~~, table wine ~~or~~ dessert wine from licensees of the commission and to the state line for transportation outside the State. Whoever is convicted of illegal transportation of malt liquors ~~or~~, table wine ~~or~~ dessert wine into or illegal transportation from place to place within the State shall be punished by a fine of not more than \$500 or by imprisonment for not more than 11 months, or by both.

Sec. 33. 28 MRSA § 1054, first sentence, as amended by PL 1969, c. 360, § 31, is further amended to read:

No person shall knowingly transport to or cause to be delivered to any person, other than the commission, unless upon written permission of the commission, any spirituous ~~or vinous~~ liquor, ~~containing more than 14% alcohol by volume~~ except liquors purchased from a state store or the commission.

STATEMENT OF FACT

The purposes of this bill are to:

1. Permit the sale of dessert wines at retail stores rather than state liquor stores;
2. Remove a conflict with other legislation relating to the age of persons who may drink;
3. Standardize the tax on all spirits sold by the commission to not less than 75% of the cost of the State Liquor Commission;
4. Increase the excise tax from 60¢ to 90¢ per gallon on dessert wines. It reinstates the fee for liquor licensees to sell or transport table wine to \$600;
5. Prevent potential conflicts between this bill and enacted laws; and
6. Provide a limit of 20% on the alcohol content of dessert wine sold at retail stores.