

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. 199

New Draft H. P. 34—L. D. 49

H. P. 156

House of Representatives, Dec. 16, 1933.

Reported by a majority of the Committee on Temperance. Both reports tabled on motion of Mr. Carswell of Gorham pending motion of same gentleman that the majority report be accepted. New draft ordered printed.

HARVEY R. PEASE, Clerk.

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 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 state licensing board.

(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 of pharmacy 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 principal function of which is to compound physicians' prescriptions and to manufacture and sell drugs, medicines, poisons, and allied products.

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

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

(10) 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.

(11) The word "licensee" means any person who has been granted a license by the state licensing board.

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

(13) 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.

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

(15) 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 degrees Fahrenheit.

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

(17) The word "physician" means a person who is duly authorized to practice any school of medicine in the state of Maine and also one who is duly authorized to practice obstetrics and surgery.

Sec. 2. Administration. The state licensing board created under chapter 268 of the public laws of 1933 shall have the additional powers and duties herein specified and the members thereof shall receive the following additional compensation for their services. The chairman shall receive an additional annual salary of \$500 dollars and the other two members shall receive a salary of ——— each.

The principal officers of this board shall be in the state house and they shall employ sufficient deputies, clerks, inspectors, or stenographers, whose compensation shall be fixed by the governor and council.

The board shall make an annual report to the governor of its activities, of the amount of monies collected, and such other information as it deems advisable, or as the governor may require.

No member of the board, or any employee thereof, 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, or 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 member 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. 3. Functions, duties and powers. The board shall grant, refuse or cancel licenses for the wholesale and retail of intoxicating liquors for medicinal or mechanical purposes and the arts.

(1) The board may make such rules and regulations, not inconsistent with this act, as to the board seems necessary for carrying out the provisions of this act and for the efficient administration thereof.

(2) The board shall, from time to time, have the authority to determine the retail price to the purchaser, not in excess of 10% net over the invoice cost.

(3) The board shall have power to summon witnesses for hearings in connection with the suspension or revocation of wholesale or retail licenses.

(4) The board may require any and all wholesalers or retailers to give a bond in such form as it may provide, with sureties, in the penal sum of \$1,000, to the state of Maine, to comply with all of the provisions of this act, including payment of taxes hereunder, and payment of all fines and penalties assessed against the principal of said bond for violation of any provisions of this act, or any rule or regulation pursuant thereto.

Sec. 4. Licenses. All licenses shall be the right to do business for one 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 partnership, and if it shall cease upon the death of the licensee, any re-

maining stock of spirituous liquors or wines shall be impounded and sealed under any directions that may hereafter be issued by the board.

Sec. 5. Kinds of licenses. Licenses issued by the board shall be subject to the rules and regulations of the board and the provisions of this act, and shall be the of following classes. 1. Wholesale. 2. Retail.

1. Wholesale license. The wholesale license shall allow the wholesale sale and transportation of spirituous liquors and wines to retail licensees in this state and to manufacturers of medicants unfit for use as a beverage, or for the manufacture of commodities which cannot be drunk.

(a) Wholesalers shall pay an annual fee of not less than \$1,000 and not to exceed \$2,000 for a license fee.

(b) Any person, firm, partnership, or corporation, duly organized, incorporated and existing under the laws of the state of Maine, whose owner or principal officers are citizens of the United States, may apply to the board for a license to sell a'cohol, whiskey, rum, gin, brandy or wine, of standard brands and quality guaranteed under the United States laws relating to pure foods and drugs, at wholesale as hereinbefore provided, for medicinal and mechanical purposes and the arts. Application for said license shall be accompanied by a certified check or United States money order, payable to the order of the State Licensing Board, for the amount of the fee required for such license. If the board shall deny the application, it shall return said fee to the applicant, and if the board does grant the application, it shall issue a license in such form as may be provided by the board and assign the applicant a license number.

(c) Only one license shall be granted to any individual, copartnership or corporation, to sell liquors or wines at wholesale.

(d) No wholesaler shall sell, or agree to sell, or deliver, in this state any spirituous liquors or wines, as the case may be, to any person who is not duly licensed by the board to sell liquors or wines at retail, or is in the business of manufacturing medicants unfit for use as a beverage, or the manufacture of commodities which can not be drunk, at the time of such agreement and sale.

