

Maine Revised Statutes

▼	§161 PDF
▼	§161WORD/RTF
▼	STATUTE SEARCH
◀	CH. 7 CONTENTS
◀	TITLE 28-A CONTENTS
◀	LIST OF TITLES
▼	DISCLAIMER
◀	MAINE LAW
◀	REVISOR'S OFFICE
◀	MAINE LEGISLATURE

§124

Title 28-A:

§161-A

LIQUORS HEADING: PL 1987, C. 45, PT. A, §4 (NEW)

Part 1: GENERAL PROVISIONS HEADING: PL 1987, C. 45, PT. A, §4 (NEW)

Chapter 7: BOTTLE CLUBS HEADING: PL 1987, C. 45, PT. A, §4 (NEW)

§161. Bottle clubs

1. Registration. Each bottle club, as defined in section 2,

subsection 3, shall register annually with the bureau on forms provided by the bureau. Registration consists of submission of the information required in paragraph A and payment of the registration fee established in paragraph B.

A. The information each bottle club is required to submit consists of only the following:

- (1) The name and address of each owner of the bottle club;
- (2) The name and address of each operator of the bottle club; and
- (3) The regular hours of operation. [1987, c. 45, Pt. A, §4 (NEW).]

B. The annual fee for registration of a bottle club is \$50. [1987, c. 45, Pt. A, §4 (NEW).]

C. [2003, c. 452, Pt. X, §2 (AFF); 2003, c. 452, Pt. P, §1 (RP).]

A bottle club that does not register with the bureau commits a Class E crime. Violation of this subsection is a strict liability crime as defined in Title 17-A, section 34, subsection 4-A.

[2003, c. 452, Pt. P, §1 (AMD); 2003, c. 452, Pt. X, §2 (AFF) .]

1-A. Eligibility qualifications. The bureau may not register a bottle club unless each owner or operator of the bottle club meets the eligibility qualifications under section 601, subsection 1.

[1997, c. 373, §34 (AMD) .]

1-B. Disqualification. The bureau may not register a bottle club if the bureau determines that:

A. An owner or operator of the bottle club is disqualified from receiving a liquor license under section 601, subsection 2; or [1993, c. 730, §23 (AMD).]

B. [1993, c. 730, §24 (RP).]

C. The purpose of the application is to circumvent the eligibility or disqualification provisions of section 601. [1989, c. 816, §2 (NEW).]

The bureau shall notify each owner or operator of the bottle club in writing of its decision to approve or deny registration of the bottle club under this subsection. The decision of the bureau to approve or deny registration of a bottle club is final agency action.

[1997, c. 373, §35 (AMD) .]

1-C. Penalty for operation after denial. Notwithstanding subsection 1, paragraph C, a person who operates a bottle club after receipt of notice of denial of registration under subsection 1-B commits a Class D crime. Violation of this subsection is a strict liability crime as defined in Title 17-A, section 34, subsection 4-A.

[2003, c. 452, Pt. P, §1 (AMD); 2003, c. 452, Pt. X, §2 (AFF) .]

2. Charges and fees. Charges paid by the bottle club's members or the general public for membership, admission, food, mixers or other supplies used with liquor or storage or handling of liquor belonging to members or the general public are not sales, as defined in this Title, or gifts.

[1987, c. 45, Pt. A, §4 (NEW) .]

3. Minors on the premises.

[2003, c. 452, Pt. X, §2 (AFF); 2003, c. 452, Pt. P, §1 (RP) .]

3-A. Minors on premises. A bottle club may not allow a minor not employed by the bottle club or not accompanied by the minor's parent, guardian or custodian, as defined in Title 22, section 4002, to remain on the bottle club premises, except on occasions when liquor is prohibited on the bottle club premises. The following penalties apply to violations of this subsection.

A. A bottle club that violates this subsection commits a civil violation for which a fine of not less than \$100 and not more than \$300 may be adjudged. [2003, c. 452, Pt. P, §1 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

B. A bottle club that violates this subsection after having previously violated this section commits a civil violation for which a fine of not less than \$200 and not more than \$500 may be adjudged. [2003, c. 452, Pt. P, §1 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

C. A bottle club that violates this subsection after having previously violated this section 2 or more times commits a civil

violation for which a fine of \$500 may be adjudged. [2003, c. 452, Pt. P, §1 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

[2003, c. 452, Pt. P, §1 (NEW); 2003, c. 452, Pt. X, §2 (AFF) .]

3-B. Employment of minors. A bottle club may employ minors only if an employee of legal drinking age or older is present in a supervisory capacity.

[2003, c. 452, Pt. P, §1 (NEW); 2003, c. 452, Pt. X, §2 (AFF) .]

4. Consumption or possession on premises. A bottle club may not permit consumption or possession of imitation liquor on the bottle club premises by minors. A bottle club may not permit consumption of liquor on the bottle club premises by minors or visibly intoxicated persons. The following penalties apply to violations of this subsection.

