

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)

1 SECOND REGULAR SESSION
2

3 ONE HUNDRED AND TWELFTH LEGISLATURE
4

5 Legislative Document

No. 1905
6

7 H.P. 1361

House of Representatives, January 17, 1986

8 Approved for introduction by a majority of the Legislative Council
9 pursuant to Joint Rule 26.

Reference to the Committee on Taxation suggested and ordered printed.

EDWIN H. PERT, Clerk
10

Presented by Representative Reeves of Pittston.

Cosponsored by Senator Trafton of Androscoggin, Representative
Masterman of Milo and Representative Rioux of Biddeford.
11

12 STATE OF MAINE
13

14 IN THE YEAR OF OUR LORD
15 NINETEEN HUNDRED AND EIGHTY-SIX
16

17 AN ACT Relating to Liquor Excise Taxes and
18 Freight Rates.
19

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

22 Sec. 1. 28 MRSA §56, as amended by PL 1983, c.
23 865, Pt. B, §§1 and 2, is further amended to read:

24 §56. Working capital

25 The net profits of the commission shall be gener-
26 al revenue of the State. The commission is autho-
27 rized to keep and have on hand a stock of wines, ex-
28 cept table wines, and spirits for sale, the value of
29 which, when priced for resale, shall be computed on
30 ~~less earlead~~ price quotations f.o.b. warehouse filed
31 by liquor and wine vendors. The inventory value shall
32 be based upon actual cost for which payment may be
33 due and shall not at any time exceed the amount of
34 working capital authorized. Wines and spirits shall
35 not be considered in the inventory until payment has

1 been made therefor. The maximum permanent working
2 capital of the commission is established at
3 \$3,500,000 and permanent advances up to this amount
4 may be authorized by the Governor upon recommendation
5 of the commission with the approval of the Commis-
6 sioner of Finance and Administration. The permanent
7 working capital of the commission may be supplemented
8 by temporary loans from other state funds upon recom-
9 mendation of the commission and by approval of the
10 Commissioner of Finance and Administration and the
11 Governor.

12 Sec. 2. 28 MRSA §451, as amended by PL 1979, c.
13 307, is further amended to read:

14 §451. Consumers' tax

15 All spirits and wines, except table wines, shall
16 be sold by the commission at a price to be determined
17 by the commission which will produce a state liquor
18 tax of not less than 75% based on the ~~less carload~~
19 cost f.o.b., State Liquor Commission warehouse, and
20 in addition thereto there shall be levied and imposed
21 an excise tax of 75¢ per gallon, or its metric equiv-
22 alent, on wines ~~containing more than 14% alcohol by~~
23 ~~volume other than table wines~~; except that spirits
24 and wines sold at wholesale a discount under section
25 204 may be sold at wholesale lower prices established
26 pursuant to the provisions thereof of section 204.
27 ~~Prices for sale of spirits and wines bought by the~~
28 ~~commission from Maine licensees to manufacture liquor~~
29 ~~under section 501 shall be based on minimum truck~~
30 ~~load delivery prices f.o.b. warehouse as the same are~~
31 ~~filed with the Public Utilities Commission.~~ Special
32 orders by the commission for unstocked merchandise
33 shall be priced at not less than 75% over actual cost
34 delivered f.o.b. warehouse. In all cases the commis-
35 sion is authorized to round off costs to the next
36 highest 5 cents. Any increased federal taxes levied
37 on or after November 1, 1941, shall be added to the
38 established price without markup. All net revenue de-
39 rived from such tax shall be deposited to the credit
40 of the General Fund of the State. Notwithstanding
41 the other provisions of this section, the commission,
42 with approval of the Commissioner of Finance and Ad-
43 ministration, may reduce the price of discontinued
44 items of liquor. The reduced price shall not be less

1 than the actual cost of the discontinued liquor items
2 and no item shall be discontinued by the commission
3 for a period of at least 6 months after ~~such~~ the item
4 has been listed and on sale in state stores. Not-
5 withstanding the other provisions of this section,
6 the commission, with the approval of the Commissioner
7 of Finance and Administration, may reduce the price
8 of liquor in one store, and ~~licensees permitted to~~
9 ~~purchase liquor at a discount under section 204 may~~
10 ~~purchase liquor for resale from that store at the~~
11 ~~same price they are permitted to purchase liquor for~~
12 ~~resale from any state store which does not offer a~~
13 ~~retail discount.~~

