LEGISLATION

A COMPARATIVE SURVEY OF POST-REPEAL LIQUOR LEGISLATION [1]—The overthrow of national prohibition by the ratification of the Twenty-first Amendment to the Federal Constitution has invested the individual states with the right to function once again as forty-eight experimental laboratories in the field of liquor control.[2] After a respite of thirteen years the majority of the states have plunged headlong into the alchemy of legislation to seek the magic formula with which to cure the social ills caused by the traffic in intoxicating liquor.[3] The alacrity with which the lawmaking bodies throughout the country have responded to the mandate of public feeling against complete prohibition has served to confound those who decry the lethargy which invariably marks the response of legislatures to the stimulus of public sentiment. Within a single year after the return of the control of the liquor traffic to the states all but eight of them had taken steps to cope with the situation so suddenly thrust upon them.[4] The parade of liquor legislation stopped not even at the barrier of state constitutional prohibition. So impelling was the urge of acceding to the popular clamor for liberalized liquor laws in Kentucky that the existence of a constitutional inhibition against the use of intoxicating liquor was not regarded as fatal. Under the guise of allowing the use of intoxicating liquor for medicinal purposes only the liquor traffic was legalized, and through the ingenious expedient of casting each citizen in the rôle of his own personal physician with the power of diagnosing his own ills and prescribing the curative of liquor, the general public was encouraged to participate actively in the state-wide health scheme.[5]

As in the pre-national prohibition era, legislative attempts to cope with the problem run the entire gamut of control schemes, from the indulgent local license system with minimized restrictions on liquor sales [6] to the strongly paternalistic

1. A list of the statutes to be considered in this note, with full citations, will be found in the Appendix. References in subsequent footnotes will be made by naming the state and the appropriate section of the statute.

2. The Twenty-first Amendment not only repeals the Eighteenth Amendment but also provides for protection of the dry states in the following terms: "The transportation or importation into any State, Territory or possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited." The inability of the dry states effectively to enforce their dry laws because of lack of power to control interstate shipments of liquor was long a source of much agitation before national prohibition. The language of the Twenty-first Amendment, however, merely confirms the state of the law at the time national prohibition went into effect since the Webb-Kenyon Act enacted in 1913 by Congress had divested liquor of its interstate character. For a review of the statutes and decisions on this question see Note (1919) 19 COL. L. REV. 140.

3. Thirty states have enacted liquor control statutes. See Appendix. The Mississippi control statute was rejected by the electorate on July 10, 1934. In a number of other states constitutional restrictions have been repealed by popular referenda, and the legislatures are expected to take action in the near future. Among these states are Florida, Idaho, Nebraska, South Dakota, Utah and Wyoming. In many of the remaining states liberalizing movements are under way.

4. Alabama, Georgia, North Carolina, Oklahoma, South Carolina, Tennessee, Texas and Utah have not as yet taken any action to repeal existing dry laws. Three others, Arizona, Nevada and Florida, allow liquor sales under old laws.

5. Among the reasons given for the passage of the act are the existence of bootlegging, moonshining, poisoned liquor and the exorbitant prices being charged for good liquor (§ 1). Sales of liquor are allowed by the drink in hotels, restaurants and clubs without the need of a "prescription" (§ 12).

6. The Louisiana statute confines itself to revenue measures, leaving matters of control to the local subdivisions.

state monopoly,[7] with innumerable variations between the two extremes. The federal government has intensified this bewildering state of affairs by contributing a separate tax statute [8] as well as its own regulatory body—the Federal Alcohol Control Administration—whose regulations frequently run counter to the express provisions of local statutes.[9]

From an analysis of this maze of widely divergent statutory provisions, however, it becomes apparent that the opinions of those interested in the social aspects of liquor control [10] have played an important part in devising statutory safeguards against the more serious evils attendant upon an uncontrolled liquor traffic. Post-repeal statutes, regardless of the broad system of control adopted, have incorporated a variety of provisions which aim directly at checking the abuses resulting from overindulgence in the stronger liquors, stamping out the traditional saloon in its character of a breeding place for intemperance and lawlessness, and the elimination of the once unholy alliance between politics and the liquor interests.[11]

As contrasted with the liquor legislation of past years the most striking development of present day laws is the trend toward control by means of the monopoly, or state dispensing system,[12] by which the state actually participates in one or more phases of the liquor business, rather than being content with a mere supervisory function—as under the licensing system. Aside from this fundamental distinction, however, the two systems often meet on common ground, the major differences arising from the variations in the methods employed to achieve identical results. Under every system a varying degree of power is invested in a state governing body. While in some states existing state agencies have been utilized for this purpose,[13] and in others *ex officio* boards have been created,[14] most states have attempted to isolate the administration of the liquor traffic by erecting special bodies for this purpose. Membership on these boards vary from a single member to five, although a board of three is encountered most frequently.[15] Tenure of office is usually fixed by statute, thereby giving the members a measure of freedom from external forces,[16] and ranges from three to nine years.[17] Provision for overlapping terms to insure

7. Iowa permits only beer to be sold by private dealers.

8. P. L. No. 43, 73d Cong., 2d Sess., 26 U. S. C. A. c. 5 (Supp. 1934).

9. A striking example of this is the conflict created by the regulation of the federal body prohibiting the purchase of liquor on consignment while the Ohio statute (§ 6064-12) specifically allows the commission to buy on consignment.

