

MAINE STATE LEGISLATURE

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117th MAINE LEGISLATURE

FIRST REGULAR SESSION-1995

Legislative Document

No. 753

S.P. 281

In Senate, March 7, 1995

An Act to Correct and Clarify Certain Provisions of the Liquor Laws.

Submitted by the Department of Public Safety pursuant to Joint Rule 24.
Reference to the Committee on Legal and Veterans Affairs suggested and ordered printed.

A handwritten signature in cursive script that reads "May M. Ross".

MAY M. ROSS
Secretary of the Senate

Presented by Senator STEVENS of Androscoggin.
Cosponsored by Senator: MICHAUD of Penobscot, Representatives: CLARK of Millinocket,
CLUKEY of Houlton, TRUE of Fryeburg, WHEELER of Bridgewater.

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

2
4 **Sec. 1. 5 MRSA §10051, sub-§3**, as repealed and replaced by PL 1985, c. 748, §4, is amended to read:

6 **3. Appellate jurisdiction.** The Administrative Court shall
8 have has exclusive jurisdiction to review disciplinary decisions
10 of occupational licensing boards and commissions taken pursuant
12 to Title 10, section 8003 and licensing decisions of the Bureau
14 of Liquor Enforcement taken pursuant to Title 28-A, sections
453-A, 458 and 653. The Maine Administrative Procedure Act,
chapter 375, subchapter VII, ~~shall~~ governs these
proceedings as far as applicable, substituting "Administrative
Court" for "Superior Court."

16 **Sec. 2. 28-A MRSA §62-A, sub-§5**, as enacted by PL 1993, c.
18 730, §21, is amended to read:

20 **5. Act as a review board.** Act as a review board on all
22 appeals from the decisions of municipal officers. The bureau
24 shall appoint a hearings officer to conduct appeal hearings.
Except as provided in section 805, the decision of the chief is
final. The hearings officer for the bureau is the Director of
the Liquor Licensing and Tax Division.

26 The hearings officer may conduct hearings in any licensing matter
28 pending before the bureau. The hearings officer shall, after
holding the hearing, file with the bureau all papers connected
30 with the case and report the findings to the ~~director~~ chief. The
~~director~~ chief shall render a final decision based upon the
32 record of the hearing.

34 The hearings officer may administer oaths and issue subpoenas for
witnesses and subpoenas duces tecum to compel the production of
36 books and papers relating to any license question in dispute
before the bureau or to any matter involved in a hearing.
38 Witness fees in all proceedings are the same as for witnesses
before the Superior Court and must be paid by the bureau, except
40 that, notwithstanding Title 16, section 253, the bureau is not
required to pay the fees before the travel and attendance occur;

42 **Sec. 3. 28-A MRSA §161-B** is enacted to read:

44 **§161-B. Local approval of bottle clubs**

46 **1. Application to local authorities.** Prior to registration
48 with the commission under section 161, an owner or operator of a
bottle club must apply to the municipal officers or, in the case
50 of unincorporated places, the county commissioners of the county
in which the unincorporated place is located, for permission to

2 operate the bottle club or for transfer of location of an
3 existing bottle club. The commission shall prepare and supply
4 application forms.

6 2. Hearings. The municipal officers or, in the case of
7 unincorporated places, the county commissioners of the county in
8 which the unincorporated place is located shall hold a public
9 hearing for the consideration of applications for new bottle
10 clubs and applications for transfer of location of existing
11 bottle clubs. The municipal officers or the county commissioners
12 shall provide public notice of a hearing held under this
13 section. The notice, at the applicant's prepaid expense, must
14 state the name and place of the hearing and must appear for at
15 least 6 consecutive days before the date of the hearing in a
16 daily newspaper having general circulation in the municipality or
17 unincorporated place where the bottle club is located or for 2
18 consecutive weeks before the hearing date in a weekly newspaper
19 having general circulation in the municipality or unincorporated
20 place where the bottle club is located.

22 3. Findings. In granting or denying an application, the
23 municipal officers or the county commissioners shall indicate the
24 reasons for their decision and provide a copy to the applicant.
25 An application may be denied on one or more of the following
26 grounds:

28 A. Conviction of the applicant of any Class A, Class B or
29 Class C crime;

30 B. Noncompliance of the bottle club with any local zoning
31 ordinance or other land use ordinance not related directly
32 to liquor control;

34 C. Conditions of record such as waste disposal violations,
35 health or safety violations or repeated parking or traffic
36 violations on or in the vicinity of the bottle club and
37 caused by persons patronizing or employed by the bottle club
38 or other such conditions that unreasonably disturb,
39 interfere with or affect the ability of persons or
40 businesses residing or located in the vicinity of the bottle
41 club to use their property in a reasonable manner;

42 D. Repeated incidents of record of breaches of the peace,
43 disorderly conduct, vandalism or other violations of law at
44 or in the vicinity of the bottle club and caused by persons
45 patronizing or employed by the bottle club;

46 E. A violation of any provision of this Title;
48

2 F. In the case of corporate applicants, ineligibility or
4 disqualification under section 601 of any officer, director
6 or stockholder of the corporation; and

8 G. Location of the bottle club at any amusement area, beach
10 or other area designed primarily for use by minors.

12 4. Appeal to commission. Any applicant aggrieved by the
14 decision of the municipal officers or county commissioners under
16 this section may appeal to the commission. The commission shall
18 hold a public hearing in the city, town or unincorporated place
20 where the premises are situated. In acting on such an appeal,
22 the commission may consider all of the requirements referred to
24 in subsection 3.

