

MAINE STATE LEGISLATURE

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SECOND REGULAR SESSION

ONE HUNDRED AND THIRTEENTH LEGISLATURE

Legislative Document

NO. 2184

H.P. 1598 House of Representatives, February 2, 1988
Approved for introduction by a majority of the
Legislative Council pursuant to Joint Rule 26.

Reference to the Committee on Legal Affairs suggested and
ordered printed.

EDWIN H. PERT, Clerk

Presented by Representative PERRY of Mexico.

Cosponsored by Representatives MURPHY of Berwick, JALBERT
of Lisbon and Senator DILLENBACK of Cumberland.

STATE OF MAINE

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

1 **AN ACT to Make Corrections in the**
2 **Recodification of the Liquor Laws.**
3

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

6 **Sec. 1. 28 MRSA §52, as repealed by PL 1987, c.**
7 **45, Pt. A, §3 and as amended by PL 1987, c. 349, Pt.**
8 **H, §16, is repealed.**

9 **Sec. 2. 28 MRSA §101, as repealed by PL 1987,**
10 **c. 45, Pt. A, §3 and as amended by PL 1987, c. 54, §1,**

1 is repealed.

2 **Sec. 3.** 28 MRSA §103, as repealed by PL 1987,
3 c. 45, Pt. A, §3 and as amended by PL 1987, c. 54, §2,
4 is repealed.

5 **Sec. 4.** 28-A MRSA §61, sub-§1, as enacted by PL
6 1987, c. 45, Pt. A, §4, is amended to read:

7 1. Membership. The State Liquor Commission shall
8 consist of 3 5 members to be appointed by the
9 Governor, subject to review by the joint standing
10 committee of the Legislature having jurisdiction over
11 legal affairs and to confirmation by the Legislature.
12 Not more than 2 3 members of the commission may
13 belong to the same political party. The Governor
14 shall designate one of the members to be the
15 commission chairman.

16 **Sec. 5.** 28-A MRSA §124, sub-§4, as enacted by
17 PL 1987, c. 45, Pt. A, §4, is amended to read:

18 4. Repeal or reconsideration. Where a
19 municipality or unincorporated place has voted to
20 accept or reject any local option question, the vote
21 is effective until repealed by a new petition and vote
22 as required by section 121 or 122. No local option
23 vote may be taken on the same question more than once
24 in any 2-year one-year period.

25 **Sec. 6.** 28-A MRSA §457, as enacted by PL 1987,
26 c. 342, §23, is amended to read:

27 §457. Transfer of agency liquor store license

28 If an agency liquor store license is transferred,
29 the new licensee may operate the agency liquor store
30 after notifying the commission of the transfer until a
31 new agent is selected by the commission.

32 **Sec. 7.** 28-A MRSA §605, sub-§§5 and 8, as
33 enacted by PL 1987, c. 342, §27, are amended to read:

34 5. Incorporation of licensee's business. The

1 incorporation of a licensee's business or a change in
2 the form of incorporation of a licensee's business are
3 transfers within the meaning of this section. This
4 subsection does not apply to agency liquor stores as
5 long as the licensed agent retains control of the
6 corporate stock.

7 8. Application. This section does not apply to
8 certificate of approval holders or agency liquor
9 stores.

10 Sec. 8. 28-A MRSA §653, sub-§1, as enacted by
11 PL 1987, c. 45, Pt. A, §4, is amended to read:

12 1. Hearings. The municipal officers or, in the
13 case of unincorporated places, the county
14 commissioners of the county in which the
15 unincorporated place is located, shall hold a public
16 hearing for the consideration of applications for new
17 on-premise licenses requiring their approval and
18 applications for transfer of location of existing
19 on-premise licenses. The municipal officers or county
20 commissioners may hold a public hearing for the
21 consideration of requests for renewal of licenses.

