

SENATE No. 262

To accompany the petition of Albert Cole for legislation to repeal certain provisions of law relative to appeals to the Alcoholic Beverages Control Commission on certain licenses for the sale of alcoholic beverages. Legal Affairs.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Thirty-Eight.

AN ACT REPEALING CERTAIN PROVISIONS OF LAW RELATIVE TO APPEALS TO THE ALCOHOLIC BEVERAGES CONTROL COMMISSION ON CERTAIN LICENSES FOR THE SALE OF ALCOHOLIC BEVERAGES.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Said chapter one hundred⁷ and thirty-
2 eight of the General Laws is hereby amended by
3 striking out section twelve, as most recently amended
4 by chapter three hundred and thirty-one of the acts
5 of nineteen hundred and thirty-seven, and inserting
6 in place thereof the following:—

7 *Section 12.* A common victualler duly licensed
8 under chapter one hundred and forty to conduct a
9 restaurant, an innholder duly licensed under said
10 chapter to conduct a hotel and a keeper of a tavern
11 as defined by this chapter, in any city or town
12 wherein the granting of licenses under this section

13 to sell all alcoholic beverages or only wines and malt
14 beverages, as the case may be, is authorized by this
15 chapter, subject however, in the case of a tavern,
16 to the provisions of section eleven A, may be licensed
17 by the local licensing authorities to sell to travelers,
18 strangers and other patrons and customers not
19 under twenty-one years of age, such beverages to be
20 served and drunk, in case of a hotel or restaurant
21 licensee, only in the dining room or dining rooms
22 and in such other public rooms or areas of a hotel
23 as the local licensing authorities may deem reason-
24 able and proper, and approve in writing; provided,
25 that no tavern license shall be granted to the holder
26 of a hotel license hereunder. Such sales may also
27 be made, by an innholder licensed hereunder, to
28 registered guests occupying private rooms in his
29 hotel. Upon an application for a restaurant license,
30 the local licensing authorities may in their discretion
31 grant such a license authorizing the sale of alcoholic
32 beverages on all days of the week or one authorizing
33 such sale on secular days only, and the decision of
34 such authorities as to which of the two types may be
35 granted upon any particular application shall be
36 final. During such time as the sale of such alcoholic
37 beverages is authorized in any city or town under
38 this chapter, the authority to grant innholders'
39 and common victuallers' licenses therein under
40 chapter one hundred and forty shall be vested in
41 the local licensing authorities.

42 No alcoholic beverage shall be served to or drunk
43 by a woman in a public room or area of a hotel, or in a
44 restaurant or club, licensed under this section, except
45 while seated at a table or seated at a counter equipped
46 with stools, and no such beverage shall be served to

47 or drunk by a woman in a tavern; and no such
48 beverage shall on Sundays be served to or drunk
49 by any person standing at a bar or counter in such a
50 hotel, restaurant or club.

51 Any club in any city or town wherein the granting
52 of licenses to sell alcoholic beverages, or only wines
53 and malt beverages, as the case may be, is authorized
54 under this chapter may be licensed by the local
55 licensing authorities to sell such beverages to its
56 members only, and also, subject to regulations made
57 by the local licensing authorities, to guests introduced
58 by members, and to no others.

59 The local licensing authorities may determine in
60 the first instance, when originally issuing and upon
61 each annual renewal of licenses under this section,
62 the amount of the license fee, in no case less than
63 two hundred and fifty nor, except as hereinafter
64 provided, more than seven hundred and fifty dollars
65 for a tavern license or twenty-five hundred dollars for
66 any other license under this section for the sale of
67 all alcoholic beverages, and in no case less than one
68 hundred dollars, nor, except as hereinafter provided,
69 more than five hundred dollars for a tavern license
70 or one thousand dollars for any other license under
71 this section for the sale of wines and malt beverages,
72 or either; provided, that the minimum license fee in
73 the case of a club license for the sale of all alcoholic
74 beverages shall be one hundred dollars; and pro-
75 vided, further, that nothing herein shall prevent such
76 authorities from establishing license fees differing
77 in amounts within the limitations aforesaid for
78 restaurant licenses authorizing the sale of alcoholic
79 beverages on all days of the week and for restaurant
80 licenses authorizing such sale on secular days only.

81 If different license fees are so established the fee for
82 licenses authorizing the sale of alcoholic beverages
83 on all days of the week shall not be more than twenty-
84 five per cent higher than the fee for licensing such
85 sale on secular days only. Before issuing a license to
86 any applicant therefor under this section, or before
87 a renewal of such license, the local licensing authori-
88 ties shall cause an examination to be made of the
89 premises of the applicant to determine that such
90 premises comply in all respects with the appropriate
91 definition of section one and that the applicant is
92 not less than twenty-one years of age and a person
93 of good character in the city or town in which he
94 seeks a license hereunder.

95 The local licensing authorities may accept the
96 surrender of a license issued under this section and
97 may issue in place thereof to the same licensee any
98 other form of license authorized under this section,
99 and may allow as a credit on the fee for the new license
100 the license fee paid for the license surrendered but
101 no refund shall be authorized. Different licenses
102 issued as aforesaid for any portion of the same license
103 year to the same licensee shall count as one license
104 for the purposes of section seventeen.

105 The hours during which sales of such alcoholic
106 beverages may be made by any licensee as aforesaid
107 shall be fixed by the local licensing authorities either
108 generally or specially for each licensee; provided,
109 that no such sale shall be made on any secular day
110 between the hours of one and eight o'clock ante
111 meridian and that, except as provided in section
112 thirty-three, no such licensee shall be barred from
113 making such sales on any such day after eleven o'clock
114 ante meridian and before eleven o'clock post meri-

115 dian, and that no tavern shall be kept open on any
116 such day after eleven o'clock post meridian.

