

MAINE STATE LEGISLATURE

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DECEMBER SPECIAL SESSION

E I G H T Y - S I X T H L E G I S L A T U R E

Legislative Document

No. 49

H. P. 34

House of Representatives, Dec. 5, 1933.

Referred to Committee on Temperance. 1,000 copies ordered printed.
Sent up for concurrence.

HARVEY R. PEASE, Clerk.

Presented by Mr. Hescock of Monson.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED AND
THIRTY-THREE

AN ACT Regulating the Sale of Spirituous and Vinous Liquors, for
Medicinal and Mechanical Purposes and the Arts.

Emergency Preamble. Whereas, there are now no laws providing for the sale and keeping for sale of liquors, not including cider, for medicinal and mechanical purposes and the arts in accordance with the provisions of article XXVI of the Constitution of the State of Maine; and

Whereas, this act is hereby declared to be an emergency within the meaning of section 16 of article XXXI of the constitution of the state of Maine, and immediately necessary for the preservation of the public peace, health and safety, now therefore

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

Sec. 1. Definitions.

(1) The word "board" means Maine Board of Pharmacy.

(2) The word "medicine" means a drug or preparation of drugs for use as a curative or remedial substance.

(3) The word "pharmacy" means the place licensed by the board in which drugs, chemicals, medicines, prescriptions, or poisons are compounded, dispensed or retailed.

(4) The word "poison" means any drug, chemical or preparation liable to be destructive to human life in quantities of 60 grains or less.

(5) The word "supervision" means under the direct charge or supervision, and does not contemplate any continued absence of such supervision.

(6) The words "apothecary" or "pharmacist" or "druggist," means a person who prepares, dispenses, or sells drugs or medicines and authorized and licensed by the Maine board of pharmacy to conduct the business of an apothecary store.

(7) The words "apothecary store" or "pharmacy" or "drug store" means a place where drugs or chemicals or medicines, or physician's prescriptions, are compounded, dispensed or sold, and licensed and registered by the Maine board of pharmacy, and the principle function of which is to compound physician's prescriptions and to manufacture and sell drugs, medicines, poisons, and allied products.

(8) The words "Maine control commission" means the commission appointed by the governor with the advice and consent of the council, for the control of spirituous liquors, and wines.

(9) The word "person" may include a body corporate.

(10) The word "commission" means the Maine control commission.

(11) The words "sale at wholesale" means a sale to any authorized person for purposes of resale.

(12) The words "sale at retail" means a sale to a consumer or to any person for medicinal or mechanical purposes and the arts, and not for resale.

(13) The word "licensee" means any person who has been granted a license by the commission.

(14) The words "wholesale business" shall mean to the extent to which the products are sold for resale, to a retail licensee.

(15) The words "retail business" shall mean to the extent to which such products are sold by a retail licensee to be used for medicinal and mechanical purposes and the arts by the purchaser.

(16) The word "wine" means all fermented alcoholic product made from fruits, flowers, herbs or vegetables, other than cider made from apples, and containing not more than 24% of alcohol by volume.

(17) The words "spirituous liquor", "liquor", shall mean all distilled liquors or rectified spirits; vinous, fermented, or by whatever name called, containing more than 1% by volume at 60° Fahrenheit.

(18) The words "not to exceed 1 quart" may mean either apothecaries' or wine measure, or Imperial measure, as defined in the United States Dispensatory.

Sec. 2. Administration. There shall be a commission to be known as the Maine control commission, consisting of 3 members to be appointed by the governor, with the advice and consent of the council, provided how-

ever that the present members of the state licensing board shall be members of the Maine control commission for the expiration of their present terms. Vacancies occurring shall be filled in the same manner as described above by the governor for the balance of the unexpired term. The governor shall designate 1 of the members of this commission as chairman, except that the present chairman of the state licensing board shall be chairman of the Maine control commission for the remainder of his term thereon. The principle office of this commission shall be in the state house and they shall be furnished with sufficient deputies, clerks, inspectors, or stenographers as may be approved by the governor and council and their compensation to be fixed by the governor and council.