22 A. The commission shall prepare and supply
23 application forms.

24 B. The municipal officers or the county
25 commissioners, as the case may be, shall prepare
26 public notice of any hearing held under this
27 section by causing a notice, at the applicant's
28 prepaid expense, stating the name and place of
29 hearing, to be printed:

30 (1) If the municipality where the premises
31 are situated has a daily newspaper, then in
32 that newspaper for at least 6 consecutive
33 days before the date of hearing;

34 (2) If the municipality where the premises
35 are situated has a newspaper, although not a
36 daily, then in that newspaper for 2
37 consecutive weeks before the date of hearing;
38 or

1 (3) If no newspaper is printed, then for at
2 least 6 consecutive days in a daily newspaper
3 having general circulation in the
4 municipality in which the premises are
5 situated or for 2 consecutive weeks before
6 the date of hearing in any newspaper
7 published in that county.

8 **Sec. 9. 28-A MRSA §751, sub-§1, as amended by**
9 **PL 1987, c. 342, §48, is further amended to read:**

10 1. Records to be kept. Every retail licensee
11 shall keep for 2 years complete records showing:

12 A. The date of all purchases;

13 B. The actual prices paid;

14 C. The fact that the licensee paid by cash or
15 check for all liquor bought by him at the time of
16 or before delivery of the liquor; and

17 D. The name and address of every person from whom
18 the liquor was purchased.

19 **Sec. 10. 28-A MRSA §1007, sub-§2, ¶A, as**
20 **enacted by PL 1987, c. 45, Pt. A, §4, is amended to**
21 **read:**

22 A. Full-time (one year).....\$ 125
23 135;

24 **Sec. 11. 28-A MRSA §1012, sub-§1, ¶B, as**
25 **enacted by PL 1987, c. 45, Pt. A, §4, is repealed.**

26 **Sec. 12. 28-A MRSA §1012, sub-§3, ¶A, as**
27 **enacted by PL 1987, c. 45, Pt. A, §4, is amended to**
28 **read:**

29 A. The license fee per calendar day of the event
30 or gathering is\$10.

31 **Sec. 13. 28-A MRSA §1061, sub-§4, as amended by**

1 PL 1987, c. 232 and as repealed and replaced by PL
2 1987, c. 342, §84, is repealed and the following
3 enacted in its place:

4 4. Required number of sleeping rooms. Each hotel
5 must be equipped with at least the required number of
6 adequate sleeping rooms.

7 A. The number of rooms required is based on the
8 population of the municipality in which the hotel
9 is located.

10 (1) If the hotel is located in a
11 municipality of 3,000 or less population, the
12 hotel must have at least 14 adequate sleeping
13 rooms.

14 (2) If the hotel is located in a
15 municipality of more than 3,000 but not more
16 than 7,500 population, the hotel must have at
17 least 20 adequate sleeping rooms.

18 (3) If the hotel is located in a
19 municipality of 7,500 or more population, the
20 hotel must have at least 30 adequate sleeping
21 rooms.

22 B. Any increase in population as shown by the
23 1960 and any subsequent Federal Census does not
24 affect the eligibility for license of premises
25 licensed before that census.

26 Sec. 14. 28-A MRSA §1355, as amended by PL
27 1987, c. 248 and repealed and replaced by PL 1987, c.
28 342, §107, is repealed and the following enacted in
29 its place:

30 §1355. Manufacturer licenses

31 1. Issuance of licenses. The commission may issue
32 manufacturer licenses to distill, rectify, brew or
33 bottle spirits, wine or malt liquor to distillers,
34 rectifiers, brewers, bottlers and wineries, as defined
35 in section 2, operating under federal law and federal
36 supervision.

1 1-A. Breweries. The following provisions apply to
2 the manufacturer's license issued to a brewery, other
3 than a small Maine brewery licensed under subsection 2.

4 A. The holder of a brewery license may produce
5 malt liquor in an amount exceeding 50,000 gallons
6 a year.

7 B. The holder of a brewery license may permit
8 sampling of the malt liquor product on the
9 premises:

10 (1) By employees for the purpose of quality
11 control of the product;

12 (2) By wholesalers for the purpose of
13 determining whether to carry the brewery's
14 product as a wholesale product, provided that
15 the excise tax on any product sampled is paid
16 before sampling; and

17 (3) By the public in conjunction with a tour
18 of the brewery's facilities, provided that:

19 (a) The excise tax on any product
20 sampled is paid before sampling; and

21 (b) Minors are not permitted to consume
22 any product with an alcohol content
23 greater than 1/2 of 1%.