117 No person, firm, corporation, association or other
118 combination of persons, directly or indirectly, or
119 through any agent, employee, stockholder, officer or
120 other person, or any subsidiary whatsoever, licensed
121 under the provisions of section fifteen, eighteen or
122 nineteen shall be granted a license under this section.

123 No licensee under this section, or any employee
124 of such licensee, shall serve any alcoholic beverage
125 to any customer or other person in the licensed prem-
126 ises without charge.

127 In cities and towns which vote to authorize under
128 section eleven the granting of licenses for the sale of all
129 alcoholic beverages, specific licenses may neverthe-
130 less be granted under this section for the sale of wines
131 or malt beverages only, or both. The licensing
132 authorities may refuse to grant licenses under this
133 section in certain geographical areas of their respec-
134 tive cities or towns, where the character of the
135 neighborhood may warrant such refusal.

136 All malt beverages sold by a licensee under this
137 section containing not more than three and two
138 tenths per cent of alcohol by weight shall be expressly
139 sold as such.

140 No malt beverage shall be sold on draught from a
141 tap, faucet or other draughting device unless there
142 shall plainly appear on or attached to such device,
143 in legible letters, the brand or trade name of the malt
144 beverage so sold therefrom.

1 SECTION 2. The first paragraph of section fifteen
2 of chapter one hundred and thirty-eight of the
3 General Laws, as most recently amended by section

4 twelve of chapter four hundred and forty of the
5 acts of nineteen hundred and thirty-five, is hereby
6 further amended by striking out, in the twentieth
7 and twenty-first lines, the words "No such license
8 shall be granted except to an applicant approved by
9 the commission".

1 SECTION 3. Section sixteen A of said chapter
2 one hundred and thirty-eight, as most recently
3 amended by section one of chapter four hundred
4 and twenty-four of the acts of nineteen hundred
5 and thirty-seven, is hereby further amended by
6 striking out all after the word "cause" in the six-
7 teenth line, — so as to read as follows: — *Section*
8 *16A.* The holder of an annual license under sec-
9 tion twelve or fifteen who applies during the month
10 of November in any licensing period for a license
11 of the same class for the next succeeding licensing
12 period or any former holder of a seasonal license who
13 applies during the month of March for a renewal of a
14 license held during the preceding seasonal licensing
15 period shall be prima facie entitled thereto, if the
16 number of such licenses issuable under section seven-
17 teen is not less than the number of such holders or
18 former holders so applying. If in any year the num-
19 ber of such licenses so issuable is less than the number
20 of such holders or former holders so applying, such
21 applicants shall be prima facie entitled to renewals
22 in the order of the dates of their respective applica-
23 tions, to the extent that the same are issuable under
24 section seventeen. Any such application may, how-
25 ever, be rejected for cause.

1 SECTION 4. Said chapter one hundred and thirty-
2 eight is hereby further amended by striking out

3 section sixteen B, as most recently amended by
4 section two of said chapter four hundred and twenty-
5 four, and inserting in place thereof the following:—

6 *Section 16B.* Applications for licenses or permits
7 authorized to be granted by the commission shall be
8 granted or dismissed not later than thirty days after
9 the filing of the same or not later than thirty days
10 after the filing of an appeal under section sixty-seven,
11 as the case may be, and applications for licenses
12 authorized to be granted by the local licensing
13 authorities shall be acted upon within a like period;
14 provided, that local licensing authorities shall not be
15 required to act prior to December fifteenth in any
16 year on applications for the renewal of annual
17 licenses filed in accordance with the provisions of
18 section sixteen A or prior to April fifteenth in any
19 year on applications for the renewal of seasonal
20 licenses so filed. Any applicant for a license under
21 this chapter who fails to comply with the require-
22 ments of section seventy within fourteen days after
23 notice that a license has been authorized to be
24 granted to him shall forfeit any right thereto, unless
25 the licensing authorities to which application was
26 made otherwise determine.

27 Unless the licensing authorities otherwise deter-
28 mine, not more than one application for a license
29 under section twelve or fifteen to be exercised on the
30 same premises shall be received in any year.

1 SECTION 5. Section twenty-three of said chapter
2 one hundred and thirty-eight, as most recently
3 amended by section twenty-three of chapter four
4 hundred and forty of the acts of nineteen hundred
5 and thirty-five, is hereby further amended by strik-

6 ing out the sixth paragraph, as appearing in section
7 sixteen of chapter three hundred and eighty-five
8 of the acts of nineteen hundred and thirty-four.

1 SECTION 6. Said chapter one hundred and thirty-
2 eight is hereby further amended by striking out
3 section sixty-seven, as most recently amended by
4 section forty-two of chapter four hundred and forty
5 of the acts of nineteen hundred and thirty-five, and
6 inserting in place thereof the following: —

7 *Section 67.* Upon the petition of twenty-five
8 persons who are taxpayers of the city or town in
9 which a license has been granted by such authorities
10 or who are registered voters in the voting precinct
11 or district wherein the licensed premises are situated,
12 the commission may investigate the granting of a
13 license by the local licensing authorities or the con-
14 duct of the business being done thereunder and may,
15 after a hearing, modify, suspend, revoke or cancel
16 such license if, in its opinion, circumstances warrant.
17 If the local licensing authorities fail to perform
18 any act when lawfully ordered so to do by the com-
19 mission upon an appeal, within such time as it may
20 prescribe, the commission may itself perform such
21 act, with the same force and effect as if or performed
22 by the local licensing authorities.