

# MAINE STATE LEGISLATURE

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# 117th MAINE LEGISLATURE

## FIRST REGULAR SESSION-1995

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Legislative Document

No. 1212

S.P. 445

In Senate, April 5, 1995

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### An Act to Eliminate State Participation in the Retail Liquor Business.

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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 BEGLEY of Lincoln.  
Cosponsored by Senator: STEVENS of Androscoggin, Representative: LOVETT of  
Scarborough.

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

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**Sec. 1. 28-A MRSA §2, sub-§1**, as enacted by PL 1987, c. 45, Pt. A, §4, is amended to read:

**1. Liquor store.** "~~Agency--liquor~~ Liquor store" means a person who is licensed by the commission to sell spirits to be consumed off the premises.

**Sec. 2. 28-A MRSA §2, sub-§32**, as amended by PL 1993, c. 462, §4, is repealed.

**Sec. 3. 28-A MRSA §62, sub-§1**, as enacted by PL 1987, c. 45, Pt. A, §4, is amended to read:

**1. Supervision of the Bureau of Alcoholic Beverages.** To supervise and direct the Director of the Bureau of Alcoholic Beverages and Lottery Operations relating to all phases of the merchandising of liquor ~~through--state--liquor--stores--and--agency liquor--stores; and~~

**Sec. 4. 28-A MRSA §62, sub-§5**, as amended by PL 1993, c. 730, §17, is further amended to read:

**5. Spirits for sale.** To buy and have in its possession spirits for sale to ~~the--public~~ retail licensees. The commission shall buy spirits directly and not through the State Purchasing Agent. All spirits must be free from adulteration and misbranding; ~~and.~~

**Sec. 5. 28-A MRSA §62, sub-§6**, as amended by PL 1993, c. 730, §17, is repealed.

**Sec. 6. 28-A MRSA §123, sub-§2**, as amended by PL 1991, c. 95, §1, is further amended to read:

**2. Sale of liquor for consumption off the premises on days other than Sunday.** Shall this municipality authorize the State Liquor and Lottery Commission to permit the operation of state liquor stores ~~and--agency--liquor--stores~~ on days other than Sunday?

**Sec. 7. 28-A MRSA §123, sub-§4**, as amended by PL 1991, c. 95, §3, is further amended to read:

**4. Sale of liquor for consumption off the premises on Sundays.** Shall this municipality authorize the State Liquor and Lottery Commission to permit the operation of state liquor stores ~~and--agency--liquor--stores~~ on Sundays?

2           **Sec. 8. 28-A MRSA §351, sub-§1**, as amended by PL 1987, c. 342,  
§20, is further amended to read:

4           **1. Liquor store may not be located within 300 feet of**  
**school or church.** The commission may not establish a state  
6 liquor store ~~or an agency liquor store~~ within 300 feet of any  
public or private school, church, chapel or parish house.

8           A. The commission, after holding a public hearing near the  
10 proposed location, may locate ~~an agency~~ a liquor store  
within 300 feet of a church, chapel, parish house or  
12 post-secondary school when the location has the unanimous  
approval of the members of the commission.

14           **Sec. 9. 28-A MRSA §353**, as amended by PL 1993, c. 266, §6, is  
16 further amended to read:

18           **§353. Business hours**

20           ~~State liquor stores and agency liquor~~ Liquor stores may be  
open for the sale and delivery of liquor between the hours of 6  
22 a.m. and 1 a.m. in municipalities and unincorporated places that  
have voted in favor of the operation of ~~state~~ liquor stores under  
24 local option provisions. Notwithstanding any local option  
decisions to the contrary, ~~state~~ liquor stores ~~and agency liquor~~  
26 ~~stores~~ may be open from noon Sunday to 1 a.m. the next day. The  
~~commission shall establish the hours of operation of each state~~  
28 ~~liquor store.~~

30           **Sec. 10. 28-A MRSA §§354 and 355**, as enacted by PL 1987, c.  
45, Pt. A, §4, are amended to read:

32           **§354. Sales to minors or intoxicated persons**

34           ~~No state~~ A liquor store ~~or agency liquor store~~ may not sell  
36 liquor to a minor or to a visibly intoxicated person.

