

The Eighteenth Amendment and National Prohibition, Part 4: Early Prohibition Laws

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This Legal Sidebar post is the fourth in a seven-part series that discusses the [Eighteenth Amendment to the Constitution](#). Prior to its [repeal](#), the Eighteenth Amendment prohibited the manufacture, sale, or transportation of “intoxicating liquors” for “beverage purposes” within the United States. Section 2 of the Amendment granted Congress and the state legislatures “concurrent power” to enforce nationwide Prohibition by enacting “appropriate legislation.” The Eighteenth Amendment was partly a response to the Supreme Court’s pre-Prohibition Era Commerce Clause jurisprudence, which limited [the federal](#) and [state governments’](#) power over the liquor traffic. As such, the Eighteenth Amendment’s history provides insight into the judicial evolution of the [Commerce Clause](#), which operates as both a positive grant of legislative power to Congress and a [limit on state authority](#) to regulate commerce. Additional information on this topic will be published in the [Constitution Annotated: Analysis and Interpretation of the U.S. Constitution](#).

Early Federal and State Prohibition Laws

Before the Civil War, several states [enacted laws](#) that restricted or banned the manufacture and sale of alcoholic beverages statewide. However, by the war’s end, most of these states had repealed or weakened their prohibition laws. In the late 1800s, a resurgent temperance movement prompted the enactment of [new statewide bans or restrictions](#) on the liquor traffic. Producers and sellers of alcoholic beverages [challenged](#) some of these state prohibition laws in federal court, contending that they violated various provisions of the Constitution, including the [Commerce Clause](#).

In evaluating constitutional challenges to late 19th century state prohibition laws, the Supreme Court [confirmed](#) the states’ power to prohibit the intrastate manufacture and sale of alcoholic beverages. However, the Court [held that](#) the Commerce Clause prevented the states from banning the importation or initial sale of out-of-state beverages that remained in their original packages. The Court decided that, absent contrary federal law, such state bans impermissibly burdened interstate commerce.

Responding to concerns that the Supreme Court’s decisions would prevent “dry” states from enforcing their prohibition laws fully, Congress enacted various statutes that specifically subjected imported alcoholic beverages to state regulation. For instance, the [Webb-Kenyon Act of 1913](#) effectively authorized the states to restrict the direct shipment of imported alcoholic beverages to consumers for

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personal use. In 1917, Congress enacted the Reed Amendment to penalize anyone who imported alcoholic beverages into a “dry” state for personal use by subjecting them to imprisonment or payment of a fine.

In addition to facilitating state prohibition efforts, Congress passed nationwide laws restricting the production and sale of alcoholic beverages during the United States’ participation in World War I. In May 1917, one month after declaring war on Germany, Congress [prohibited](#) the sale of alcoholic beverages to soldiers in uniform. Some wartime prohibition laws were ostensibly designed to preserve grain and other food ingredients for soldiers’ provisions. For instance, later in 1917, Congress enacted the Food Control Act or “Lever Act,” which [prohibited](#) liquor producers from using food materials to manufacture distilled alcoholic beverages. The President, acting pursuant to authority delegated to him in the Act, [proclaimed restrictions](#) on the production of less potent beverages, including beer.

In November 1918, about two months before the states ratified the Eighteenth Amendment—and a little more than a year before Prohibition took effect—Congress enacted the [War-Time Prohibition Act](#). The Act banned the sale of “intoxicating” alcoholic beverages until the President declared an end to the country’s mobilization for World War I. Charged with enforcing the Act, the Commissioner of Internal Revenue [determined](#) that “a beverage containing as much as one-half of one per centum of alcohol by volume would be regarded as intoxicating.” Thus, even before the states ratified the Eighteenth Amendment, the federal government had imposed stringent nationwide restrictions on the liquor trade to facilitate state prohibition laws and support the nation’s efforts in World War I.

Click [here](#) to continue to Part 5.

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