10. See, for example, FOSDICK AND SCOTT, TOWARD LIQUOR CONTROL (1933) (an excellent survey of the various systems of liquor control); *Future Legislative Policy* [Report of the Legal and Legislative Departments, Anti-Saloon League of America (1934)]. For a proposed model act see 23 NAT. MUN. REV. (Supp.) 62 (1934).

11. The following statement found in the Oregon control act (§ 2) is typical of like stat ments found in many of the new statutes: "This act shall be deemed an exercise of the police powers . . . to prevent the recurrence of abuses associated with saloons . . . to eliminate the evils of . . . unlawful manufacture . . . and to promote temperance. . . ."

12. This plan has been adopted in Delaware, Iowa, Maine, Michigan, Montana, New Hampshire, Ohio, Oregon, Vermont, Virginia and Washington.

13. California (§ 5), Kentucky (art. III), Maryland (§ 3), Wisconsin (§ 176.05).

14. Montana (§ 4—governor, attorney general and secretary of state); New Mexico (§ 9—secretary of state, attorney general and director of public health). Michigan (§ 5) has a hybrid commission, three of its members being appointed, two being members *ex officio*.

15. Delaware (§ 4), Indiana (§ 3727), Missouri (§ 2) and New Jersey (c. 436, § 3) have one-man boards; Michigan (§ 5), New York (§ 10) and Rhode Island (§ 7) have five members; Ohio (§ 2) has four members; the remaining states have three-man boards.

16. Missouri (§ 2) is exceptional in providing that the commissioner serve at the pleasure of the governor. Indiana (§ 3727) provides that appointments be made for a term not in excess of 4 years.

17. Most states provide for 6 year terms; Massachusetts (§ 1) and Michigan (§ 5) provide 3 year terms; Montana (§ 4) provides for the longest term, 9 years.

stability of policy and personnel is common. Salaries for the most part, in the specially created boards, seem sufficiently large to attract men of high caliber.[18] Where the control bodies are given wide powers, members are required to devote their entire time to their duties on the board and are prohibited from holding other public offices or from maintaining any connection with any phase of the private liquor traffic, including shareholdership in liquor concerns.[19] The feeling against politically entangled control commissions is faintly noticeable in statutes vesting the power of appointment in the chief executive of the state, although more frequently the concurrence of the legislature is required.[20] A single state provides for full power in this respect to rest in the legislature.[21] The invariable stipulation for bi-partisan membership on the commissions would seem merely to distribute rather than prevent political appointments. Provisions which actually aim at a non-political administration of the liquor problem are rare. Highly exceptional are the Michigan provision [22] which disqualifies an appointee who has solicited an endorsement from a member of the legislature, and the Iowa section [23] which prohibits a member from contributing to campaign funds, serving on a political committee or using his influence to persuade anyone to adopt his political views. At the opposite extreme is the Rhode Island requirement [24] that the Governor select the members of the control board from lists submitted by heads of the respective political parties. The notable omissions to adopt more stringent safeguards in this respect assume added significance in the light of the ignominious failure of the early South Carolina experiment in state liquor control—admittedly occasioned in a large measure by political corruption.[25]

Under both the monopoly and license statutes the control bodies have been granted a wide variety of powers. In general, however, those bodies which are to function under the monopoly system of control have been given more extensive powers—and, with few exceptions, exclusive regulatory powers.[26] The latter feature is less frequently found in the statutes which have adopted the license plan of control, the regulatory and licensing powers, in most cases, being divided between the state and local bodies.[27] This feature is unfortunate if the purpose of these statutes is to create a non-political and, what is more important here, a centralized and efficient body for the entire state. The largest group of statutes, both of the monopoly and license variety, provide for the

18. Members of the Pennsylvania Control Commission, for example, receive $10,000 annually (§ 744-901).

19. The Pennsylvania act (§ 744-607) is typical in providing that "(a) A member or employe of the board shall not be, directly or indirectly, interested or engaged in any other business or undertaking dealing in liquor, whether as owner, part owner, partner, member of syndicate, shareholder, agent or employe, and whether for his own benefit or in a fiduciary capacity. . . ."

20. Connecticut (§ 671b), Delaware (§ 4-1-7), Illinois (art. 3, § 1), Indiana (§ 3727), Oregon (§ 4), Virginia (§ 3b) and Washington (§ 63) give the governor complete authority.

21. New Jersey (c. 436, § 3).

22. § 5.

23. § 5. This provision applies as well to employees of the commission.

24. § 7.

25. See Sherard, *South Carolina's State Liquor Control* (1931) 35 CURRENT HISTORY 69. The state system was inaugurated in 1893; members of the commission were appointed by the legislature. This system was abolished in 1907. Governor Pinchot of Pennsylvania, in an address reprinted in 44 ROTARIAN 12 (1934) makes much of the fact that the managers of the state dispensaries were paid on a commission basis. It is interesting to note that of the modern liquor legislation only the Mississippi act (§ 10) (repealed) contained such provision.

