

MAINE STATE LEGISLATURE

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(Governor's Bill)
FIRST REGULAR SESSION

ONE HUNDRED AND TENTH LEGISLATURE

Legislative Document

No. 1536

H. P. 1346

House of Representatives, April 13, 1981

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

EDWIN H. PERT, Clerk

Presented by Representative Soulas of Bangor.

Cosponsor: Senator Violette of Aroostook.

STATE OF MAINE

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

AN ACT to Limit the State's Retail Liquor Operations.

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

Sec. 1. 28 MRSA § 2, sub-§ 8, ¶ L-1 is enacted to read:

L-1. Retail liquor store. "Retail liquor store" means a retail establishment licensed by the commission to engage in the retail sale of wine, except table wine, and spirits in the original containers, for consumption other than upon the premises where sold, which establishment may sell other goods or merchandise on the same premises.

Sec. 2. 28 MRSA § 5, 3rd sentence, is repealed and the following enacted in its place:

The commission may make reasonable regulations restricting the advertising of any type of alcoholic beverages, provided that any advertisement relating to liquor placed by a retail liquor store shall contain only the name and location of the retail liquor store and the brand name, size and price of the advertised product offered for sale.

Sec. 3. 28 MRSA § 52, first sentence, as repealed and replaced by PL 1975, c. 770, § 129, is amended to read:

The State Liquor Commission, as heretofore established, shall consist of 3 members to be appointed by the Governor, subject to review by the Joint Standing Committee on ~~Liquor Control~~ Legal Affairs and to confirmation by the Legislature, to serve for 3 years and may be removed by the Governor on the address of both branches of the Legislature or by impeachment.

Sec. 4. 28 MRSA § 53, sub-§ 1, as enacted by PL 1975, c. 741, § 4, is repealed and the following enacted in its place:

1. **Supervision of the Bureau of Alcoholic Beverages.** To supervise and direct the Director of the Bureau of Alcoholic Beverages relating to the merchandising of liquor through retail liquor stores as provided in this Title.

Sec. 5. 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 spirits for sale to the public as provided in this Title or to retail liquor stores.

Sec. 6. 28 MRSA § 53, sub-§ 7, as enacted by PL 1975, c. 741, § 4, is repealed and the following enacted in its place:

7. **Sell at wholesale.** To sell at wholesale to retail liquor stores, in original packages, either over the counter or by shipment to points within the State, wine, except table wine, and spirits of all kinds.

Sec. 7. 28 MRSA § 53, sub-§ 7-A is enacted to read:

7-A. **Sell at retail.** Notwithstanding any other provision of this Title, the commission, with the approval of the Commissioner of Finance and Administration, may continue to operate one state discount store located in York County for the specific purpose of selling at retail, in the original packages and for cash, over the counter, wine, except table wine, and spirits of all kinds for consumption off the premises. All liquors purchased from this store shall not be offered for resale by licensees of the commission, unless purchased pursuant to section 451.

Sec. 8. 28 MRSA § 53, sub-§ 9, as enacted by PL 1975, c. 741, § 4, is repealed and the following enacted in its place:

9. **Prevent sale to minors and others.** To prevent the sale, of all liquors, by licensees to minors or persons under the influence of liquor.

Sec. 9. 28 MRSA § 101, sub-§§ 1 and 5, as last repealed and replaced by PL 1977, c. 630, § 2, are repealed and the following enacted in their place:

1. **Shall retail liquor stores for the sale of liquor be operated by permission of the State Liquor Commission in this city or town?**

5. **Shall retail liquor stores for the sale of liquor be operated by permission of the State Liquor Commission in this city or town on Sunday?**

Sec. 10. 28 MRSA c. 7, as amended, is repealed.

Sec. 11. 28 MRSA c. 8 is enacted to read:

CHAPTER 8

STATE RETAIL LIQUOR STORES

§ 161. State facilities

The commission is authorized to lease and equip in the name of the State, warehouses and other merchandising facilities for the sale of liquor as are necessary to carry out this Title, but any lease or contract made under this section shall be approved by the Attorney General before becoming effective.

§ 162. Retail liquor stores

The State Liquor Commission has the authority to license and regulate in cities, towns and unorganized territories which have voted in favor of the operation of retail liquor stores under local provisions, retailers as retail liquor stores for the purpose of selling liquor in sealed bottles, containers or original packages for consumption off the premises.