38           **§355. Closed in cases of riots; hurricanes; flood**

40           The Governor or the commission may, in cases of riots,  
hurricanes and floods, order any or all state liquor stores ~~or~~  
42 ~~agency liquor stores~~ to close.

44           **Sec. 11. 28-A MRSA §401-A, sub-§§1, 2 and 3**, as enacted by PL  
1991, c. 591, Pt. Z, §2, are repealed.

46           **Sec. 12. 28-A MRSA §401-A, sub-§4**, as enacted by PL 1991, c.  
48 591, Pt. Z, §2, is amended to read:

2           **4. Commission may lease and equip facilities; location.**  
3     The commission may lease and equip, in the name of the State,  
4     stores, warehouses and other merchandising facilities for the  
5     sale wholesale marketing of liquor to retail licensees that are  
6     necessary to carry out the purposes of this Title. The  
7     commission shall designate where the facilities will be located,  
8     in accordance with this section.

9  
10           **Sec. 13. 28-A MRSA §402**, as amended by PL 1991, c. 591, Pt.  
11     Z, §3, is repealed.

12           **Sec. 14. 28-A MRSA §403**, as amended by PL 1991, c. 780, Pt.  
13     Y, §129, is repealed.

14           **Sec. 15. 28-A MRSA §451**, as amended by PL 1993, c. 509, §2,  
15     is further amended to read:

16  
17           **§451. Liquor stores**

18           The Bureau of Liquor Enforcement may license and regulate  
19     persons as agency liquor stores on an annual or temporary basis  
20     for the purposes of selling liquor in sealed bottles, containers  
21     or original packages to be consumed off the premises.

22  
23           **Sec. 16. 28-A MRSA §452**, as enacted by PL 1987, c. 45, Pt. A,  
24     §4, is amended to read:

25           **§452. Rules governing liquor stores**

26           The commission shall adopt rules for the selection and  
27     operation of agency liquor stores. These rules include, but are  
28     not limited to, the following:

29           **1. Location.** Location of agency stores, subject to section  
30     453;

31           **2. Storage facilities.** Storage facilities for liquor;

32           **3. Handling and sale.** The handling and sale of liquor;

33           **4. Hours.** The hours of operation;

34           **5. Separation from other merchandise.** The separation of  
35     liquor from other merchandise in the agency liquor stores;

36           **6. Size and nature of facilities.** The size and nature of  
37     the facilities of agency liquor stores for different quantities  
38     of liquor to be sold; and  
39

2 7. Other. Any other rules necessary to carry out the  
purposes of this chapter, except that the commission has no  
4 authority to regulate retail prices set by liquor stores.

6 Sec. 17. 28-A MRSA §453, as amended by PL 1993, c. 380, §§1  
to 5 and affected by §7, is further amended to read:

8 **§453. Location of stores**

10 1. Location requirements. The commission may license an  
agency a liquor store only when the following requirements are  
12 met.

14 A. The proposed agency liquor store is located in a  
municipality or unincorporated place ~~which~~ that has voted in  
16 favor of the operation of state liquor stores under local  
option provisions.

18 C. The proposed agency liquor store is not within 3.5 miles  
20 of an existing state liquor store ~~or an existing agency~~  
~~liquor store that was licensed before May 1, 1993.~~

22 D. If a state liquor store closes, the commission may grant  
24 more than one agency store license in a municipality when  
the commission considers it appropriate. ~~Agency liquor~~  
26 ~~stores licensed before May 1, 1993 that replace closed state~~  
~~liquor stores are exempt from the distance requirement in~~  
28 ~~paragraph C.~~

30 2. Replacement of liquor stores. The commission may not  
replace a ~~state or existing agency~~ liquor store that closes with  
32 ~~an agency~~ another liquor store if there is another ~~state or~~  
~~existing agency~~ liquor store within 3.5 miles. This subsection  
34 does not prevent the commission from locating a replacement  
agency liquor store within 3.5 miles of another replacement  
36 agency liquor store for the same town.