26. The state boards of only Vermont (§§ 18, 19) and Virginia (§ 26) of the monopoly states share their powers with local authorities.

27. Only six of the license states (Arizona [full power placed in the tax commissioner], California [§ 5], Colorado [§ 20], Connecticut [§ 677b], Indiana [§ 3728] and Kentucky [art. III, §§ 1, 3]) grant their control bodies exclusive powers.

following powers to be exercised by the regulatory bodies: grant, refuse and revoke licenses, with provisions for public hearings and right of appeal; conduct hearings and investigations; issue subpœnas and compel testimony; promulgate regulations within the limits of the statute, including the general conduct of the numerous phases of the liquor traffic; and general police power to enforce the act and the regulations made under it. Powers of local authorities vary considerably. At one extreme is a law allowing county boards to establish municipal liquor stores;[28] at the other extreme the local authority functions as an administrative arm of the higher state authority, with the power to grant retail licenses subject to the approval of the state board.[29] Others place the licensing power in the state authority, but subject to the approval of the local boards.[30] Both of the latter methods of issuing licenses would seem well adapted to effectuating the purpose of licensing only reputable dealers since such matters are best known in the communities where the applicants desire to engage in business. This point is further emphasized by provisions which stipulate as a condition precedent to receiving a license that the applicant reside in the community for a fixed period of time. Local authorities are also permitted to establish rules in regard to the conduct of the retail trade which range between complete power in this respect to a limited power to further qualify the regulations issued by the state authority.[31] Many states permit the local bodies to levy license taxes concurrently with the state authority; others grant the local bodies the sole right to do so.

The impelling motive underlying the adoption of the monopoly or state authority plan of control is the eradication of the more vicious aspects of the private liquor traffic through the elimination of private profit. It is claimed by the proponents of this plan that only through removing the incentive to increase sales can there be any decrease in the artificial stimulation of liquor sales.[32] Nowhere, however, in this country is this theory carried to its logical extreme inasmuch as no state has attempted to create a complete state monopoly. Most monopoly states while retaining the exclusive right to establish a chain of retail stores where liquor is sold only in packages and not for consumption on the premises allow such consumption on the premises of private licensed dealers.[33] The nearest approach to a complete monopoly of the liquor business is offered by the Virginia statute which limits the private sale to beer and further permits the control commission to engage in the manufacture of liquor. One other state draws the line at rectifying and blending by the state authority.[34] It is therefore obvious that private profit from liquor sales is not eliminated even in the strongest monopoly state; but the basic theory of unstimulated sales is furthered by a variety of supporting provisions. No credit will be extended a purchaser. All sales must be made according to a standard price scale, thereby eliminating stimulation of sales through competitive price cutting. Managers and employees of the state dispensaries are provided with no incentive to increase the volume of sales since most statutes specifically stipulate that their compen-

28. Minnesota (§ 3200-2-58½).

29. Minnesota (§ 3200-25.)

30. In New York (§§ 17, 43) the state control commission will act upon the recommendation of local bodies in regard to granting or revoking licenses.

31. Local bodies in Rhode Island (§ 12) and Illinois (art. IV, §§ 1, 2) have full power to issue licenses, and to make regulations.

32. See FOSDICK AND SCOTT, TOWARD LIQUOR CONTROL (1933) c. 3.

33. Delaware (§ 17), Michigan (§ 19), Ohio (§ 6064-15), Pennsylvania (§ 744-411), Vermont (§ 15) and Washington (§ 23) allow private on-sales of all liquor. Oregon (§ 16) and Virginia (§ 18) restrict this to beer and wine. Montana (§ 9 (22), 14) and Iowa (c. 24, § 1, c. 25, § 5) allow private sales of beer only.

34. Delaware (§ 14 (3)). Ohio (§ 6064-8 (3)) also permits the control commission to operate a distillery but allows private sales of all liquor.

sation be fixed on a non-commission basis.[35] Logically this principle is extended also to the compensation of special agents appointed in lieu of state stores where the establishment of such a store is not deemed necessary.[36] There the agent is limited to a fixed salary and may receive no profit from the sale of liquor by him. In fact, he may be induced to discourage large sales since a large demand will cause his agency to be revoked in favor of a state store. Nor, for the same general reasons, may an employee of the state system acquire any financial interest in the private liquor business. State dispensaries are commonly prohibited the use of advertising or window displays to stimulate sales, although this provision seems absurd where private dealers are not subjected to the same restriction, which is the case under one statute[37] and may possibly be so under another depending upon the action taken by the commission.[38] Another feature of the state authority system as created in some few of the states is elimination of unlimited private profit by the requirement that private dealers may purchase liquor only from the state system. They are allowed a comparatively small discount from the general retail price,[39] and in one state can buy only at the retail price.[40] Thus the state store, although selling liquor only in packages is an active competitor of the retailer who sells for consumption on the premises, with the result that prices charged by the private retailer will not yield large profits as compared to the possibilities under the private licensing system. It is important to note in this respect that many of the states, while adopting the main features of the licensing system, have emulated the provisions of the monopoly plan in varying degrees. Minnesota and Maryland, although remaining aloof from any participation in the liquor traffic, have adopted the theory of the state authority plan to the extent of allowing local authorities to establish municipal dispensaries. Curiously enough, the Minnesota statute goes further in this respect than the most inclusive state monopoly by allowing municipal dispensaries to sell for consumption on the premises as well as in packages.[41] That the legislators in both Rhode Island and Massachusetts were impressed with the monopoly theory of unstimulated sales through the elimination of private profit is evidenced by statutory provisions permitting the state commission to establish maximum wholesale and retail prices respectively. The Minnesota legislature exhibits a tendency to fall in line by the incorporation in its statute of a unique section which reserves to itself the right at any time to limit the profits of any manufacturer, wholesaler or retailer. Some few license statutes, like those of the monopoly type, prohibit charge or credit sales.[42]