1. Rules. The State Liquor Commission shall establish rules for the selection and operation of the retail liquor stores. These rules shall address, among other things, the following:

- A. Location of retail liquor stores;
- B. Storage facilities for alcoholic beverages;
- C. Segregation of intoxicating liquors from other goods in retail liquor stores;
- D. The size of the facilities of retail liquor stores; and
- E. Any other rules that the State Liquor Commission deems necessary to carry out the purposes of this section.

2. Information provided. The State Liquor Commission shall provide all applicants with the necessary information for the establishment of a retail liquor store. Upon the receipt of application for a retail liquor store in a municipality, the State Liquor Commission shall notify the municipal officer of that municipality of the proposed location of each retail liquor store prior to the final approval of any application.

§ 163. Applications

All applicants for a retail liquor store license shall be required to file applications in such form as the commission requires. All such applications shall be in addition to any other application filed by the applicants with the Bureau of Alcoholic Beverages concerning other liquor licensing privileges.

§ 164. Proximity to churches and schools

No retail liquor store may be established within 300 feet of any public or private

school, church, chapel or parish house, measured from the main entrance of the retail liquor store to the main entrance of the school, church, chapel or parish house by the ordinary course of travel.

§ 165. Eligibility

In addition to the eligibility requirement of section 201, the commission may issue a license to operate a retail liquor store to an applicant only upon a finding that the applicant is of sound judgment and good character, subscribes to sound business principles and meets all requirements of financial responsibility. For purposes of this chapter, unless otherwise indicated, the term "applicant" means the individual, if a natural person. If the applicant is a partnership, the term "applicant" means each person with an interest therein; if the applicant is a corporation, the term "applicant" means the officers or directors thereof or shareholders with a controlling interest therein. In the case of a publicly owned corporation, "controlling interest" means direct or indirect ownership of more than 50% of the share of the corporation. Finding of any of the following shall be prima facie ground for denial:

1. Conviction of crime. Conviction of a Class A, B and C crime or any crime of moral turpitude;
2. Conviction of violation of tax laws. Conviction of violation of any local, state or federal tax law; or
3. Career offender. Identification of the applicant or any shareholder, in the case of a corporation, as a career offender or a member of a career offender cartel or an associate of a career offender or career offender cartel in such a manner which creates a reasonable belief that the association is of such a nature as to be inimical to the policy of this chapter. For purposes of this section, "career offender" means any person whose behavior is pursued in an occupational manner or context for the purpose of economic gain, utilizing such methods as are deemed criminal violations of the public policy of this State. A "career cartel" means any group of persons who operate together as career offenders.

§ 166. Bond required

Every retail liquor store licensee shall furnish a bond with a surety to the commission prior to conducting any business under the license. The amount of the bond shall be determined by the commission but may not exceed the amount of \$100,000. The purpose of the bond shall be to insure the licensee's financial responsibility and to assure that sufficient funds are available to satisfy any penalty assessed under this chapter.

If a licensee holds more than one license the commission may determine that only one bond be required, provided that it covers all of the licensed operations of the licensee.

§ 167. Issuance of licenses

Licenses for sale and distribution of wines, except table wine, and spirits in

retail liquor stores may be issued by the commission upon application and under such regulations as the commission may prescribe. No person licensed under this section may sell any liquor 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 majority of the county commissioners of the county.

Any license issued by the commission shall apply only to the applicant and the premises designated on the application, unless transferred pursuant to section 203, subsection 1.

§ 168. Fees

Fees for a full-year license for a retail liquor store shall be \$500 per year. A part-time or 6-month license may be issued for 1/2 the full-time fee. A part-time license may be extended for one 2-month period for a fee of \$140.

All fees received under this section shall be deposited in the General Fund.

§ 169. Age of employees

For the purpose of receiving payment at the checkout counters for the sale of liquor in retail liquor 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 20 years of age or older is present in the retail store in a supervisory capacity.

Sec. 12. 28 MRSA § 204, as last amended by PL 1975, c. 771, § 302, is repealed and the following enacted in its place:

§ 204. Liquor bought from commission; sale to government agencies

All persons, except public service corporations operating interstate, licensed to sell wines, except table wine, and spirits shall purchase all such liquor from the commission. The commission shall sell to such licensees wine, except table wine, and spirits for a price established by the commission pursuant to section 451. The commission may sell wines, except table wine, and spirits to approved government instrumentalities within the State at a price to be set by the commission which shall be approved by the Governor. The commission may sell wine, except table wine, and spirits not for consumption within the State to airlines and ferry services or their agents as authorized by the State Liquor Commission at a price to be set by the commission which shall be approved by the Governor.