Sec. 3. Eligibility for appointment. No commissioner, or any employee of the commission, may, directly or indirectly, individually or as a member of a partnership, or as a shareholder of a corporation, have any interest whatsoever in dealing in, or in the manufacture of, spirituous liquors, nor receive any commission or profit whatsoever from, nor have any interest whatsoever in the purchases or sales made by the persons authorized by this act to purchase or sell spirituous liquors or wines, either at wholesale or at retail. No provision of this section shall prevent any such commissioner or employee from purchasing and keeping in his possession spirituous liquors or wines, purchased at retail for medicinal and mechanical purposes and the arts.

Sec. 4. Bonds. The commissioners and their subordinate employees who handle any state moneys shall give bond to the state as may be required by the governor and council.

Sec. 5. Licenses. A license shall be the right to do business for 1 year after the issuance, subject to the conditions under which said license is issued, and is in no sense a contract or property right, nor is it transferable or assignable to any other person, nor to any other premises than those specified therein, but said license shall cease upon the death of a person or the voluntary or involuntary dissolution of a corporation or a partnership, but it shall cease upon the death of the licensee and any remaining stock of spirituous liquors shall be impounded or sealed under any directions that may hereinafter be issued by the commission.

Sec. 6. Classes of permits. Permits shall be subject to the rules and regulations of the commission and the provisions of this act and shall be of the following classes: (a) wholesale, (b) retail.

Sec. 7. Wholesale license. The wholesale license shall allow the wholesale sale of spirituous liquors or wines to licensees in this state and without the state as may be permitted by law or by any subsequent rules and regulations from the commission. Wholesalers shall pay an annual license

fee of \$500 under such rules and regulations as may be hereinafter prescribed by the commission and shall be assigned a license number by the commission.

Sec. 8. Retail license. A retail license may be issued by the commission, in its discretion, provided the applicant shall have presented to the commission a certificate from the board of pharmacy signed by its secretary, that said applicant is a registered pharmacist in Maine or duly licensed to conduct a pharmacy in Maine, and said certificate shall certify that the applicant is fit and duly qualified to dispense spirituous liquor or wine for medicinal and mechanical and the arts.

No pharmacist's license shall be issued covering a new pharmacy or a new location of an old pharmacy unless said applicant shall be a registered pharmacist in Maine, licensed in Maine, and shall have been a legal resident of Maine for at least 3 consecutive years next prior to the filing of his application, and provided further that the commission and board of pharmacy, by a majority vote of its members, shall have indicated that a pharmacy at such location is required for public convenience and necessity.

A registered pharmacist who owns stock of the actual value of at least \$500 in a corporation which has been incorporated for the purpose of carrying on a pharmacy, licensed by the Maine board of pharmacy, and who conducts in person the business of a store of such corporation, shall be considered as actively engaged in business on his own account and shall be entitled to make application for a license subject to the provisions of this section.

A pharmacist's permit shall allow the use of spirituous liquors or wines for the compounding of physician's prescriptions, or the manufacture of all U. S. P. or N. F. preparations and all other medicinal preparations.

A pharmacist retail license fee shall be \$50 per year.

The licensee shall be assigned a license number to conduct a retail business under such rules and regulations as defined in this act and such additional rules and regulations as may be prescribed by the commission, and approved by the governor and council.

No sales at retail shall be permitted on Sundays, holidays or election days, and no sales shall be made before 8 o'clock ante meridian and after 11 o'clock post meridian.

Sec. 9. Sales on prescription. A pharmacist's license shall allow the filling of a prescription on any day and at any time and without regard to the vote of any city or town prohibiting the sale of such liquors, provided however that such prescription shall include the name and address of the person for whom it is prescribed, and shall be signed with the full name of the physician issuing such prescription. Such prescription shall be filled

only once and the person making a sale on such prescription shall sign his initials and the date of the sale or delivery of such liquor and shall keep such prescription on file and available at all reasonable times to the inspection of the commission or any of its authorized agents.