Since sales for consumption on the premises of private licensees may be made under both license and state authority statutes, restrictions placed upon such sales may be examined together. Outstanding among these restrictions are those which have as their purpose the abolition, at least in regard to physical characteristics, of the saloon or its modern counterpart, the speakeasy. Drinkers are now faced with the unhappy prospect of choosing between imbibing in the privacy of the home or satisfying their thirsts in full view of a gaping public, for no longer may the interior of a drinking establishment be concealed from public view by obstructions such as blinds, screens, frosted glass or even

35. See *supra* note 25.

36. The Iowa (c. 24, § 10), Michigan (§ 14) and Ohio (§ 6064-11) statutes contain this provision.

37. The Washington statute (§ 43) merely prohibits advertising by the commission.

38. The Oregon statute (§ 14) specifies that there be no advertising in state stores and places advertising by private dealers under the supervision of the commission.

39. Michigan (§ 16) allows a 15% discount to dealers.

40. Washington (§ 4).

41. § 3200-25.

42. Illinois (§ 13) and Massachusetts (§ 12).

the celebrated and time-honored swinging doors.[43] Nor may the identity of drinkers be concealed nor an atmosphere conducive to drinking be created by the use of dimmed lights,[44] enclosed booths or stalls, or the traditional "back room".[45] Of special interest to the observer of the changing American scene is the nearly universal blacklisting of the traditional bar[46] and its replacement by eminently respectable, but less colorful, tables and chairs.

In general, modern legislation represents an effort to discourage abusive drinking of liquor by permitting its sale only in respectable and sanitary surroundings, where the prospective drinker is confronted with a minimum of sales-stimulating devices. Licenses for the sale of the stronger alcoholic beverages are restricted to *bona fide* hotels and restaurants, the primary business of which is the preparation and service of cooked meals to the public.[47] Frequently encountered are provisions which require a minimum number of sleeping rooms for a hotel, adequate and sanitary facilities for the preparation of meals, and that the establishment realize the principal portion of its revenue from the sale of meals and/or lodging.[48] Although in most states liquor may be served only on premises where meals can be bought, only a minority of these states require that liquor may be served and drunk only with meals.[49] In all, however, only patrons seated at tables may be served.[50] In some of the states which require the patron to take food with his drink, some few legislatures, forewarned by the ease with which this type of restriction was practically nullified in pre-prohibition days,[51] have endeavored to forearm themselves by setting definite limits to the definition of "meal". Besides the general use of the terms "cooked" or "hot" in reference to food, one state has further provided that sandwiches and salads do not constitute a meal,[52] while in Montana a patron who has ordered food the value of which does not total twenty-five cents will discover that he has not ordered a meal, and will therefore not be permitted to order liquor with his food.[53]

Another method intended to encourage temperance is the grant of special privileges to associations organized for social, fraternal or other purposes of

43. This type of provision is encountered in practically all statutes. See, for example, the New York statute (§ 106) which specifically designates swinging doors along with curtains, blinds, *etc.*

44. It is usually required that the premises be well lighted. The Illinois statute (art. VI, § 20) requires "white or natural light".

45. The last provision usually takes the form of a prohibition against any connecting passages between that part of the premises where liquor is sold and other parts of the same or adjoining premises. Connecticut (§ 7066) and Illinois (art. VI, § 9) have incorporated such provisions.

46. Consumption while standing at a bar is expressly forbidden in most states, as in Colorado (§ 8), Illinois (§ 21) and Massachusetts (§ 12). In many states, as in Pennsylvania, the modern equivalent of a bar in the form of a lunch counter distinguished by permanently attached stools is permitted. The New York statute [art. 8, § 100 (4)] permits each drinking establishment to contain a single bar so long as that bar is not a "predominant" fixture of the place.

47. The Michigan statute (§ 2), for example, defines a restaurant as a place, where hot meals are habitually served to the public and specifically excludes candy or drug stores from this category.

48. Among these states are Kentucky (art. III), Maryland (§ 1) and Wisconsin (§176.01).

49. California (§ 1), Illlinois (§ 21), Iowa (§ 15 of Beer Act), Kentucky (§ 12), New Mexico (§ 5) and Oregon (§ 20) are among those states which allow liquor to be served only with meals.