14 Taxes on spirituous or vinous liquors imposed by
15 the State ~~shall~~ do not apply to spirituous or vinous
16 liquors sold by wholesalers, manufacturers, bottlers
17 and rectifiers holding licenses from the commission
18 to any instrumentality of the United States, or to
19 any vessel of foreign registry, or to industrial es-
20 tablishments for use as an ingredient in the manufac-
21 ture of food products, or for use as an ingredient in
22 the manufacture of commodities which by reason of
23 their nature cannot be used for beverage purposes.
24 The commission is specifically authorized to make
25 such rules ~~and regulations as they deem it deems~~ nec-
26 cessary for carrying out the provisions of this para-
27 graph.

28 Notwithstanding the other provisions of this sec-
29 tion, the commission may, from time to time, estab-
30 lish special prices on certain listed liquor items to
31 be made available to the consumer at all state
32 stores. ~~Such~~ The special prices ~~shall~~ may not be
33 lower than the price established for the same listed
34 item at the one authorized special discount state
35 store.

36 Sec. 3. 28 MRSA §452, as amended by PL 1985, c.
37 148 is further amended to read:

38 §452. Excise tax on malt liquor and table wine; de-
39 ficiency account; credits; refunds

40 There shall be ~~levied and~~ imposed an excise tax
41 on all malt liquor ~~manufactured~~ sold in this State of
42 ~~5 1/3¢~~ 25¢ per gallon, or its metric equivalent, to

1 be paid by the Maine manufacturer in addition to the
2 fee provided by law or importing wholesaler. A
3 wholesale licensee who imports malt liquor shall pay
4 an excise tax of 25¢ per gallon, or its metric equiv-
5 alent, and at a like rate for any multiple or frac-
6 tion thereof.

7 There shall be levied and imposed an excise tax
8 of 30¢ per gallon, or its metric equivalent, or frac-
9 tion or multiple thereof of its metric equivalent, on
10 all table wine containing 14% or less alcohol by vol-
11 ume imported into sold in this State, except the ex-
12 cise tax shall be 20¢ per gallon, or its metric
13 equivalent, or fraction or multiple thereof on all
14 still wine containing 14% or less alcohol by volume
15 which is manufactured or bottled in this State, and
16 an excise tax of \$1 per gallon, or its metric equiva-
17 lent, or multiple or fraction thereof of its metric
18 equivalent, on all sparkling wines manufactured in or
19 imported into sold in this State. Such These taxes
20 shall be paid by the Maine manufacturer or the im-
21 porting wholesaler.

22 Notwithstanding the provisions of this section,
23 until July 1, 1989, the excise tax imposed on table
24 wine containing 14.5% or less alcohol by volume pro-
25 duced by a licensed Maine farm winery, shall be 5¢
26 per gallon, or its metric equivalent, on the first
27 10,000 gallons of table wine produced in one year,
28 10¢ per gallon, or its metric equivalent, on all wine
29 produced in excess of 10,000 gallons, but not in ex-
30 cess of 25,000 gallons, and 20¢ per gallon, or its
31 metric equivalent, on all wine produced in excess of
32 25,000 gallons.

33 All money received by the commission under this
34 section shall be forthwith immediately turned over to
35 the Treasurer of State and shall be credited to the
36 General Fund of the State.

37 The commission shall open an excise tax account
38 with all Maine manufacturers and wholesale licensees.

39 The commission is authorized to give such proper
40 credits and to make such proper tax adjustments as it
41 may from time to time deem the wholesale licensee to
42 be entitled to upon the filing of affidavits in such

1 form as it may prescribe and shall refund all excise
2 tax paid by the wholesale licensee on all malt liquor
3 or table wine caused to be destroyed by a supplier as
4 long as the quantity and size are verified by the Bu-
5 reau of Alcoholic Beverages and the destruction is
6 witnessed by an inspector of the bureau.