(e) No wholesaler shall keep on the licensed premises any liquors or wines intended for resale in any cask, barrel, keg or other container, except in the original sealed package or glass bottles, or other containers containing quantities not to exceed one quart, as received from the distiller, except as hereinafter provided in sections 12 and 12-A. 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 the necessary federal tax stamps affixed thereto as may be required by law.

(f) 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 of said licensed premises.

(g) Each wholesale licensee shall file with the board at Augusta a monthly report not later than the 10th of the following month, which shall be on a form to be furnished by the board 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.

(H) 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 board.

(I) 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 board may tend to influence such licensee to purchase the product of such wholesaler.

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

(K) 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, without permission from the board being first obtained in writing.

(L) No delivery shall be made by the wholesaler to a licensed retailer except on an order form to be furnished by the board. Such order form shall be prepared by the board and shall have stamped thereon the name, address and permit number of the retail licensee.

(M) 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.

2. Retail Licenses. A retail license may be granted by the Board to

any person, firm, partnership or corporation who shall be the owner of a bonafide pharmacy, who may or may not be a duly licensed pharmacist under the laws of the State of Maine; but if the owner is not a duly licensed pharmacist, he must have in his employ a duly licensed pharmacist; and in either case, the application for a retail license must be accompanied by a certificate from the Board of Pharmacy signed by its secretary, stating that said applicant is a registered pharmacist and the owner of a pharmacy, or that said applicant is the owner of a pharmacy and has in his employ a duly registered pharmacist, and that the owner who is a registered pharmacist, or the registered pharmacist in the owner's employ, is fit and duly qualified to dispense spirituous liquors and wines for medicinal and mechanical purposes and the arts.

(A) 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 three consecutive years next prior to the filing of his application, and provided further that the State Licensing Board and the 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.

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

(C) A retail license fee for a pharmacy shall be \$100.00 per year.

(D) Application to the Board for license to sell alcohol, whiskey, rum, gin, brandy or wines of standard brands and quality guaranteed under the United States laws relating to pure foods and drugs, shall be made upon a form to be prepared by the board and shall set forth in detail, under oath, such information as may be required by the Board. Said application shall be accompanied by a certified check or postal money order payable to the order of the State Licensing Board for the amount of fee required for such license, together with the prerequisite certificate from the board of pharmacy. If the board shall deny the application, it shall return the fee to the applicant. If the board shall grant the application, it shall issue a license in such form as shall be determined by the board and assign a license number.

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

(F) No retail licensee shall keep upon the licensed premises any liquors or wines intended for resale in any cask, barrel, keg, or 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 wholesaler, excepting as hereinafter provided in section 12. 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 revenue stamps affixed thereto, as may be required by law.

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

(H) 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.

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

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

(K) 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:

1. Any minor, actually or apparently under 21 years of age.
2. To any intoxicated person, or to any person actually or apparently under the influence of liquor.

(L) A retail licensee shall use the order forms furnished at cost by the Board when ordering liquors or wines. Said forms to be made out in triplicate, one copy to be sent to the wholesaler, one copy kept on file for a period of at least one year, which shall be open to inspection at all reasonable hours for any authorized agent of the Board, and one copy to be sent to the Board with each monthly report.

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

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

(O) No license shall be issued to any pharmacist who has been convicted within ten years of a violation of the liquor laws of the United States of America.

Sec. 6. Revocation of licenses. The Board 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 one calendar year thereafter.

(a) The Board 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 Board 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, five days at least before the day set for the hearing.

Sec. 7. Licenses may be revoked. 1. Licenses may be revoked at the discretion of the Board for the following causes:

(a) Violation of any rule or regulation issued by the Board.

(b) For making any false statement in application for the license.

(c) 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 purposes 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.

Licenses shall be revoked. Licenses shall be revoked for the following causes:

(a) For making any misrepresentation of material fact in the application for a license.

(b) For transferring, assigning, or hypothecating a license.

(c) 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.

(d) For failure or default of any licensee to pay any fees when due to the board, except on expressed authority of the board during an appeal to the courts.

Sec. 8. Appeal. If any person is aggrieved by the decision of the board in revoking or suspending a license, he may, within ten 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 board, and after hearing, such justice may affirm or reverse the decision of the board, and the decision of the justice shall be final. Pending judgment of the court, the decision of the board in revoking or suspending any license shall remain in full force and effect.

Sec. 9. License void. A retail license issued by the board under the provisions of section 5 shall become null and void without any process

or decree, if the owner, who is a registered pharmacist, ceases to conduct his business in person, or does not continue in his employ a registered pharmacist, 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 board.