50. Section 1 of the Massachusetts statute provides that patrons in taverns may drink only while seated in view of all other patrons.

51. Many will recall the custom, prevalent in New York, of including a permanent sandwich as part of the regular table equipment.

52. The statutes of Michigan (§ 2) and New York (art. 1, § 3) also include this provision, although food need not be ordered with liquor.

53. Montana (§ 2 (g)).

like nature, presumably in the hope of fostering temperate, semi-private drinking among homogeneous groups. These "clubs" are usually granted licenses which permit drinking on the same scale or manner as the most highly privileged licenses allowed in a particular state, and frequently upon payment of a smaller license fee and qualified by fewer restrictions in regard to the manner of sale.[54] Incorporated in most laws, however, are stipulations designed to prevent the utilization of club charters for the conduct of privileged, public drinking establishments.[55] With a single exception,[56] the purposes for which a club may be chartered exclude pecuniary gain. Many states further require that revenue from sources other than the sale of liquor be ample to defray the fiscal expenses of the organization.[57] Nor may those who conduct the affairs of the club realize any financial gain from the sale of liquor beyond a reasonable and pre-determined salary.[58] A provision frequently found in the statutes requires the club to maintain at all times with the control body a list of all members.[59]

In line with the discouragement of abusive drinking by confining public drinking to *bona fide* food-selling establishments, a variety of statutory provisions are concerned with the elimination of sales-stimulating devices. Many statutes prohibit gratuitous drinks "on the house" [60] or even gifts of food or other things of value such as premiums in connection with the sale of liquor,[61] although, strangely enough, but one state has outlawed the hallowed custom of "treating" in spite of the fact that the opponents of the saloon have condemned this feature as being one of the most vicious fostered by that institution.[62] Statutes uniformly provide for a period of time in each day during which liquor may not be sold so that continued "soaking" may be eliminated. None has gone as far, however, in this respect as has been done in England, where even within the briefer time allowed licensed establishments to sell liquor a "rest period" of two hours is required.[63] In few localities are Sunday or holiday sales permitted,[64] and in all states no liquor may be sold on election days. In most states, either by express statutory provision or by authority granted the control bodies, a limit is or may be imposed upon the number of licenses which may be issued in any one locality.[65] Many states also prescribe the maximum amount

54. In Pennsylvania (§ 744-407), for example, whereas license fees for hotels and restaurants range between $150 and $600, depending upon the size of the town or city where the establishment is located, a club license is uniformly fixd at $50 (§ 744-411). In Indiana hotels and restaurants may serve liquor only in connection with meals; clubs are unimpeded by this restriction (see § 3734).

55. The Pennsylvania act (§ 744-407) is unique in providing that clubs be subject to the same license fees as hotels and restaurants where they "cater to large groups of non-members."

56. Delaware (§ 3 (17)).

57. Michigan (§ 2).

58. Connecticut (§ 670b (8)), Massachusetts (§ 1), Michigan (§ 2) and Minnesota (§ 3200-21).

59. Connecticut (§ 670b (8)), Montana (§ 2 (k)) and Vermont (§ 2).

60. The Michigan statute (§ 29) provides that no licensee shall give away liquor in connection with his business.

61. Michigan (§ 27), Ohio (§ 6064-24) and Pennsylvania (§ 744-604). The New Jersey statute (c. 436, § 36) gives the control commission the power to make regulations in this respect. The Iowa statute (§ 15 of the Beer Act) forbids the giving away of food except pretzels, crackers and cheese. In Wisconsin no licensee may give away any free lunch or meals except popcorn, cheese, crackers, pretzels, sausage, fish or bread and butter.

62. Delaware (§ 17 (5)).

63. See Carter, *The Drink Problem in England* (1932) ANNALS 163, 197.

64. Connecticut (§ 730b), New Jersey (§ 41) and New York (§ 106-5) permit restricted Sunday sales.

65. Minnesota (§ 3200-25), for example, limits the number of licenses for each locality in accordance with the population therein.

of liquor which may be purchased at one time or over a fixed period of time.[66] In those states operating under the license system licenses for sale by package and those for consumption on the premises are rarely permitted to be utilized under a single roof. Little uniformity, however, exists among the requirements in regard to sale of unrelated merchandise under package sale licenses. One group of states prohibits the licensee from engaging in any other type of business on the premises;[67] another makes it mandatory that other merchandise be sold there;[68] a third allows off-sale licenses with no provision in this respect, thereby allowing either type of establishment by indirection.