7 The ~~commissioner~~ commission is also authorized to
8 refund the excise tax on ~~distributor's distributors'~~
9 inventories in the event ~~such~~ those inventories are
10 destroyed by fire, flood or other natural disaster.

11 A credit shall be granted for the excise tax im-
12 posed by this State on malt beverages or table wines
13 sold by wholesalers to any instrumentality of the
14 United States or any Maine National Guard state
15 training site accredited with exemption by the com-
16 mission. A credit shall be granted for the excise tax
17 imposed by this State on malt beverages or table
18 wines sold to any ship chandlers, provided the malt
19 beverages and table wines are resold to vessels of
20 foreign registry for consumption after that vessel
21 has left port or are resold for consumption on board
22 vessels of United States registry which are destined
23 for a foreign port. Any wholesaler selling to such an
24 instrumentality, training site or ship chandlers
25 shall present proof of that sale to the commission
26 and shall thereupon receive from the commission a
27 credit of all state excise taxes paid in connection
28 with that sale.

29 Sec. 4. 28 MRSA §474 sub-§§3 and 4, as enacted
30 by PL 1981, c. 454, §8, are amended to read:

31 3. Amount of premium. The premium imposed by
32 subsections 1 and 2 shall be 5¢ per gallon, or its
33 metric equivalent, or fraction or multiple thereof,
34 on all malt beverages sold in this State; 15¢ per
35 gallon, or its metric equivalent, or fraction or mul-
36 tiple ~~thereof~~ of its metric equivalent, on all table
37 wine containing 14% or less alcohol by volume sold in
38 this State; 12¢ per gallon, or its metric equivalent,
39 or multiple or fraction ~~thereof~~ or its metric
40 equivalent, on all sparkling wines manufactured in or
41 imported into sold in this State; 62 1/2¢ per proof
42 gallon as the term proof gallon is defined in the
43 United States Code, Title 26, Section 5002, or its

1 metric equivalent, or fraction or multiple thereof,
2 on all spirituous liquors and wines ~~containing more~~
3 ~~than 14% alcohol by volume other than table wines~~
4 sold in this State.

5 4. Payment to fund. All premiums collected by
6 the commission under this section shall be paid
7 ~~forthwith~~ immediately to the Treasurer of State and
8 credited to the fund in accordance with section 472.

9 Sec. 5. 28 MRSA §501, as amended by PL 1985, c.
10 300, is further amended to read:

11 §501. Manufacturers' licenses; sales; transporta-
12 tion; fees

13 The commission is authorized and empowered to may
14 issue manufacturers' licenses to distill, rectify,
15 brew or bottle alcohol, or spirituous, vinous or fer-
16 mented liquor to distillers, rectifiers, brewers,
17 bottlers and wineries operating under federal law and
18 federal supervision. The following license fees shall
19 be charged:

20 1. Distillers and brewers. Distillers and brew-
21 ers using exclusively the agricultural products of
22 this State as raw material for the production of al-
23 ~~cohol or alcoholic liquors shall pay an annual li-~~
24 ~~cence fee of~~ \$ ~~100~~ \$500

25 Distillers and brewers using exclusively the agricul-
26 tural products of other states as raw material -----
27 ----- \$3,000-

28 Distillers and brewers using in part agricultural
29 products of this State and in part those of other
30 states as raw material shall pay such fee as the com-
31 mission may determine, to be directly proportioned as
32 to the source and quantity of such raw material and
33 based upon the foregoing differential. In case Maine
34 agricultural products are not available for use as
35 raw material by distillers and brewers in any partic-
36 ular year, the commission is authorized to make such
37 adjustment in said fees as they deem just and equita-
38 ble, resulting in a final computation of not less
39 than \$1,500-

1 All licensees to whom manufacturers' licenses are as-
2 signed for distilling and brewing shall pay with
3 their application a base fee of \$100 and make monthly
4 reports to the commission of the kind, quantity and
5 source of raw material used by them. A final computa-
6 tion of the fee for each license year shall be made
7 by the commission on the basis of said monthly re-
8 ports and the final fees, as computed by the commis-
9 sion, shall be paid on December 31st of each license
10 year.