24 C. The holder of a brewery license may sell on
25 the brewery premises during regular business hours
26 a specialty package of malt liquor produced at the
27 brewery, the volume of which is not to exceed one
28 gallon, to be consumed off the premises.

29 D. The holder of a brewery license may sell the
30 brewery's product to wholesalers.

31 E. The holder of a brewery license may be issued
32 one license under chapter 43 for the sale of
33 liquor to be consumed on the premises for a

1 location other than the brewery.

2 (1) The retail license must be held
3 exclusively by the holder of the brewery
4 license.

5 (2) This retail license authorizes the sale
6 of products of the brewery, other than the
7 specialty package under paragraph C, in
8 addition to other liquor permitted to be sold
9 under the retail license, to be consumed on
10 the premises.

11 (3) Notwithstanding section 1361, the
12 brewery licensee may sell products of the
13 brewery directly to the retail licensee under
14 this paragraph without selling to a wholesale
15 licensee. The brewery licensee shall keep and
16 maintain complete records on all sales to the
17 retail licensee.

18 (4) All records of the brewery licensee
19 shall be kept separate from the records of
20 the retail licensee.

21 2. Small Maine breweries. The following
22 conditions apply to licenses issued to small Maine
23 breweries.

24 A. A holder of a small Maine brewery license may
25 produce malt liquor containing 25% or less alcohol
26 by volume in an amount not to exceed 50,000
27 gallons per year.

28 B. A holder of a small Maine brewery license may
29 sell, on the premises during regular business
30 hours, malt liquor produced at the brewery by the
31 bottle, by the case or in bulk.

32 C. A holder of a small Maine brewery license may
33 sell or deliver the product to licensed retailers
34 and wholesalers. The licensee may sell, on the
35 premises for consumption off the premises, malt
36 liquor produced at the brewery by the bottle, case
37 or in bulk to licensed retailers, including, but

1 not limited to, off-premise retail licensees,
2 restaurants and clubs.

3 D. A holder of a small Maine brewery license may
4 apply for one license for the sale of liquor to be
5 consumed on the premises for a location other than
6 the brewery.

7 E. A holder of a small Maine brewery license may
8 list on product labels and in its advertising the
9 list of the ingredients and the product's average
10 percentage of the recommended daily allowances of
11 nutritional requirements.

12 3. Maine farm wineries. The following conditions
13 apply to Maine farm wineries.

14 A. A holder of a Maine farm winery license may
15 produce wines and sparkling wines in an amount not
16 to exceed 50,000 gallons a year.

17 B. A holder of a Maine farm winery license may
18 serve complimentary samples of wine and sell,
19 during regular business hours, wines produced at
20 the winery by the bottle, by the case or in bulk
21 on the premises of the winery to persons who are
22 not minors. A holder of a Maine farm winery
23 license may serve complimentary samples of wine on
24 Sunday after the hour of 12 noon and may sell
25 wines on Sunday after the hour of 12 noon if the
26 municipality in which the winery is located has
27 authorized the sale of wines on Sunday for
28 consumption off the premises under chapter 5.

29 C. A holder of a Maine farm winery license, upon
30 application to and approval of the commission and
31 payment of the license fee, may obtain a license
32 for one additional location other than the winery
33 licensed under this subsection. The holder of the
34 license is not required to conduct any bottling or
35 production of wine at the 2nd licensed location,
36 but may conduct all activities which are permitted
37 by this section at the winery.

38 D. A holder of a Maine farm winery license may

1 sell or deliver the product to licensed retailers
2 and wholesalers, and may sell, on the premises,
3 wine produced at the winery by the bottle, by the
4 case or in bulk to licensed retailers, including,
5 but not limited to, off-premise retail licensees,
6 restaurants and clubs.

7 Sec. 15. 28-A MRSA §1652, sub-§2, ¶A, as
8 amended by PL 1987, c. 236, and as repealed by PL
9 1987, c. 342, §116, is repealed.

10 Sec. 16. 28-A MRSA §1652, sub-§2-A is enacted
11 to read:

12 2-A. Payment due. On the 10th day of each month,
13 every brewery and winery shall pay the excise taxes
14 and premium due on malt liquor and wine which that
15 brewery or winery removed from areas required to be
16 bonded by the Federal Government.