Most important among provisions effectuating the general feeling against artificial sales stimulation are those restricting the use of advertising. Of these states many invest the control authority with the power to regulate advertising as it deems necessary,[69] while other statutes prescribe a variety of restrictions irrespective of regulations made by the commission.[70] Frequently signs are declared to be unlawful if they contain words *malum in se* such as "bar" or "saloon".[71] Advertising is often permitted for wines and beers while prohibited for the stronger beverages.[72] Closely related to the advertising provisions are the companion restrictions against the soliciting of sales from consumers[73] or those against peddling liquor.[74]

A rational approach to the problem of promoting temperate drinking is evidenced by the variegated treatment of beverages of differing alcoholic content. In general fewer restraints have been placed on the sale of the weaker beverages such as wine of lower alcoholic content and beer,[75] presumably on the theory that the greater ease with which these beverages can be obtained will be reflected in larger numbers of drinkers who will satisfy their thirsts together with the gregarious instinct, by consuming the more innocuous beverages. Although as a rule licenses issued for consumption on the premises of the stronger beverages include the right to sell the weaker drinks, it is not uncommon to grant licenses for the sale of wine and beer under less stringent requirements as to method of sale or character of the premises where they are sold, and at a lower license fee. Many of these states, in fact, have established a graduated scale of license fees based on the comparative alcoholic strength of the various beverages to be sold.[76]

66. This ranges from 5 gallons in California (commission regulation) to 1 quart in Delaware (§ 16). The Connecticut statute (§ 688b) curiously provides that not less than 1 quart may be bought at one time. In Oregon (§ 6) the commission has the power to regulate the quantity which may be purchased at any one time.

67. New York is included among the states. (See § 54)

68. Indiana (§ 3734), Missouri (§ 22) and New Mexico (§ 5). In Missouri the merchant must have a stock of other merchandise of a value in excess of $1,500.

69. Massachusetts (§ 24), Minnesota (§ 3200-23), Ohio (§ 6064-3), Oregon (§ 6) and Virginia (§ 4).

70. Delaware (§ 9—no poster advertising except for beer and wine); Montana (§ 64—only in newspapers and periodicals except by commission. Prices may not be quoted in advertisement); Washington (§ 43—no advertisement by the commission).

71. Montana (§ 64), for example, prohibits the display of signs containing the words bar, barroom, saloon, tavern, wine, spirits, liquors or words of like import.

72. Delaware (§ 9).

73. Maryland (§ 26) and Washington (§ 42).

74. Massachusetts (§ 32), Pennsylvania (§ 744-602h).

75. The following states allow only package sales of strong liquors but permit sales for consumption of wine and beer on the premises of licensed establishments: California, Colorado, Connecticut, Indiana, New Mexico, Oregon, Virginia and Washington. Iowa stands alone in permitting only "on-sales" of beer.

76. In Massachusetts (§ 15), for example, license fees for the sale of all liquor range between $250 and $2,500, while licenses for the sale of beer and wine range between $100 and $1,000.

The most striking development along these lines has been the widespread encouragement of the tavern or "beer-garden", as a substitute for the saloon.[77]

Statutes of all types have uniformly attempted to provide safeguards against the recurrence of the once solidly intrenched control by the large liquor interests of the retail outlets, with the attendant pressure upon the retailer to increase sales volume at any cost in order to placate the manufacturers to whom he had become financially obligated. Statutes commonly forbid persons who hold any financial interest in manufacturing or wholesale licenses from acquiring any interest, direct or indirect, in retail establishments by contributing to the cost of the license, advancing money as a loan or gift or acting as surety or in the character of pledgee for a retail licensee.[78] Also prohibited are acquisitions by the upper classes in the liquor hierarchy of financial interests in the premises occupied by retail licensees through ownership, mortgage or lien. Other provisions falling within this category preclude the furnishing of equipment, supplies or fixtures; or even signs or other display material in excess of a given value.[79] Generally outlawed is the notorious "tied-house" contract[80] by which a retailer bound himself to dispense the products of a particular manufacturer exclusive of all others in return for favors granted him, frequently assuming the form of protection against political interference with his establishment or, alternately, the guarantee of the renewal of his license. Closely related provisions prohibit owners of any one type of license to acquire an interest in a license of another type. Presumably for the purpose of curtailing the development of powerful liquor combines as well as the discouragement of intemperate consumption many statutes have limited the number of licenses which can be granted to a particular person or corporation.[81] Worthy of mention in this regard are two statutes which specifically prohibit the licensing of chain liquor stores.[82] In an endeavor to prevent a recurrence of the pre-prohibition alliance between politics and the liquor interests sharply barbed provisions in Illinois and Oregon cause the licenses of retail dealers to be revoked where such licensee contributes to political campaign funds or lends his support to the candidacy of a particular aspirant to office.[83]

In conjunction with the multitude of provisions enacted to regulate the conduct of retail dispensaries there are various restrictions placed upon the right of the individual citizen to purchase or drink liquor. Most statutes prohibit sales to minors (the age limit is relaxed to some degree in the case of beer), intoxicated persons, habitual drunkards and interdicted persons. Other statutes include persons receiving public relief,[84] insane persons, women in

77. See statutes in Connecticut (§ 670b), Delaware (§ 17), Michigan (§ 2), Rhode Island (§ 5) and Washington (§ 3). These are designated as "taverns" in all but Rhode Island.

78. In connection with this type of provision the Pennsylvania act (§ 744-609d) provides that "the purpose of this section is to require a separation of the financial and business interests between manufacturers and holders of hotel and restaurant licenses . . . and no person shall, by any device whatsoever, directly or indirectly, evade the provisions of this section."