11 1-A. Small Maine breweries. Small Maine brew-
12 eries shall pay an annual license fee of \$50.

13 For purposes of this section, "small Maine brewery"
14 means a facility that is brewing, lagering and
15 kegging, bottling or packaging its own malt liquors
16 within the State. If an inadequate amount of agri-
17 cultural products used for raw materials exists with-
18 in the State, a holder of a small Maine brewery li-
19 cense may file an affidavit and application with the
20 Bureau of Alcoholic Beverages setting forth the un-
21 availability of raw materials within the State and
22 requesting permission to import those agricultural
23 products from out-of-state. If the bureau finds that
24 there is in fact an inadequate supply of raw materi-
25 als within the State, it may authorize that importa-
26 tion.

27 A holder of a small Maine brewery license may produce
28 malt liquors containing 25% or less alcohol by volume
29 in an amount not to exceed 50,000 gallons per year,
30 or their metric equivalent.

31 A holder of a small Maine brewery license may sell,
32 on the premises during regular business hours, malt
33 liquors produced at the brewery by the bottle, case
34 or in bulk.

35 A holder of a small Maine brewery license may sell or
36 deliver his product to licensed retailers and wholes-
37 alers. In addition, he may sell, on the premises
38 for consumption off the premises, malt liquors pro-
39 duced at the brewery by the bottle, case or in bulk
40 to licensed retailers, including, but not limited to,
41 retail stores, restaurants and clubs.

1 A holder of a small Maine brewery license may apply
2 for one license for the sale of liquor for on-premise
3 consumption for a location other than the brewery.

4 A holder of a small Maine brewery license may list on
5 product labels and in its advertising the list of the
6 ingredients and the product's average percentage of
7 the recommended daily allowances of nutritional re-
8 quirements.

9 2. Rectifiers. Rectifiers shall pay an annual
10 license fee of \$500.

11 3. Bottlers. Bottlers shall pay an annual
12 license fee of..... \$500.

13 3-A. Maine farm wineries. Maine farm wineries
14 shall pay an annual license fee of\$50.

15 For purposes of this section: "Maine farm winery"
16 means a facility that is fermenting, aging and bot-
17 tling its own wines within the State. If an inade-
18 quate amount of agricultural products used for raw
19 materials exists within the State, a holder of a
20 Maine farm winery license may file an affidavit and
21 application with the Bureau of Alcoholic Beverages
22 setting forth the unavailability of raw materials
23 within the State and requesting permission to import
24 these agricultural products from out-of-state. If
25 the bureau finds that there is in fact an inadequate
26 supply of raw materials within the State, it may au-
27 thorize the importation. If out-of-state raw materi-
28 als contribute to more than 50% of the yearly wine
29 production of a winery, then an excise tax shall be
30 levied on that out-of-state raw material at a rate of
31 4¢ per gallon, or its metric equivalent, on liquid
32 raw materials and 2¢ per pound on solid or semisolid
33 raw materials. The commission shall promulgate rules
34 for the collection of the excise tax.

35 A holder of a Maine farm winery license may produce
36 table wines and sparkling wines containing 14.5% or
37 less alcohol by volume in an amount not to exceed
38 50,000 gallons per year, or their metric equivalent.

39 A holder of a Maine farm winery license may serve
40 complimentary samples of wine and sell, during regu-

1 lar business hours, table wines produced at the winery by the bottle, case or in bulk on the premises of the winery to persons who are not minors. A holder of a Maine farm winery license may serve complimentary samples of wine on Sunday after the hour of 12 o'clock noon and may sell table wines on Sunday after the hour of 12 o'clock noon if the municipality in which the winery is located has authorized the sale of table wines on Sunday for consumption off the premises pursuant to section 101.

11 A holder of a Maine farm winery license may, upon application to and approval of the commission and payment of the license fee set out in this subsection, obtain a license for one additional location other than the winery licensed under this subsection. The holder of the license shall not be required to conduct any bottling or production of wine at the 2nd licensed location, but may conduct all activities which are permitted by this section at the winery.