A. A bottle club that violates this subsection commits a civil violation for which a fine of not less than \$100 and not more than \$300 may be adjudged. [2003, c. 452, Pt. P, §1 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

B. A bottle club that violates this subsection after having previously violated this section commits a civil violation for which a fine of not less than \$200 and not more than \$500 may be adjudged. [2003, c. 452, Pt. P, §1 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

C. A bottle club that violates this subsection after having previously violated this section 2 or more times commits a civil violation for which a fine of \$500 may be adjudged. [2003, c. 452, Pt. P, §1 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

[2003, c. 452, Pt. P, §1 (AMD); 2003, c. 452, Pt. X, §2 (AFF) .]

5. Violation of state law. A bottle club may not knowingly allow any violation of any state law on the bottle club premises to occur or continue. The following penalties apply to violations of this subsection.

A. A bottle club that violates this subsection commits a civil violation for which a fine of not less than \$100 and not more than \$300 may be adjudged. [2003, c. 452, Pt. P, §1 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

B. A bottle club that violates this subsection after having previously violated this section commits a civil violation for which a fine of not less than \$200 and not more than \$500 may be adjudged. [2003, c. 452, Pt. P, §1 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

C. A bottle club that violates this subsection after having

previously violated this section 2 or more times commits a civil violation for which a fine of \$500 may be adjudged. [2003, c. 452, Pt. P, §1 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

[2003, c. 452, Pt. P, §1 (AMD); 2003, c. 452, Pt. X, §2 (AFF) .]

6. Jurisdiction. The District Court has jurisdiction over the civil violations, defined in this section, under Title 17-A, section 9.

[2003, c. 452, Pt. P, §1 (AMD); 2003, c. 452, Pt. X, §2 (AFF) .]

7. Right of access. Every bottle club shall allow law enforcement officers to enter the premises at reasonable times for the purpose of investigating compliance with this Title.

A. Entry into the premises under this subsection must be conducted in a reasonable manner so as not to disrupt the operation of the bottle club. [2003, c. 510, Pt. E, §5 (RPR).]

B. The investigation must be limited to those areas involved in the actual operation of the bottle club, including storage areas. [2003, c. 510, Pt. E, §5 (RPR).]

C. The following penalties apply to violations of this subsection.

(1) A bottle club that violates this subsection commits a civil violation for which a fine of not less than \$100 and not more than \$300 may be adjudged.

(2) A bottle club that violates this subsection after having previously violated this section commits a civil violation for which a fine of not less than \$200 and not more than \$500 may be adjudged.

(3) A bottle club that violates this subsection after having previously violated this section 2 or more times commits a civil violation for which a fine of \$500 may be adjudged. [2003, c. 510, Pt. E, §5 (RPR).]

[2003, c. 510, Pt. E, §5 (RPR) .]

SECTION HISTORY

1987, c. 45, §A4 (NEW). 1989, c. 816, §§1,2 (AMD). 1993, c. 266, §4 (AMD). 1993, c. 730, §§23,24 (AMD). 1997, c. 373, §§33-35 (AMD). 2003, c. 451, §T10 (AMD). 2003, c. 452, §P1 (AMD). 2003, c. 510, §E5 (AMD). 2003, c. 452, §X2 (AFF).

Data for this page extracted on 12/10/2008 02:07:22.

**The Revisor's Office cannot provide legal advice or interpretation of Maine law to the public.
If you need legal advice, please consult a qualified attorney.
Office of the Revisor of Statutes
7 State House Station**

**State House Room 108
Augusta, Maine 04333-0007**

Please note: This packet is intended for general information purposes only and should not take the place of a thorough review of pertinent statutes, consultation with legal counsel, or other specific guidance on this subject.

Local Liquor Option

This packet includes the following attachments:

Title 28-A M.R.S.A. §§ 121 , 123 , 124 , 161-163 , 653 , 654 , 1054 ;

Title 30-A M.R.S.A. §§ 2528-2532 ;

"Local Option Liquor Question." *Maine Townsman*, December 1984;

Sample Suggested forms ("Petition." "Notice of Public Hearing/Return on the Notice." "Return of Warrant." "Town Meeting Warrant." "Official Ballot." and "Specimen Ballot");

MMA's Town Meeting and Elections Manual, Chapter 9 (Preparation of Secret Ballots)

Important issues and considerations include:

I. Generally

Using the local option mechanism, a municipality may authorize or prohibit the sale of alcoholic beverages within its boundaries. Under State statute, the municipality may, by secret ballot election, approve one or more of a series of questions established by the Legislature that allow the municipality to adopt a range of options, including: a ban on sales of all alcoholic beverages, the serving of wine, beer and/or liquor by restaurants (sale for on-premises consumption) or the sale of the same in stores (sale for off-premises consumption). The provisions of Title 28-A also govern local input into the licensing and relicensing of on-premises consumption of liquor and the issuance of special amusement licenses.