Sec. 10. Penalty. Every pharmacist who shall, by himself, servant, agent or employee, sell spirituous liquors or wine in violation of the provisions of this act, shall, upon conviction in any court and also during pendency of an appeal from a conviction, forfeit his pharmacist's license for the sale of such liquor, or any rule or regulation made thereunder, and in addition thereto, shall be punished by a fine of not more than \$500 or by imprisonment for not more than 6 months.

Sec. 11. Second application. A person whose application has been denied by the commission on the ground that he is not a suitable person, shall not make a second application for 1 year thereafter; and no second application shall be made by any person for a license for any place for which the commission has already refused within 1 year prior thereto a license on the ground that such place is not a suitable place for the sale of spirituous liquor. Any license granted upon second application made in violation of this section shall be null and void.

Sec. 12. License void. A retail license issued by the commission under the provisions of section 8 shall become null and void without any process or decree, if the registered pharmacist to whom it has been granted ceases to conduct his business in person and on his own account, or upon the revocation of his certificate of registration as a pharmacist unless the registered pharmacist has been unable to so conduct his business or has died, and his business is continued by his wife, widow, executor, or administrator under the supervision of another registered pharmacist under the expressed approval of the commission.

Sec. 13. Revocation of licenses. The commission may of its own motion revoke any license for the sale of spirituous liquors upon reasonable cause found after due notice and hearing. The revocation, unless successfully appealed from, shall prevent the granting of any license to any other person at the same location for a period of 1 calendar year thereafter.

(a) The commission may, pending a speedy hearing, summarily suspend a license to sell spirituous liquors or wines in its discretion, and may order the license to be surrendered to it, whenever it has reason to believe that the holder thereof is an improper person to have a license.

(b) Notice of hearing held by the commission under this chapter shall state the place, day, and hour, thereof, and warn the licensee that he may then and there appear in person or by counsel to show cause why his license should not be suspended or revoked; service of such notice shall be

sufficient, if sent by registered mail to the address given by the licensee, 5 days at least before the day set for the hearing.

Sec. 14. Appeal. If any person is aggrieved by the decision of the commission in revoking or suspending a license, he may, within 10 days thereafter, appeal to any justice of the superior court, by presenting to him a petition thereof, in term time or vacation. Such justice shall fix a time and place for hearing, which may be in vacation, and cause notice thereof to be given to the commission, and after hearing, such justice may affirm or reverse the decision of the commission, and the decision of such justice shall be final. Pending judgment of the court, the decision of the commission in revoking or suspending any license shall remain in full force and effect.

Sec. 15. Commission to direct disposal of stock, upon death of licensee. In the event of the death of a licensee any remaining stock of spirituous liquors or wines shall be impounded or sealed under any directions that may hereinafter be issued by the commission.

Sec. 16. License to be hung in plain view. Every wholesale and retail license which may hereinafter be granted by the commission shall be on such form as may hereinafter be prescribed by the commission and furnished to licensee without cost. Said licensee shall cause his license to be framed under glass and hung in plain view in a conspicuous place in any room where the sales are permitted to be carried on.

Sec. 17. Regulations to be printed. Every subsequent regulation promulgated by the commission and approved by the governor and council shall be printed in full in 1 issue of a newspaper published in each county, if any, or those having a general circulation therein, and from and after the date of such publication shall have the same force and effect as law unless rescinded by the commission. The commission shall compile in pamphlet form all rules and regulations in force and shall furnish each licensee with at least 1 copy of such pamphlet and shall furnish copies to such other persons as may make application to the commission.