20 A holder of a Maine farm winery license may sell or deliver his product to licensed retailers and wholesalers. In addition, he may sell, on the premises, wine produced at the winery by the bottle, case or in bulk to licensed retailers, including, but not limited to, retail stores, restaurants and clubs.

26 This subsection is repealed on July 1, 1989.

27 4. Other wineries. Wineries using exclusively the agricultural products of other states or foreign countries other than Maine farm wineries shall pay an annual license fee of\$50.

31 In addition to such license fee of \$50, an excise tax shall be imposed in the amount of 4¢ per gallon, or its metric equivalent, on liquid raw materials and 2¢ per pound on solid or semisolid raw materials, under the supervision of the commission, which shall make the necessary rules for their collection.

37 This subsection is repealed on July 1, 1989.

38 4-A. Wineries. Beginning on July 1, 1989, wineries using exclusively the agricultural products of

1 this State as raw material shall pay an annual li-
2 cense fee of.....\$50.

3 Wineries using in part the agricultural products of
4 other states or foreign countries shall pay, in addi-
5 tion to the license fee of \$50, an excise tax of 4¢
6 per gallon, or its metric equivalent, on liquid raw
7 materials and 2¢ per pound on solid or semisolid raw
8 materials, the same being under the supervision of
9 the commission, which shall make the necessary rules
10 and regulations for their collection.

11 Sec. 6. 28 MRSa §1052, as amended by PL 1981, c.
12 470, Pt. B, §10, is further amended to read:

13 §1052. Importation of liquor

14 No person, other than the commission, shall may
15 import spirituous or vinous liquor into this State
16 except wholesalers of table wine may import table
17 wine ~~containing not more than 14% alcohol by volume.~~
18 Any person unlawfully importing, or causing to be
19 shipped into the State, or unlawfully transporting
20 spirituous or vinous liquor into the State, shall be
21 punished by a fine of not more than \$500 or by im-
22 prisonment for not more than 11 months, or by both.
23 It shall be lawful for an individual to transport in-
24 to this State and to transport from place to place
25 within the State such spirituous or vinous liquor for
26 his personal use in a quantity not to exceed 4 quarts
27 or its metric equivalent. The commission, in its dis-
28 cretion and by its written authorization, may permit
29 and authorize the importation of spirituous or vinous
30 liquors into this State and the transportation of the
31 same from place to place within this State to the
32 following:

33 1. Industrial establishments. To industrial es-
34 tablishments for use as an ingredient in the manufac-
35 ture of food products, or for use as an ingredient in
36 the manufacture of commodities which by reason of
37 their nature cannot be used for beverage purposes, or
38 for use in the manufacture of commodities unfit for
39 beverage purposes;

40 2. Distillers and manufacturers. To duly li-
41 censed distillers and manufacturers of spirituous or

1 vinous liquors in this State for use as an ingredient
2 in distilling or manufacturing spirituous or vinous
3 liquors and such other spirituous or vinous products
4 as may be authorized by Federal Regulations 26 CFR;

5 3. Churches. ~~Said~~ The commission, in its discre-
6 tion and by its written authorization, may permit and
7 authorize the importation of wine into this State and
8 the transportation of the same from place to place
9 within this State to churches or to the respective
10 pastor of any church for sacramental purposes or like
11 religious rites; and

12 4. Hospitals. The commission may authorize hos-
13 pitals and state institutions to import, for medici-
14 nal purposes only, liquor made available to them from
15 stocks of liquor seized by the Federal Government.
16 The commission, in its discretion and by written au-
17 thorization, may grant permission to hospitals and
18 state institutions for the purchase of liquors for
19 medicinal purposes only, from licensed Maine whole-
20 salers and state liquor stores. ~~Liquors purchased~~
21 ~~from state liquor stores may be sold at the discount~~
22 ~~price authorized for licensees in section 204.~~

23 The commission shall have the right and power to pre-
24 scribe such conditions as it deems necessary or ad-
25 visable as conditions precedent to granting permis-
26 sion and authority to import spirituous and vinous
27 liquors into this State and to transport the same
28 liquors within this State under subsections 1 to 4
29 and to make rules and regulations for clarifying and
30 carrying out said subsections and preventing viola-
31 tion of the laws relating to liquor.