38 ~~2-A. Replacement of state liquor stores closed in fiscal~~  
~~year 1991-92. The commission may replace a state liquor store~~  
40 ~~closed after July 1, 1990 with 3 agency liquor stores if:~~

42 ~~A. The agency stores are within a 10-mile radius of the~~  
~~location of the closed state liquor store; and~~

44 ~~B. The commission does not issue to a person or corporation~~  
46 ~~more than 2 of the 3 licenses issued to replace a state~~  
~~liquor store. For purposes of this restriction, each~~  
48 ~~partner of a partnership, each corporation that owns an~~  
~~interest in another corporation and each person who owns 20%~~  
50 ~~or more of the shares or other interest in a corporation is~~

2           ~~deemed to own a license granted to the partnership or~~  
3           ~~corporation.~~

4           **Sec. 18. 28-A MRSA §453-A**, as amended by PL 1993, c. 509,  
5           §§3 and 4, is further amended to read:

6           **§453-A. Issuance of liquor store license**

7           The commission shall issue a license for ~~an agency~~ a liquor  
8           store within a municipality or unincorporated place by the  
9           following procedure.

10           ~~1. Bidding to replace state liquor stores. The Bureau of~~  
11           ~~Liquor Enforcement shall solicit bids from the general public for~~  
12           ~~each agency liquor store license to be issued. For an agency~~  
13           ~~license to replace an existing state store, the Bureau of Liquor~~  
14           ~~Enforcement may not accept a bid lower than 1% of the taxable~~  
15           ~~retail sales of the store being replaced, determined for the~~  
16           ~~fiscal year that ended immediately before the closure of the~~  
17           ~~store.~~

18           **1-A. Bidding to establish or replace liquor stores.** The  
19           Bureau of Liquor Enforcement shall solicit bids from the general  
20           public for each ~~agency~~ a liquor store license to be issued. For  
21           licenses to establish ~~an agency~~ a liquor store or replace an  
22           existing ~~agency~~ a liquor store, the Bureau of Liquor Enforcement  
23           may not accept a bid lower than \$2,000.

24           **2. Public notice and solicitation of bids.** The commission  
25           shall, in accordance with the Maine Administrative Procedure Act,  
26           give public notice that ~~an agency~~ a liquor store may be  
27           established in a particular municipality or unincorporated  
28           place. The commission shall summarize in the public notice the  
29           bidding requirements for the ~~agency~~ a store license, including the  
30           minimum bid required. The commission shall request all parties  
31           in the municipality or unincorporated place interested in bidding  
32           on a license to establish ~~an agency~~ a liquor store there to  
33           submit bids and applications to the commission.

34           **3. Information to applicants.** The commission shall provide  
35           all applicants with the necessary information for the  
36           establishment of ~~an agency~~ a liquor store.

37           **4. Notice to municipality.** Upon receipt of all  
38           applications for ~~an agency~~ a liquor store license in a  
39           municipality and at least 15 days before the final selection of  
40           an applicant or applicants by the commission, the commission  
41           shall notify the municipal officers of that municipality of the  
42           proposed location of each applicant.

43

2           **5. Licensing decisions.** The commission shall conduct an  
3 investigation to determine the feasibility of the location and  
4 type of facility for the agency liquor store and shall issue the  
5 license to one or more of the applicants, taking into  
6 consideration the bid offered and any other factors the  
7 commission considers appropriate.