Sec. 18. General powers and duties. The commission shall have power to enforce the provisions of this act, and to make all needful rules and regulations for that purpose; it shall have power generally to do whatever is reasonably necessary for the carrying out of the intent of this act; and, without intending to limit its authority, it is empowered to call upon other administrative departments of state or municipal governments, state and municipal law enforcement agencies, and upon state's attorneys for such information and assistance as it may deem necessary to the performance of its duties. It shall submit to the governor an annual report of its official acts. The commission shall keep a record of proceedings and orders per-

taining to the matters under its jurisdiction and of all licenses granted, refused, suspended or revoked, and of all reports sent to its office. It shall furnish without charge, for official use only, certified copies of licenses and documents relating thereto, to officials of the state or of any municipality therein, to officials of any other state or to any court in this state. Any certified copy of any document or record of the commission, attested as a true copy by the chief clerk of said commission, shall be competent evidence in any court of the state of facts therein contained. All records of the commission pertaining to applicants and licenses of the current year or of the previous 3 years shall be open to public inspection at any reasonable time during office hours. All other records may be regarded as confidential by the commission, except as to the governor and in response to judicial process.

Sec. 19. Licenses may be revoked. Licenses **may** be revoked at the discretion of the commission for the following causes:

- (1) Violation of any rule or regulation issued by the commission.
- (2) For making any false statement in application for the license.
- (3) Where the licensee is guilty of any unfair practice which shall include inaccurate or misleading statements as to brands or labels; rebates to a customer for the purpose of influencing a sale; rendering of inaccurate bills to a customer; or secretly giving anything of value to the employee or agent of a customer for the purpose of making or influencing a sale.

Sec. 20. Licenses shall be revoked. Licenses **shall** be revoked for the following causes:

- (1) For making any misrepresentation of material fact in the application for a license.
- (2) For transferring, assigning, or hypothecating a license.
- (3) For selling, or agreeing to sell, liquors and wines to a wholesaler or retailer, who is not licensed at the time of the agreement and sale.
- (4) For failure or default of any licensee to pay any fees when due to the commission, except on expressed authority of the commission or during the appeal to the courts.

Sec. 21. Local option. Status of towns as to sale of spirituous liquors or wines. The sale of spirituous liquors or wines under the provisions of this act may be prevented, except by physician's prescription, in any city or town in the state by vote of the city or town. Upon the petition of not less than 15% of the total vote cast for governor in the last biennial election in said town, lodged with the city or town clerk, the municipal officers shall cause the qualified voters to assemble under the provisions of the revised statutes to vote on the following question: "Liquor Permit, Yes"; "Liquor

Permit, No", and the vote shall be taken according to law, on a day fixed by the municipal officers.

Sec. 22. Liquor license contrary to vote void. Whenever any town shall have voted "no" upon the question of liquor license as aforesaid, any liquor license granted in such town which is not in accordance with such vote shall be void, except sales on prescription. A special pharmacist's license may be issued by the commission for the filling of physicians' prescriptions only for which the fee shall be \$10 a year.

Sec. 23. Receipts. All moneys and fees as may be received by the state under the provisions of this act shall be received by the commission under such terms and provisions as may be prescribed by the department of finance, and all accounts of the commission, and those of wholesale and retail licensees, under the scope of this act shall be subject to audit under such regulations as may be prescribed by the department of audit.

Sec. 24. Tax to be paid. Each licensee under the terms of this act shall pay to the commission at the end of each month, or on or before the 15th day of the following month, without notice from any official of the commission, a tax calculated at the rate of 2% of the gross receipts from retail business, and 1% of the gross receipts from wholesale business. Except that in the computation of this tax there shall be deducted as not taxable hereunder: (a) Any amounts actually paid by any licensee as transportation charges on any spirituous liquors. (b) Cash discounts allowed and taken on purchases where the total amounts of such discounts have been included in the amount of gross receipts reported as subject to taxation. (c) The value of goods returned to the extent to which the sales price is refunded in cash or credit, where the sale price has been included in the amount of gross receipts reported as subject to taxation. (d) The sale price of any liquors or wines accepted in exchange in whole or in part, for any new purchase of liquors or wines where the amount of the sales price of the liquors or wines accepted in exchange has been included in the amount of gross receipts reported as subject to taxation. Records of receipts for the purpose of computing this tax shall be kept in a method prescribed by the commission and shall be subject to audit by the department of audit. If the audit so conducted shall indicate the payment of additional tax due the state, the commission shall so notify the licensee within 10 days after the same is due and payable. Non-payment of the tax or of additional tax found due for a period of 3 months may, in the discretion of the commission, be cause for revocation of license. All taxes thus received by the commission shall be paid to the treasurer of state to be considered as general revenue of the state and not for any specific purpose.