79. In Illinois (§ 5) the manufacturer may not give the retailer, during any one year, any signs or display material exceeding an aggregate value of $100. This limit is set at $25 in Wisconsin (§ 176-17), and $5 in Maryland (§ 28).

80. Minnesota (§ 3200-27), Missouri (§ 3) and New York (§ 101) specifically outlaw this type of agreement.

81. For example, no more than three off-sale licenses nor more than one manufacturer's, wholesaler's or importer's license can be held by any one person or group of persons in Massachusetts (§ 15).

82. Colorado (§ 21) and Rhode Island (§ 6).

83. Illinois (§ 12a) and Oregon (§ 33).

84. The statute of Massachusetts (§ 69) is among those which contain this restriction.

Massachusetts taverns, Arizona bar maids while on duty, and Indians. In addition, many statutes fix the maximum amount of liquor which can be purchased at one time or over a period of time, and in keeping with the greater liberality allowed in the case of beer and wine, fix the maximum for these beverages at a correspondingly higher figure.[85] In five states,[86] all under the monopoly plan of control, and composed of a preponderantly rural population, a further restriction is imposed upon the person in the form of an individual purchasing permit. Under this requirement it is possible to effect a stringent enforcement of the various individual restrictions since such permit must be presented at the state dispensary at every purchase and will be revoked for violations of the liquor laws. Nor may these permits be transferred or used to purchase for another person.

Liquor legislation on the whole represents the result of many compromises among the various interests concerned in the liquor traffic. In no other phase of legislation on the subject, however, is this more apparent than in the completely jumbled state of the taxing provisions. Fighting for low taxes is the ultimate consumer, those interested in larger sales and, most important of all at the present stage, those who wish to combat the bootlegger effectively. Both the prohibitionist and the taxing authorities, although impelled by unrelated reasons, seek high taxes. An excise tax is levied both by federal and state authorities, and in many states local authorities are permitted to duplicate taxes levied by the state. In general, both license and excise taxes vary with the alcoholic strength of the beverage to be sold or manufactured, although there is little relation between fees charged for licenses of the same type in different states. Manufacturer's licenses vary with the type of liquor to be manufactured as well as the capacity of the plant or the amount manufactured. Retail licenses frequently vary with the population of the locality. It is interesting to note that in some few states the interest of the state in revenue has been effectively combined with the desire to control private profit to some extent by the utilization of excess profit taxes,[87] although this method of taxation can hardly be said to constitute an effective deterrent upon the desire to increase liquor sales. Another point of interest to those who want effective control of the liquor traffic is the practice of allocating revenue to be received to various purposes. When viewed in the light of the express purposes of most statutes to increase temperance in the use of liquor this type of provision seems anomalous since it serves only to create groups of people who will be interested only in increased consumption in order to increase revenue.

Of primary importance under any system of control is the uniformly incorporated provision for local option. Although an integral part of liquor control statutes before national prohibition, the right of voters in small sections of the state to determine whether their community shall be "wet" or "dry" assumes an added significance in view of the widespread belief that an important factor in the downfall of national prohibition was the failure to reckon with the diversified tastes of a heterogeneous population. This reasoning applies equally to the possibility of variation within a single state. In few statutes,

85. Delaware (§ 37) allows the purchase at one time of one bottle of spirits or twelve bottles of beer or wine; Indiana (§ 3743) four quarts of spirits and twenty-four bottles of wine or beer.

86. Iowa (§ 20), Montana (§§ 18-27), New Mexico (§ 8), Oregon (§ 26) and Washington (§ 12). The provision for a purchasing permit has been repealed, however, in New Mexico [see N. M. Laws (1934) c. 30, § 8]. Delaware (§ 37) requires a special permit in order to purchase liquor in excess of the maximum amount allowed.

87. Ohio (§ 43) has utilized this form of taxation in regard to the stronger liquors, although not with respect to wine and beer. Rhode Island (§ 49) limits the profits of wholesalers to 9% on the amount invested.

however, has any attempt been made to base the local option districts upon anything other than the usual political units—the county, city or town. The fact that the composition of a large urban unit may be as diversified in composition as an entire state is disregarded under this classification. The Wisconsin statute[88] offers a remedy for this apparent weakness by providing for local option divisions of small, compact groups of people composed of not less than one hundred nor more than seven hundred and fifty electors residing in a small residential area. Under this classification a wet or dry unit will represent more truly the desires of a homogeneous group, and will thereby lay the foundation of popular respect and obedience to law as chosen by the members of the community. While some statutes merely give the local voters the option of registering a choice between the system of liquor sales as prescribed by the statute or complete prohibition,[89] others allow the members of the community some latitude in determining a system which will be suited to their particular desires and habits.[90] In still others an attempt has been made to provide for the desires of the irreconcilable wet minority by permitting, under any state of the local law, the importation of liquor for personal use.[91] This type of provision frankly recognizes the fact, learned through bitter experience during national prohibition, that people who desire intoxicating liquor will satisfy that desire extra-legally if not permitted to do so under the law. Provisions regarding the frequency with which local option elections may be held, and the time for holding such elections, reveal in some quarters the recognized necessity of divorcing the influence of politics from the liquor problem. While some statutes tend to cement the bond between the two by making it mandatory that the issue be voted upon at every general election,[92] more enlightened statutes have stipulated that the popular choice should not be registered at the same time as a general election, and then only after a petition by a fixed percentage of the voters of the community.[93] As a precaution against continual agitation of the question it is frequently stipulated that there be no reconsideration of the matter for a fixed period of years.[94]