8           **5-A. Hearings on applications.** The commission, in  
9 accordance with the provisions of the Maine Administrative  
10 Procedure Act, shall conduct a hearing to take testimony,  
11 consider comment and deliberate on applications. In addition to  
12 giving any notice required by the Maine Administrative Procedure  
13 Act, the commission shall give notice of public hearing in  
14 writing to any existing agency liquor stores located within 5  
15 miles of the applicant's proposed store location by regular mail  
16 at least 15 days prior to the hearing.

17           **6. Denial of application.** The commission shall notify any  
18 applicant denied a license of the reasons for the denial by  
19 certified mail to the mailing address given by the applicant in  
20 the application for an agency a liquor store license.  
21

22           **7. Aggrieved applicants.** Any applicant aggrieved by a  
23 decision made by the commission may appeal the decision by filing  
24 a complaint with the Administrative Court and serving a copy of  
25 the complaint upon the commission. The complaint must be filed  
26 and served within 15 days of the mailing of the commission's  
27 decision.  
28

29           **8. Measurement of distance.** All distances described in  
30 this section must be determined by the most reasonable direct  
31 route of travel.  
32

33           **Sec. 19. 28-A MRSA §454,** as enacted by PL 1987, c. 45, Pt. A,  
34 §4, is repealed.  
35

36           **Sec. 20. 28-A MRSA §§454-A to 454-E** are enacted to read:  
37

38           **§454-A. Applications**  
39

40           Each applicant for a liquor store license must file an  
41 application in the form prescribed by the commission. The  
42 application is in addition to any other application filed with  
43 the Bureau of Alcoholic Beverages concerning other liquor  
44 licensing privileges.  
45

46           **§454-B. Eligibility**  
47

48           **1. Qualification for a license.** The commission may issue a  
49 license to operate a liquor store to an applicant only upon a  
50



2 finding that the applicant meets the eligibility requirements in  
4 section 601, and that the applicant is of sound judgment and good  
6 character, subscribes to sound business principles and meets all  
8 requirements of financial responsibility. For purposes of this  
10 chapter, unless otherwise indicated, the term "applicant" means:

12 A. For an applicant who is a natural person, the individual;

14 B. For an applicant that is a partnership, each person with  
16 an interest in the partnership; and

18 C. For an applicant that is a corporation, the officers or  
20 directors of the corporation and each shareholder with a  
22 controlling interest in the corporation. In the case of a  
24 publicly owned corporation, "controlling interest" means  
26 direct or indirect ownership of more than 50% of the shares  
28 of the corporation.

30 2. Denial of license. Finding any of the following is a  
32 ground for license denial:

34 A. Conviction of a Class A, Class B or Class C crime, or  
36 any crime of moral turpitude; or

38 B. Conviction of any local, state or federal tax law  
40 violation.

42 **§454-C. Bond required**

44 A liquor store licensee must furnish a bond with a surety to  
46 the commission before conducting any business under the license.  
48 The amount of the bond must be determined by the commission, but  
may not exceed \$100,000. The purpose of the bond is to insure  
the licensee's financial responsibility and to ensure 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 is required, as long as the bond  
covers all of the licensed operations of the licensee.

42 **§454-D. Issuance of licenses**

44 Licenses for sale and distribution of spirits in liquor  
46 stores may be issued by the commission upon application and under  
48 such rules as the commission may prescribe. A person licensed  
under this section may not sell liquor for consumption on the  
premises where sold.

2 A license issued by the commission applies only to the  
applicant and the premises designated on the application, unless  
4 transferred pursuant to section 605, subsection 1.

6 **§454-E. Fees**

8 The fee for a full-year license for the sale of liquor in a  
liquor store is \$1,200. The fee for a seasonal license for the  
10 sale of liquor in a liquor store is \$600. The fee for a  
temporary license for the sale of liquor in a liquor store is  
12 \$100 per month for the license period.

14 **Sec. 21. 28-A MRSA 455**, as amended by PL 1991, c. 376, §51,  
is further amended to read:

16 **§455. Liquor for liquor stores**

18 ~~Agency-liquor~~ Liquor stores must buy their liquor from the  
20 commission under section 606.