17 Sec. 17. 28-A MRSA §2084, as enacted by PL
18 1987, c. 254, is amended to read:

19 §2084. Sales by agent of licensee to minors

20 Any agent of a licensee who sells liquor to a
21 person when he knows or when a reasonable person
22 should know that that person is a minor commits a
23 civil violation for which a forfeiture of not more
24 than \$500 may be adjudged.

25 STATEMENT OF FACT

26 This bill makes corrections and clarifications in
27 the recodification of the liquor laws. Several of the
28 changes are necessary to eliminate conflicts created
29 when the same section of the title was amended more
30 than once.

31 Sections 1 and 4 of the bill eliminate the
32 conflict created when Public Law 1987, chapter 349,
33 amended the Maine Revised Statutes, Title 28 rather
34 than Title 28-A to increase the size of the State
35 Liquor Commission from 3 members to 5 members.

1 Sections 2, 3 and 5 of the bill eliminate the
2 conflict created when Public Law 1987, chapter 54,
3 amended Title 28, as the bill was an emergency, rather
4 than Title 28-A, which was not enacted and signed at
5 the time. The change from a 2-year waiting period to
6 a one-year waiting period between votes on local
7 option questions is made in the new section, section
8 124. In the recodification, many procedures were
9 consolidated, which is why making the same change in
10 Title 28 required amendments to 2 sections, and only
11 one section needed to be amended in Title 28-A.

12 Section 6 of the bill clarifies that when the
13 holder of an agency store license sells the store, the
14 licensee may transfer the license and the new licensee
15 may operate the agency liquor store, but only until
16 the State Liquor Commission can go through the
17 procedure of selecting a new agent to serve that
18 area. This temporary transferability of the agency
19 store license is done only for the convenience of
20 customers and the commission to make sure there is no
21 unnecessary gap in service to that area.

22 Section 7 of the bill clarifies that the
23 provisions concerning the transferability of licenses
24 because of a change in the licensee also apply to
25 agency liquor store licenses, except where the
26 licensee incorporates, or changes the form of
27 incorporation, and retains control of the corporate
28 stock.

29 Section 8 of the bill clarifies that municipal
30 approval for new liquor licenses and the transfer of
31 location of existing licenses is required for only
32 on-premise retailers, not off-premise retailers. This
33 is not a change in current law, but the wording of the
34 law is unclear.

35 Section 9 of the bill inserts a word which was
36 left out in the recodification. This clarification
37 helps to explain what the records a retail licensee
38 keeps must show.

39 Section 10 of the bill corrects the license fee

1 for Class VI licenses, which are licenses for
2 retailers to sell malt liquor to be consumed off the
3 premises. The license fee structure for all
4 off-premise licenses for the sale of malt liquor and
5 wine was revised in the bill making substantive
6 changes. The license fee should have been raised to
7 \$135 to offset the decrease in the license fee for
8 ship chandlers' licenses.

9 Section 11 of the bill repeals the paragraph that
10 limited the license for incorporated civic
11 organizations to only one event per year. Last
12 session the law was changed to allow the issuance of
13 up to 5 licenses per year to incorporated civic
14 organizations. This paragraph confuses the issue.

15 Section 12 of the bill clarifies that the fee for
16 the off-premise catering license is \$10 per calendar
17 day of the event, not per event catered.

18 Section 13 of the bill eliminates a conflict
19 created when the section on hotel requirements was
20 revised twice. It also uses the 1960 Federal Census
21 as a benchmark for population requirements.

22 Section 14 of the bill makes technical corrections
23 to the section concerning manufacturers' licenses.

24 Sections 15 and 16 of the bill eliminate a
25 conflict by repealing a paragraph in the section on
26 excise taxes which was amended and repealed by 2
27 different laws. The paragraph was repealed because of
28 the unconstitutional requirements it imposed on
29 wineries. The paragraph was amended to make it clear
30 when wineries must pay the excise taxes due. Section
31 16 of the bill enacts a new subsection to state
32 clearly when excises taxes and premiums must be paid
33 by wineries as well as breweries.

34 Section 17 of the bill clarifies that a clerk or
35 agent of a licensee breaks the law prohibiting selling
36 liquor to minors when a reasonable person in that
37 situation should have known that the customer was a
38 minor. This is intended to eliminate confusion
39 indicated by some courts and attorneys.

40