Sec. 10. Local option. 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 petition of not less than 15 per cent 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.

(a) **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 board for the filling of physicians' prescriptions only, for which the fee shall be ten dollars per year.

Sec. 11. 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 prescriptions 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 board or any of its authorized agents.

Sec. 12. Hospitals, doctors, etc. Any licensed retail licensee may sell, transport and deliver to any hospital, sanatorium, home for the aged, osteopath, chiropractor, physician or dentist, in containers other than pint or quart bottles, and in quantities to be fixed by the state licensing board, alcohol, whiskey, rum, gin, brandy or wines, excise tax free, price not to exceed ten per cent above the invoice charged to said retailer, for medical and mechanical use.

Sec. 12A. Manufacturers. Wholesalers may sell and deliver to manufacturers amounts of spirituous liquors or wines necessary in their business

for the manufacture of medicants unfit for use as a beverage, or for the manufacture of commodities which can not be drunk.

(a) The board shall issue the permits required under this section and the charge for such permit shall not be less than \$10 or more than \$100, the amount to be determined by the board and to be based upon the probable amount of business of said permittee, which amounts shall be paid to the board and by the board remitted to the treasurer of state.

(b) Every manufacturer shall make, the first of each and every month, a report to the board of all spirituous liquors and wines purchased the preceding month.

Sec. 13. Revenue. Whereas license fees are hereinbefore provided for under this act for the purposes of regulating the sale of spirituous liquors and wines, now, therefore, in addition thereto, there is hereby levied and imposed an excise tax on all spirituous liquors and wines of ten cents on each and every pint or fractional part thereof, and twenty cents on each and every quart. The payment of said tax shall be evidenced by a stamp affixed to each pint or quart bottle and shall be in denominations of ten and twenty cents respectively. Said stamp shall express the amount of tax paid as evidenced thereby. No spirituous liquors shall be sold unless such stamps shall be affixed thereto prior to delivery by the retail licensee.

(a) Excise tax stamps shall be purchased by the wholesaler and said stamp shall be cancelled as provided by the rules and regulations of the board, and enclosed in an official envelope, and shall be attached to the container of said bottles to a retail dealer, who shall affix said cancelled stamp to each and every bottle before sale. Excise stamps shall be affixed to said bottles in a conspicuous place.

(b) The board shall cause to be prepared and shall furnish and sell all excise tax stamps to carry into effect the provisions of the foregoing sections of this act.

(c) All excise taxes received under the provisions of this act shall be paid by the board to the treasurer of state to be considered as general revenue of the state and not for any specific purpose or purposes.

Sec. 14. Board 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 hereafter be issued by the board.

Sec. 15. License to be hung in plain view. Every wholesale and retail license which may hereafter be granted by the board shall be on such form as may hereafter be prescribed by the board and furnished to the 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. 16. Regulations to be printed. Every subsequent regulation promulgated by the board and approved by the governor and council shall be printed in full in one 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 recinded by the board. The board shall compile in pamphlet form all rules and regulations in force and shall furnish each licensee with at least one copy of such pamphlet and shall furnish copies to such other persons as may make application to the board.

Sec. 17. Receipts. All moneys and fees as may be received by the state under the provisions of this act shall be received by the board under such terms and conditions as may be prescribed by the department of finance, and all accounts of the board and those of the 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. 18. Transportation. It shall be unlawful to transport alcohol, whiskey, rum, gin, brandy or wine within the state, other than for the purposes hereinafter mentioned, and shall be punished as provided in section 19 of this act.

(a) It shall be lawful for manufacturers of spirituous liquors and wines to ship by common carrier said liquors or wines into the state to any duly licensed wholesaler within the state.

(b) It shall be lawful for any duly licensed wholesaler to transport and deliver to any duly licensed retailer spirituous liquors or wines.

(c) It shall be lawful for the purchaser of spirituous liquors or wines for his own medicinal or mechanical purposes or the arts, or that of his family, to carry in his possession said spirituous liquors or wines from place to place within the state.

Sec. 19. Penalty. Whoever violates any of the provisions of this act, or any rule or regulation made pursuant thereto, shall be punished by a fine of not more than \$500 or by imprisonment for not more than 6 months, or by both such fine and imprisonment.

Sec. 20. 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. 21. Emergency clause. In view of the emergency recited in the preamble, this act shall take effect when approved.