22 **Sec. 22. 28-A MRSA §606, sub-§1**, as repealed and replaced by  
PL 1993, c. 276, §2, is amended to read:

24 **1. Purchase of liquor.** Subject to the restrictions  
26 provided in subsection 1-A, a person licensed to sell spirits  
must purchase liquor from ~~a state or agency liquor store~~ the  
28 commission. The commission shall sell liquor to licensees at  
uniform prices set by the commission and approved by the  
30 Governor. This subsection does not apply to public service  
corporations operating interstate.

32 **Sec. 23. 28-A MRSA §606, sub-§1-A**, as repealed and replaced by  
PL 1993, c. 276, §3, is amended to read:

34 **1-A. On-premises licensees; purchase from liquor store.** A  
36 person licensed to sell spirits for consumption on the premises  
may purchase spirits from ~~an agency~~ a liquor store only in  
38 accordance with this subsection.

40 ~~A. The sale price of spirits sold to a licensee under this~~  
~~subsection must equal the price for which a licensee would~~  
42 ~~purchase liquor at a state store.~~

44 B. Upon completion of a transaction, the ~~agency~~ liquor  
store and the on-premise licensee shall each retain a copy  
46 of the licensee order form.

48 **Sec. 24. 28-A MRSA §606, sub-§1-B**, as enacted by PL 1991, c.  
622, Pt. K, §8, is amended to read:

50

1-B. **Price of sales to liquor stores.** The commission shall  
2 sell spirits to agency liquor stores for 92% of the retail sales  
price set in accordance with chapters 65 and 67.

4  
6 **Sec. 25. 28-A MRSA §606, sub-§4,** as amended by PL 1987, c.  
342, §29, is repealed.

8 **Sec. 26. 28-A MRSA §1651, sub-§2, ¶C,** as amended by PL 1991,  
c. 780, Pt. Y, §130, is further amended to read:

10 C. Notwithstanding the other provisions of this section,  
12 with approval of the Commissioner of Administrative and  
Financial Services, the commission may reduce the price of  
14 discontinued items of liquor. The reduced price may not be  
less than the actual cost of the discontinued liquor items  
16 and the commission may not discontinue an item for a period  
of at least 6 months after that item has been listed-~~and on~~  
18 ~~sale-in-state-liquor-stores.~~

20 **Sec. 27. 28-A MRSA §1651, sub-§2, ¶E,** as enacted by PL 1987,  
c. 45, Pt. A, §4, is repealed.

22 **Sec. 28. 28-A MRSA §2075, sub-§2,** as amended by PL 1993, c.  
24 730, §47, is further amended to read:

26 **2. Transportation of spirits within the State.** No A person  
may not transport or cause to be transported any spirits within  
28 the State in a quantity greater than 4 quarts unless the spirits  
were purchased from ~~a state or agency~~ the commission or a liquor  
30 store licensed in this State.

32 **Sec. 29. 28-A MRSA §2076, sub-§1,** as enacted by PL 1987, c.  
45, Pt. A, §4, is amended to read:

34 **1. Delivery of liquor.** Except with the commission's  
36 written permission, no a person may not knowingly transport to or  
cause to be delivered to any person other than the commission any  
38 spirits not purchased from a ~~state~~ liquor store or the commission.

40 **Sec. 30. 28-A MRSA §2229, sub-§2,** as enacted by PL 1987, c.  
42 45, Pt. A, §4, is amended to read:

44 **2. Sale of forfeited liquor by commission.** Except as  
provided in paragraph A, the commission shall sell forfeited  
46 liquor ~~in-the-state~~ to liquor stores throughout the State.

48 A. If any liquor is determined by the court to be unfit or  
unsatisfactory for consumption or retail sale, the court may  
order the liquor to be destroyed by any officer competent to