The State Liquor Commission shall have the power to adopt such rules as it deems necessary or advisable to effectuate the purposes of this section.

Sec. 13. 28 MRSA § 451, as last amended by PL 1979, c. 307, is repealed and the following enacted in its place:

§ 451. Consumer's tax

All wines, except table wines, and 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 less than 70% based on the shipping point cost, except that wines and spirits bought by the commission from Maine licensees who manufacture liquor under section 501 shall be sold by the commission at a price to be determined by the commission which will produce a state liquor tax of not less than 60% based on the shipping point cost. Special orders by the commission for unstocked merchandise shall be priced at not less than 70% over actual cost delivered F.O.B. warehouse. In all cases the commission is authorized to round off costs to the next highest 5¢. All prices shall be F.O.B. warehouse designated by the State Liquor Commission.

Notwithstanding the other provisions of this section, the commission, with approval of the Commissioner of Finance and Administration, may reduce the price of discontinued items of liquor. The reduced price shall not be less than the actual cost of the discontinued liquor items and no items may be discontinued by the commission for a period of at least 6 months after such item has been listed.

Taxes on wines and spirits imposed by the State shall not apply to wines or spirits sold by wholesalers, manufacturers, bottlers and rectifiers holding licenses from the commission to any instrumentality of the United States, to any vessel of foreign registry and to industrial establishments for use as an ingredient in the manufacture of food products or for use as an ingredient in the manufacture of commodities which by reason of their nature cannot be used for beverage purposes. The commission is specifically authorized to make such rules as they deem necessary for carrying out this paragraph.

Notwithstanding the other provisions of this section, the commission may, from time-to-time, establish special prices on certain listed liquor items. The special prices may not be lower than the prices established for the same listed item at the one authorized special discount state store.

All net revenue derived from such tax shall be deposited to the credit of the General Fund.

Sec. 14. Transition. Prior to January 1, 1983, each state retail store, with the exception of the one state retail store authorized in the Revised Statutes, Title 28, section 53, subsection 7-A, shall be closed. The actual date of closing of each store shall be determined by the State Liquor Commission on the following priority basis: Facilities to which the leases have expired; facilities which are not properly staffed because of personnel attrition; and facilities within a market area served by a retail liquor store licensed pursuant to this Act. The commission may designate market areas for the purpose of implementing an orderly transition.

Notice of intent to close a state store under this section shall be published in a newspaper of general circulation in the market area at least 30 days prior to the closing. Upon publication of the notice, applications for retail liquor store licensing in the market area shall be taken by the commission.

A special state agency store existing under the Revised Statutes, Title 28, section 153 will be allowed to continue in that capacity until the license in effect on

the effective date of this Act expires, at which time it may apply for a retail liquor store license in the same manner as any other applicant.

It is the intent of this section that the commission convert all the existing state stores and special state agency stores, with the exception of the retail store authorized by the Revised Statutes, Title 28, section 53, subsection 7-A, to retail liquor stores under this Act by January 1, 1983, while providing uninterrupted service and avoiding state competition with the private sector, to the extent possible, during the interim period.

Sec. 15. Vote. A vote taken on question 1 or 5 of the Revised Statutes, Title 28, section 101 prior to the effective date of this Act shall be construed to have been a vote taken on question 1 or question 5 of Title 28, section 101 as amended by section 9 of this Act.

FISCAL NOTE

This bill would transfer the retail sale of liquor to private license holders from state-owned and operated stores, except at Kittery. No significant change in revenues to the General Fund is expected.

STATEMENT OF FACT

This bill would repeal the law authorizing state liquor stores, with the exception of the Kittery store, and special agency stores and replace it with authority for the State Liquor Commission to grant licenses for the retail sale of wine with an alcoholic content of more than 14% and spirits for consumption off premise.

The State will retain control over hours of operation, advertising, licensing and enforcement of liquor laws, including those prohibiting sales to minors. The State will also retain operations of the wholesale sale of the products. The State will continue to sell liquor to on-premise licensees.

A municipality which has voted to have a state liquor store will be deemed to have authorized a private store. A municipality may vote at any time to rescind its approval for these stores.

Revenues to the State will be maintained at the current level, assuming constant patterns in sales. Retail prices will be established by the retail licensee.

Eligibility requirements for licensees include a finding by the commission that the applicant has no convictions for major crimes, crimes of moral turpitude or violation of tax laws and does not have ties to organized crime. The applicant must also show financial responsibility.

A licensee will have to maintain adequate premises and inventory. A license will cost \$500.

This system will be phased in over an 18-month period.