Many persuasive arguments can be advanced as to the relative merits or defects of the systems of control which have been adopted in the respective states, or in regard to the various single provisions which aim at the elimination of a particular abuse associated with the liquor traffic. Much can be said, too, of the relative ease or difficulty attendant upon the enforcement of the innumerable statutory requirements. But of even greater portent in any attempt to forecast the success or failure of a particular control system is the popular reaction to the restrictions and conditions placed upon the sale of liquor to the

88. §§ 176.20-176.25.

89. Michigan (§ 56) allows a referendum to decide only whether or not strong liquor will be permitted in that community. Minnesota (§ 35) permits only a choice between the two extremes.

90. Massachusetts awards spirituous and light liquors a separate place on the ballot. Ohio (§ 3138) permits the voters to vote separately on state dispensaries and private licenses. Pennsylvania permits the voters to prohibit only private licenses.

91. Washington (§ 83).

92. Massachusetts' ballots, at every general election, contain a space in which voters are to register their preferences (§ 11). Oregon (§§ 41, 43) allows a local option vote at any general election upon petition by 10% of the voters.

93. Illinois [art. IV (25% petition) forty-seven months must elapse before the question can be resubmitted to the voters]; Minnesota (§ 35; local option election must be removed from the general election by one month); Missouri (§ 44a-1; sixty days, so that it "shall be separate and distinct from any other election whatever").

94. Kentucky (art. VIII, three years); Michigan (§ 56, four years); Minnesota (§ 35, three years); New Jersey (§ 41, three years); New Mexico (§ 3, four years); New York (§ 147, every third general election); Pennsylvania (§ 744-501, on election days every four years).

ultimate consumer. That a statute will be practically nullified when it does not approximate the desires of large groups of people becomes an obvious fact when viewed in the light of vigorous growth of the illegal liquor traffic during national prohibition. The success or failure, therefore, of a particular statute will hinge upon the degree to which it receives popular support, and this will depend in turn upon the willingness of large groups of people to cooperate in the movement toward social control. Thus it would seem a matter of vital importance that there be incorporated in any type of statute measures aimed at educating the populace along these lines. The lawmakers, however, have exhibited little foresight in this matter. The section of the Minnesota statute [95] which provides for instruction in the public schools on the effect of alcohol upon the human system and upon society in general, and, at the same time, declares a policy of regulating advertising so that the effects of the educational plan will not be neutralized, is to be commended. Unfortunately, it stands quite alone among the statutes.

C. J. F.

APPENDIX *

Arkansas Acts Spec. Sess. 1933-1934, no. 7.
CAL. CODE (Deering, Supp. 1933) tit. 278.
Col. Sess. Laws Spec. Sess. 1933, c. 12.
CONN. GEN. STAT. (Supp. 1933) c. 151.
Del. Laws 1933, c. 18.
Ill. Laws Spec. Sess. 1933-1934, no. 9.
IND. STAT. ANN. (Baldwin, 1934) c. 12.
Iowa Laws Spec. Sess. 1934, c. 24, 25 (beer act).
Ky. Acts 1934, c. 146.
La. Acts 1934, no. 15, amended, Spec. Sess. 1934, no. 15.
Md. Laws Spec. Sess. 1933, c. 2.
Mass. Laws Spec. Sess. 1933, c. 375.
Mich. Laws Spec. Sess. 1933, no. 8.
MINN. STAT. (Mason Supp., 1934) c. 16.
Miss. Laws 1934, c. 171, 172, 173.
Mo. STAT. ANN. (Supp. 1934) c. 31.
Mont. Laws 1933, c. 105.
N. J. Laws 1933, c. 434, 436.
N. M. Laws 1933, c. 159, amended, Laws 1934, c. 30.
N. Y. CONS. LAWS (Supp. 1934) c. 2a.
OHIO CODE ANN. (Throckmorton, Baldwin's ed. Supp. 1934) § 6064.
Ore. Laws 2d Spec. Sess. 1933, c. 17.
PA. STAT. ANN. (Purdon Supp. April, 1934) tit. 47.
R. I. Laws 1933, c. 2013.
Vt. Laws Spec. Sess. 1934, no. 1.
Va. Acts 1934, c. 94.
Wash. Laws Spec. Sess. 1933, c. 62.
Wis. Laws Spec. Sess. 1933-1934, c. 13.

* The texts of the statutes of Maine and New Hampshire were not available. For a brief résumé of the liquor situation as it existed in each state on Dec. 5, 1934, see Phila. Public Ledger, Dec. 5, 1934, at 4.

95. § 3200-29.