26 A. If the decision appealed is approval of the application,
28 the commission may reverse the decision if it was arbitrary
30 or based on an erroneous finding.

32 B. If the decision appealed is denial of the application,
34 the commission may reverse the decision and register the
36 bottle club under section 161 only if it finds by clear and
38 convincing evidence that the decision was without
40 justifiable cause.

42 5. Appeal to Superior Court. Any person or governmental
44 entity aggrieved by a commission decision under this section may
46 appeal the decision to the Superior Court.

48 **Sec. 4. 28-A MRSA §162, as enacted by PL 1987, c. 342, §19,**
is repealed.

Sec. 5. 28-A MRSA §653, sub-§1, ¶B, as amended by PL 1987, c.
623, §8, is further amended to read:

 B. The municipal officers or the county commissioners, as
the case may be, shall provide public notice of any hearing
held under this section by causing a notice, at the
applicant's prepaid expense, stating the name and place of
hearing, to appear on at least ~~6~~ 3 consecutive days before
the date of hearing in a daily newspaper having general
circulation in the municipality where the premises are
located or ~~on 2 consecutive weeks~~ one week before the date
of the hearing in a weekly newspaper having general
circulation in the municipality where the premises are
located.

Sec. 6. 28-A MRSA §653, sub-§1, ¶¶C and D are enacted to read:

2 C. If the municipal officers or the county commissioners,
4 as the case may be, fail to take final action on an
6 application for a new on-premise license, for transfer of
8 the location of an existing on-premise license or for
10 renewal of an on-premise license within 60 days of the
12 filing of an application, the application is deemed approved
14 and ready for action by the bureau. For purposes of this
paragraph, the date of filing of the application is the date
the application is received by the municipal officers or
county commissioners. This paragraph applies to all
applications pending before municipal officers or county
commissioners as of the effective date of this paragraph as
well as all applications filed on or after the effective
date of this paragraph.

16 D. If an application is approved by the municipal officers
18 or the county commissioners but the bureau finds, after
20 inspection of the premises and the records of the applicant,
22 that the applicant does not qualify for the class of license
24 applied for, the bureau shall notify the applicant of that
26 fact in writing. The bureau shall give the applicant 30
28 days to file an amended application for the appropriate
30 class of license, accompanied by any additional license fee,
with the municipal officers or county commissioners, as the
case may be. If the applicant fails to file an amended
application within 30 days, the original application must be
denied by the bureau. The bureau shall notify the applicant
in writing of its decision to deny the application including
the reasons for the denial and the rights of appeal of the
applicant.

32 **Sec. 7. 28-A MRSA §653, sub-§3,** as amended by PL 1993, c. 730,
34 §27, is further amended to read:

36 **3. Appeal to bureau.** Any applicant aggrieved by the
38 decision of the municipal officers or county commissioners under
40 this section may appeal to the bureau within 15 days of the
42 receipt of the written decision of the municipal officers or
44 county commissioners. The bureau shall hold a public hearing in
the city, town or unincorporated place where the premises are
situated. In acting on such an appeal, the bureau may consider
all licensure requirements and findings referred to in subsection
2.

46 **B.** If the decision appealed from is an application denial,
48 the bureau may issue the license only if it finds by clear
and convincing evidence that the decision was without
justifiable cause.

2 **Sec. 8. 28-A MRSA §653, sub-§5**, as amended by PL 1993, c. 730,
§27, is further amended to read:

4 **5. Appeal to Administrative Court.** Any person or
governmental entity aggrieved by a bureau decision under this
6 section may appeal the decision to the Administrative Court
within 30 days of receipt of the written decision of the bureau.

8
An applicant who files an appeal or who has an appeal pending
10 shall pay the annual license fee the applicant would otherwise
pay. Upon resolution of the appeal, if an applicant's license
12 renewal is denied, the bureau shall refund the applicant the
prorated amount of the unused license fee.

14 **Sec. 9. 28-A MRSA §2519, sub-§2, ¶B**, as enacted by PL 1987, c.
16 45, Pt. A, §4, is amended to read:

18 B. A ~~representative of the Bureau of Liquor Enforcement~~
liquor enforcement officer;

20

22 **STATEMENT OF FACT**

24 The bill corrects errors created by enactment of Public Law
1993, chapter 730. A section referring to bottle clubs that was
26 inadvertently repealed is reenacted as the Maine Revised
Statutes, Title 28-A, section 161-B and the section that should
28 have been repealed, Title 28-A, section 162, is repealed.
References to the Director of the Bureau of Liquor Enforcement
30 are changed to chief.

32 The Administrative Court is given jurisdiction over appeals
from licensing decisions rendered by the Bureau of Liquor
34 Enforcement.

36 The section regarding approval of new and renewal on-premise
licenses and transfer of location requests is amended to reduce
38 the legal notice publication requirements, allow for automatic
approval if the municipal officers or county commissioners fail
40 to act on an application within 60 days and allow for review by
the Bureau of Liquor Enforcement prior to final approval.

42

44 The reference to a representative of the Bureau of Liquor
Enforcement is changed to liquor enforcement officer under the
membership of the Server Education Advisory Committee.

46