Sec. 25. Regulations for wholesalers. The sale of liquors for medicinal

or mechanical purposes and the arts at wholesale, which shall also include the privilege of selling wines at wholesale on the premises designated in the license under the following regulations:

(1) Any person, firm, partnership or corporation whose principal business is dealing in pharmaceutical supplies, including drugs, proprietary remedies, toilet articles, etc., required by a retail pharmacy may apply to the commission at Augusta, for a license to sell spirituous liquors or wines at wholesale. Said application shall be accompanied by a certified check or postal money order, payable to the order of the Maine Control Commission, for the amount of fee required for such license and any bond required by the rules of the commission. If the commission shall deny the application, it shall return the fee and bond to the applicant. If the commission shall grant the application, it shall issue a license in such form as shall be determined by the commission and assign the applicant a license number. The commission may, at any time, revoke for cause, the wholesale license of a wholesaler whose sales of liquor exceed those of his sales of pharmaceutical supplies.

(2) Only 1 license shall be granted to any individual, co-partnership or corporation, to sell liquors or wines at wholesale.

(3) No wholesaler shall sell, or agree to sell or deliver in this state any liquors or wines, as the case may be, to any person who is not duly licensed by the commission to sell liquors or wines, at wholesale or retail, at the time of such agreement and sale.

(4) No wholesaler shall keep upon the license premises any liquors or wines intended for resale in any cask, barrel, keg, or any other container, except in the original sealed package of glass bottles, or other containers, containing quantities not to exceed 1 quart as received from the distiller. Such glass bottles or containers shall have affixed thereto a label, stating the name and address of said distiller, the brand of liquor or wine and the number of fluid ounces contained therein, the date when the contents were manufactured and bottled, whether it is a straight, blended or imitation product, and the alcoholic content thereof by proof, together with any necessary federal tax stamps affixed thereto as may be required by law.

(5) No sign of any kind, printed, painted or electric, advertising any brand of liquors or wines shall be permitted on the exterior or interior of any said licensed premises.

(6) Each wholesale licensee shall file with the commission at Augusta a monthly report not later than the 10th of each following month which shall be on a form to be furnished by the commission and shall contain the following information, under oath:

(a) Name, location and license number of wholesaler.

(b) Amount of liquors or wines purchased by such wholesaler during the preceding calendar month.

(c) Amount of liquors or wines sold during the preceding calendar month to individual retailers, giving their license numbers and names, place of business and the amount involved in each sale.

(7) Each wholesaler shall keep and maintain upon the licensed premises adequate books and records of all transactions and invoices involving the business transacted by such wholesaler under the scope of this act, as may be prescribed by the commission.

(8) No wholesaler shall make or cause to be made any loan to any licensee engaged in the sale of liquors or wines at wholesale or retail, nor shall any wholesaler make any gift or render any service of any kind whatsoever, directly or indirectly, to any licensee, which, in the judgment of the commission may tend to influence such licensee to purchase the product of such wholesaler.

(9) No wholesaler shall furnish, or cause to be furnished, to any licensee any exterior or interior sign, printed, painted, electric or otherwise.

(10) A wholesale license shall cover only the premises designated in the license, and no branch warehouse or storage quarters will be permitted to be maintained by such licensee at any other location than that designated in the license, with permission from the commission being first obtained in writing.