II. Petition Required

A local liquor option election may only be called upon receipt of a petition signed by a number of voters equal to at least 15% of the number of votes cast in the last gubernatorial election and submitted to the municipal officers (selectpersons or councilors) at least 45 days in advance of the election; an election cannot be initiated by the municipal officers or a would-be vendor alone (*see 28-A M.R.S.A. § 121*). All petitions must have been signed since the last general election. Petitions should state the exact wording specified in 28-A M.R.S.A. §123 for the particular question; if a petition fails to do so, it should be refused.

III. Secret Ballot Referendum Required

Except as otherwise provided in 28-A M.R.S.A. § 121 , the petition process and voting at all local liquor option elections must be conducted in accordance with 30-A M.R.S.A. §§ 2528-2532 (secret ballot), even if a municipality has not otherwise adopted the secret ballot method of voting. Among other things, this entails preparation of pre-printed ballots, availability of absentee ballots (for 30 days before the election), posting of specimen ballots, appointment of ballot clerks, arrangement of the voting place and a separate public hearing at least 10

days before the election, with notice posted at least 7 days before the hearing (see *"Local Option Liquor Questions," Maine Townsman, December 1984, linked above*). However, the election still must be called by town meeting warrant, with election (by written ballot) of a moderator being the first article (see 30-A M.R.S.A. §§ 2523-2524). For general information regarding the preparation for and holding of a secret ballot referendum, please see the relevant portions of MMA's Town Meeting and Elections Manual, linked above.

IV. Repeal or Reconsideration

No local liquor option vote may be taken on the same question more than once in any one-year period (see 28-A M.R.S.A. § 124(4)). The defeat of a question repeals existing privileges only if the petition clearly indicates an intent that it do so.

V. On-premise Licensees

Where the sale of liquor for on-premise consumption is authorized, all applicants for new on-premise licenses and for transfer of location of existing on-premise licenses must, before licensing by the State Liquor Commission, obtain permission from the municipal officers, who may hold a public hearing and who may approve or deny the application on a variety of grounds (see 28-A M.R.S.A. §§ 653 and 654). The municipal officers also may hold hearings for on-premise license renewals, except that a licensee for the prior five years with no complaints against him may request a waiver of the hearing. If the municipal officers fail to take final action on an application for a new or renewal license or transfer of a license within 60 days of the application, the application is deemed approved. The municipal officers' decision may be appealed first to the Commission and then to Superior Court. In addition, where live music, dancing or other entertainment is performed, on-premise licensees must obtain a special amusement permit from the municipal officers (see 28-A M.R.S.A. § 1054). Municipalities must adopt ordinances or authorize the municipal officers to establish written regulations governing special amusement permits. The denial, suspension or revocation of a special amusement permit may be appealed first to the local board of appeals and then to Superior Court.

VI. Bottle Clubs and B.Y.O.B. Functions

So-called "bottle clubs" (social establishments where members and guests bring their own liquor) are not considered "licensed establishments" and may be operated whether or not a local option election has first allowed them (see 28-A M.R.S.A. §§ 161-162). However, they must register annually with the Commission and must first obtain permission from the municipal officers, who may, after notice and hearing, approve or deny the application on a variety of grounds. Also, a municipality may at any time hold an election, subject to the petition and referendum requirements for local liquor option elections, on whether to allow or continue to allow bottle clubs. "B.Y.O.B. functions" (special events where attendees bring their own liquor) do not require a license from the Commission either but must obtain a permit from the Bureau of Liquor Enforcement (see 28-A M.R.S.A. § 163). A prerequisite for the permit is the written permission of the municipal officers as to the location of the function. Although the statute does not specify any reasons for denial, presumably the municipal officers may consider grounds similar to those available in the case of on-premise license applications (see 28-A M.R.S.A. § 653).

VII. State Preemption

Except as noted above, the State's comprehensive licensing scheme has entirely preempted municipal "home rule" authority regarding the regulation of liquor sales. Thus, for example, an ordinance prohibiting licensed liquor establishments within a certain distance from other such establishments is invalid and unenforceable (*see Ullis v. Inhabitants of Town of Boothbay Harbor, 459 A.2d 153 (Me. 1983)*). However, zoning ordinances, building regulations, health and sanitation codes, and other local controls that do not discriminate between licensed liquor establishments and similar "dry" establishments and that apply equally to both are lawful.

VIII. Statutes, Rules and Requirements Available

A booklet of state statutes, rules and requirements pertaining to liquor regulation is available from the State Liquor Licensing and Compliance Division (624-7220). There is also a compilation of liquor laws and regulations that can also be found here.

IX. Certification of Vote

When a municipality has voted on a local liquor option question, a copy of the vote, certified by the clerk, must be submitted to the Secretary of State, State House Station #148, Augusta, Maine 04333. The vote will be effective on the first day of the month following certification of the vote to the Secretary of State.

Date of last revision: 04/08

The statutes referenced here may have been amended during the last legislative session, and we will update them when the text becomes available.