32 Sec. 7. 28 MRSA §1053, sub-§1, as amended by PL
33 1979, c. 130, §7, is further amended to read:

34 1. Intoxicating liquor. No person ~~shall~~ may
35 knowingly transport from place to place in this State
36 any intoxicating liquor with intent to sell the ~~same~~
37 liquor in this State in violation of law, or with in-
38 tent that the ~~same liquor~~ shall be so sold by any
39 person, or to aid any person in such sale, and no
40 person ~~shall~~ may transport or cause to be transported
41 any spirituous or vinous liquor, ~~containing more than~~
42 14% alcohol by volume other than table wine, in this

1 State in a greater quantity than 4 quarts, or its
2 metric equivalent, unless such liquor was purchased
3 from a state store or the commission. The commission
4 in its discretion may grant to an individual, upon
5 his application, a permit to transport liquor pur-
6 chased for his own personal use. It shall be lawful
7 for ~~common for-hire carriers and contract carriers~~
8 duly authorized as such by the Public Utilities
9 Commission Department of Public Safety, Bureau of
10 State Police to transport liquor to state stores, to
11 state warehouses, to licensees of the State Liquor
12 Commission, to purchasers of liquor at state stores
13 and from manufacturers to state warehouses, state
14 stores and to the state line for transportation out-
15 side the State; for licensees of the commission to
16 transport liquor from state stores to their places of
17 business; and for manufacturers to transport within
18 the State to state warehouses and state stores, to
19 persons authorized under section 1052 and to the
20 state line for transportation outside the State. Who-
21 ever knowingly violates any of the provisions of this
22 subsection shall be punished by a fine of not less
23 than \$100 nor more than \$1,000, and costs, and by im-
24 prisonment for not less than 2 months nor more than 6
25 months, and in default of payment of fine and costs,
26 by imprisonment for not less than 2 months nor more
27 than 6 months, additional.

28 **Sec. 8. 28 MRSA §1054**, as amended by PL 1969, c.
29 360, §31, is further amended to read:

30 §1054. Delivery of liquor

31 No person ~~shall~~ may knowingly transport to or
32 cause to be delivered to any person, other than the
33 commission, unless upon written permission of the
34 commission, any spirituous or vinous liquor ~~contain-~~
35 ing more than 14% alcohol by volume, other than ta-
36 ble wine, except liquors purchased from a state store
37 or the commission. Any officer of any transportation
38 company, express company, carrier for hire or other
39 person who knowingly transports or delivers liquor
40 contrary to this section shall be punished by a fine
41 of not more than \$500 or by imprisonment for not more
42 than 11 months, or by both.

1

STATEMENT OF FACT

2
3

This bill is basically a housekeeping bill which clears up several problems in the liquor laws.

4
5
6
7
8
9
10
11
12
13
14

The main purpose of this bill is to correct the method in which state excise taxes are imposed on liquor. The United States Supreme Court ruled in *Bacchus Imports, Ltd. v. Dias*, 52 USLW 4979 (June 29, 1984), that states may not tax in-state produced liquor at a rate different than out-of-state produced liquor is taxed. Although the Supreme Court did not rule on the issue, there is a possibility that the State may be required to reimburse unconstitutionally collected taxes if the law is not corrected as soon as possible.

15
16
17
18
19
20
21
22

This bill also removes an unnecessary reference to freight rates for the mark-up mechanism. The rates are different for out-of-state and in-state produced liquor, which is also constitutionally unsound. License fee requirements which are based on the amount of in-state raw products used are removed to comply with *Bacchus*, resulting in all license fees for that business being the same.

23
24
25
26
27

In addition, this bill makes all references to table wine consistent by removing the percentage of alcohol description in all sections but the definition section. This will reduce confusion in the future.

28
29

This bill also removes references to discounts which are no longer extended to licensees.

30

5020123085