(11) No delivery shall be made by the wholesaler to another licensed wholesaler or retailer except on an order form to be furnished by the commission. Such order forms shall be prepared by the commission and shall have stamped thereon the name, address and permit number and kind of permit (wholesale or retail) of the licensee.

(12) All invoices intending to cover deliveries of liquors or wines shall be made out in triplicate and show the permit number of both the wholesaler and the retailer to whom shipment is intended. One copy of such invoice to be forwarded to the commission with each monthly report.

Sec. 26. Regulations for retailers. The retail sale of liquors and wines for medicinal or mechanical purposes and the arts at the premises designated in the license under the following regulations, in addition to the regulations outlined in section 8.

(1) Application to the commission shall be made upon a form to be prepared by the commission and shall set forth in detail, under oath, such information as may be required by the commission. Said application shall be accompanied by a certified check or postal money order payable to the order of the Maine control commission, for the amount of fee required for such license, together with the prerequisite certificate from the board of

pharmacy. If the commission shall deny the application, it shall return the fee to the applicant. If the commission shall grant the application, it shall issue a license in such form as shall be determined by the commission and a license number assigned.

(2) No individual, co-partnership or corporation, shall be granted both a wholesale and a retail license for the same location.

(3) No retail licensee shall keep upon the licensed premises any liquors or wines in any cask, barrel, keg, bottle, or other container, intended for resale for medicinal and mechanical purposes and the arts, except in the original sealed package, containing quantities not to exceed 1 quart each, as received from the wholesaler. Such bottles or containers shall have affixed thereto a label, stating the name and address of the distiller or wholesaler, the brand of liquor or wine, and the number of fluid ounces contained therein, the date when the contents were manufactured and bottled, whether it is a straight, blended or imitation product, and the alcoholic content thereof by proof, together with all necessary federal revenue stamps affixed thereto, as may be required by law.

(4) No liquors or wines sold at retail shall be opened or its contents consumed on the premises where sold.

(5) No sign of any kind, printed, painted, or electric, advertising any brand of liquors or wines carried in stock shall be permitted on the exterior or interior of said licensed place.

(6) All deliveries of liquors or wines at retail shall be over the counter in the main part of the store.

(7) No retail licensee shall sell or give away any liquors or wines on credit.

(8) No retail licensee shall sell, give away, or cause or permit or procure to be sold, delivered, or given away, any liquors or wines to:

(a) Any minor, actually or apparently under 21 years of age.

(b) To any intoxicated person, or to any person actually or apparently under the influence of liquor.

(9) Each retail licensee shall keep and maintain upon the licensed premises all invoices of liquor or wines received, as well as such adequate books and records as may be from time to time prescribed by the commission, which shall show the amount and kind of liquors and wines purchased by such licensee, together with the names and license number from whom the same was purchased, which books and records and invoices shall be available for inspection by any authorized representative of the commission, or any judicial enforcement officer in the performance of his official duty.

(10) A retail licensee shall use the order forms furnished at cost by

the commission when ordering liquors or wines. Such forms to be made out in duplicate, 1 copy to be sent to the wholesaler and 1 copy to be kept on file for a period of at least 1 year, which shall be open to inspection at all reasonable hours for any authorized agent of the commission.

(11) No display of liquors or wines shall be permitted.

(12) Licensees (wholesale or retail) shall be allowed additional storage facilities, if required, only after permission shall have been expressly granted, in writing, by the commission, but no sales shall be permitted therefrom. Wholesale regulation 5 and retail regulation 5 shall also apply.

Sec. 27. Validity of act. If any clause, sentence, paragraph or part of this act shall for any reason be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, or part thereof, directly involved in the controversy in which judgment shall have been rendered and all acts, or parts of acts, and administrative rules inconsistent with the provisions of this act are hereby repealed.

Sec. 28. Emergency clause. In view of the emergency recited in the preamble, this act shall take effect when approved.