

**EIGHTEENTH AMENDMENT  
PROHIBITION OF LIQUOR**

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## EIGHTEENTH AMENDMENT—PROHIBITION OF LIQUOR

### Amdt18.1 Overview of Eighteenth Amendment, Prohibition of Alcohol

#### Eighteenth Amendment

##### Section 1:

*After one year from the ratification of this article the manufacture, sale, or transportation of intoxicating liquors within, the importation thereof into, or the exportation thereof from the United States and all territory subject to the jurisdiction thereof for beverage purposes is hereby prohibited.*

##### Section 2:

*The Congress and the several States shall have concurrent power to enforce this article by appropriate legislation.*

##### Section 3:

*This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of the several States, as provided in the Constitution, within seven years from the date of the submission hereof to the States by the Congress.*

The Eighteenth Amendment was proposed by Congress on December 18, 1917, when it passed the Senate<sup>1</sup>, having previously passed the House on December 17.<sup>2</sup> It appears officially in 40 Stat. 1059. Ratification was completed on January 16, 1919, when the thirty-sixth state approved the amendment, there being then forty-eight states in the Union. On January 29, 1919, Acting Secretary of State Polk certified that this amendment had been adopted by the requisite number of states.<sup>3</sup> By its terms this amendment did not become effective until one year after ratification.

The Eighteenth Amendment was repealed by the Twenty-First Amendment, and titles I and II of the National Prohibition Act<sup>4</sup> were subsequently specifically repealed by the Act of August 27, 1935.<sup>5</sup> Federal prohibition laws effective in various Districts and Territories were repealed as follows: District of Columbia—April 5, 1933, and January 24, 1934;<sup>6</sup> Puerto Rico and Virgin Islands—March 2, 1934;<sup>7</sup> Hawaii—March 26, 1934;<sup>8</sup> and Panama Canal Zone—June 19, 1934.<sup>9</sup>

Noting that ratification of the Twenty-First Amendment was completed on December 5, 1933, the Supreme Court held that the National Prohibition Act, insofar as it rested upon a grant of authority to Congress by the Eighteenth Amendment, thereupon become inoperative, with the result that prosecutions for violations of the National Prohibition Act, including proceedings on appeal, pending on, or begun after the date of repeal, had to be dismissed for want of jurisdiction. Only final judgments of conviction rendered while the National

<sup>1</sup> CONG. REC., 65th Cong., 2d Sess. 478 (1917).

<sup>2</sup> *Id.* at 470.

<sup>3</sup> 40 Stat. 1941.

<sup>4</sup> Ch. 85, 41 Stat. 305.

<sup>5</sup> Ch. 740, 49 Stat. 872.

<sup>6</sup> Ch. 19, 48 Stat. 25; ch. 4, 48 Stat. 319.

<sup>7</sup> Ch. 37, 48 Stat. 361.

<sup>8</sup> Ch. 88, 48 Stat. 467.

<sup>9</sup> Ch. 657, 48 Stat. 1116.

## EIGHTEENTH AMENDMENT—PROHIBITION OF LIQUOR

Amdt18.1

Overview of Eighteenth Amendment, Prohibition of Alcohol

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Prohibition Act was in force remained unaffected.<sup>10</sup> Likewise a heavy “special excise tax,” insofar as it could be construed as part of the machinery for enforcing the Eighteenth Amendment, was deemed to have become inapplicable automatically upon the Amendment’s repeal.<sup>11</sup> However, liability on a bond conditioned upon the return on the day of trial of a vessel seized for illegal transportation of liquor was held not to have been extinguished by repeal when the facts disclosed that the trial took place in 1931 and had resulted in conviction of the crew. The liability became complete upon occurrence of the breach of the express contractual condition, and a civil action for recovery was viewed as unaffected by the loss of penal sanctions.<sup>12</sup>

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<sup>10</sup> *United States v. Chambers*, 291 U.S. 217, 222–26 (1934). *See also* *Ellerbee v. Aderhold*, 5 F. Supp. 1022 (N.D. Ga. 1934); *United States ex rel. Randall v. United States Marshal*, 143 F.2d 830 (2d Cir. 1944). Because the Twenty-First Amendment contains “no saving clause as to prosecutions for offenses therefore committed,” these holdings were rendered unavoidable by virtue of the well-established principle that after “the expiration or repeal of a law, no penalty can be enforced, nor punishment inflicted, for violations of the law committed while it was in force. . . .” *The General Pinkney*, 9 U.S. (5 Cr.) 281, 283 (1809), *quoted in United States v. Chambers*, 291 U.S. at 223.

<sup>11</sup> *United States v. Constantine*, 296 U.S. 287 (1935). The Court also took the position that, even if the statute embodying this “tax” had not been “adopted to penalize violations of the Amendment,” but merely to obtain a penalty for violations of state liquor laws, “it ceased to be enforceable at the date of repeal,” for with the lapse of the unusual enforcement powers contained in the Eighteenth Amendment, Congress could not, without infringing upon powers reserved to the states by the Tenth Amendment, “impose cumulative penalties above and beyond those specified by State law for infractions of . . . [a] State’s criminal code by its own citizens.” Justice Benjamin Cardozo, joined by Justices Louis Brandeis and Harlan Stone, dissented on the ground that, on its face, the statute levying this “tax” was “an appropriate instrument of . . . fiscal policy. . . . Classification by Congress according to the nature of the calling affected by a tax . . . does not cease to be permissible because the line of division between callings to be favored and those to be reproved corresponds with a division between innocence and criminality under the statutes of a state.” *Id.* at 294, 296, 297–98. In earlier cases, the Court nevertheless recognized that Congress also may tax what it forbids and that the basic tax on distilled spirits remained valid and enforceable during as well as after the life of the Amendment. *See United States v. Yuginovich*, 256 U.S. 450, 462 (1921); *United States v. Stafoff*, 260 U.S. 477 (1923); *United States v. Rizzo*, 297 U.S. 530 (1936).

<sup>12</sup> *United States v. Mack*, 295 U.S. 480 (1935).