

Title 28-A: LIQUORS
Chapter 57: CERTIFICATE OF APPROVAL HOLDER
AND MAINE WHOLESALE LICENSEE AGREEMENT ACT

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MRS Title 28-A, Chapter 57: CERTIFICATE OF APPROVAL
HOLDER AND MAINE WHOLESALE LICENSEE AGREEMENT ACT

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Maine Revised Statutes

Title 28-A: LIQUORS

Chapter 57: CERTIFICATE OF APPROVAL HOLDER AND MAINE WHOLESALE LICENSEE AGREEMENT ACT

§1451. DEFINITIONS

As used in this chapter, unless the context indicates otherwise, the following terms have the following meanings. [1987, c. 45, Pt. A, §4 (NEW).]

1. Agreement. "Agreement" means a commercial relationship, not required to be evidenced in writing, of definite or indefinite duration, between a certificate of approval holder and a wholesale licensee, under which the wholesale licensee is authorized to distribute one or more of the certificate of approval holder's brands of malt liquor, wine or beverages. The performance or accomplishment of any of the following acts shall constitute prima facie evidence of an "agreement" within the meaning of this definition:

A. The shipment, preparation for shipment or acceptance of any order by any certificate of approval holder or its agents for any malt liquor, wine or beverages to a wholesale licensee within the State; and [1987, c. 45, Pt. A, §4 (NEW).]

B. The payment by a wholesale licensee and the acceptance of payment by any certificate of approval holder or its agent or the shipment of an order for malt liquor or beverages intended for sale in Maine. [1987, c. 45, Pt. A, §4 (NEW).]

2. Person. Notwithstanding section 2, subsection 23, "person" means a natural person, corporation, partnership, trust, agency or other entity as well as the individual officer, directors or persons in active control of the activities of that entity. "Person" also includes heirs, assigns, personal representatives and guardians.

[1987, c. 45, Pt. A, §4 (NEW) .]

3. Primary source of supply. "Primary source of supply" means the distiller, the bottler, the brewer, the winery, the brand owner or the designated agent of any distiller, brewer, winery or brand owner.

[1987, c. 45, Pt. A, §4 (NEW) .]

4. Territory or sale territory. "Territory" or "sale territory" means the area of primary sales responsibility expressly or implicitly designated by any agreement between a wholesale licensee and a certificate of approval holder for the brand or label of a certificate of approval holder.

[1987, c. 45, Pt. A, §4 (NEW) .]

5. Wholesale licensee. Notwithstanding section 2, subsection 34, "wholesale licensee" means any person holding a wholesale malt liquor or wine license within the State, offering malt liquor or wine for sale or resale to retailers, without regard to whether the business of the person is conducted under the terms of an agreement with a certificate of approval holder.

[1987, c. 45, Pt. A, §4 (NEW) .]

SECTION HISTORY

1987, c. 45, §A4 (NEW).

§1452. NO INDUCEMENT OR COERCION

1. Certificate of approval holder. No certificate of approval holder may:

A. Induce or coerce, or attempt to induce or coerce, any wholesale licensee to accept delivery of any liquor or any other commodity which has not been ordered by the wholesale licensee; [1987, c. 45, Pt. A, §4 (NEW).]

B. Induce or coerce, or attempt to induce or coerce, any wholesale licensee to do any illegal act or thing by threatening to amend, cancel, terminate or refuse to renew any agreement existing between a certificate of approval holder and a wholesale licensee; or [1987, c. 45, Pt. A, §4 (NEW).]

C. Require a wholesale licensee to assent to any condition, stipulation or provision limiting the wholesale licensee in his right to sell the product of any other certificate of approval holder anywhere in the State if the acquisition of the product of another certificate of approval holder does not materially impair the quality of service or quantity of sales of the existing brand or brands of the certificate of approval holder seeking to impose the condition, stipulation or provision. [1987, c. 45, Pt. A, §4 (NEW).]

[1987, c. 45, Pt. A, §4 (NEW) .]

SECTION HISTORY

1987, c. 45, §A4 (NEW).

§1453. NO DUAL DISTRIBUTORSHIP

1. Dual distributorship prohibited. No certificate of approval holder who designates a sales territory for which a wholesale licensee is primarily responsible may enter into any agreement with any other wholesale licensee for the purpose of establishing an additional agreement for its brand or label in the same territory.

[1987, c. 45, Pt. A, §4 (NEW) .]

2. Certificate of approval holder to file list. Each certificate of approval holder shall file with his application for certificate of approval a list giving the name and address of each bottler and wholesale licensee authorized to distribute products of that certificate of approval holder and designating the exclusive territory assigned to each wholesale licensee within the State. Unless authorized by the bureau, wholesale licensees may not sell those products to licensees outside of the exclusive territory allocated and designated.

A. Sales of wine to retail licensees at the wholesale licensee's warehouse shall be considered a sale within the wholesale licensee's exclusive territory. [1987, c. 45, Pt. A, §4 (NEW).]

[1987, c. 45, Pt. A, §4 (NEW) .]

3. Primary source of supply. No wholesale licensee may purchase liquor from anyone other than the primary source of supply within the United States.

[1987, c. 45, Pt. A, §4 (NEW) .]

SECTION HISTORY

1987, c. 45, §A4 (NEW).

§1454. CANCELLATION

1. Good cause. Notwithstanding the terms, provisions or conditions of any agreement, no certificate of approval holder may amend, cancel, terminate or refuse to continue or renew any agreement, or cause a wholesale licensee to resign from an agreement, unless good cause can be established or proven for amendment, termination, cancellation, nonrenewal, noncontinuation or causing a resignation. "Good cause" does not include the sale or purchase of a certificate of approval holder. "Good cause" includes, but is not limited to, the following:

- A. Revocation of the wholesale licensee's license to do business in the State; [1987, c. 45, Pt. A, §4 (NEW).]
- B. Bankruptcy or insolvency of the wholesale licensee; [1987, c. 45, Pt. A, §4 (NEW).]
- C. Assignment for the benefit of creditors or similar disposition of the assets of the wholesale licensee; and [1987, c. 45, Pt. A, §4 (NEW).]
- D. Failure by the wholesale licensee to substantially comply, without reasonable excuse or justification, with any reasonable and material requirement imposed upon him by the certificate of approval holder. [1987, c. 45, Pt. A, §4 (NEW).]

[1987, c. 45, Pt. A, §4 (NEW) .]

SECTION HISTORY

1987, c. 45, §A4 (NEW).

§1455. NOTICE OF INTENT TO TERMINATE

1. Written notice. Before any termination procedure initiated by the certificate of approval holder, the certificate of approval holder shall give the wholesale licensee written notice of any claimed deficiency existing in his territory and shall give the wholesale licensee reasonable time to correct the claimed deficiency or deficiencies. After this reasonable time has elapsed, the certificate of approval holder shall provide the wholesale licensee at least 90 days prior written notice of any intent to amend, terminate, cancel or not renew any agreement. The notice must state all the reasons for the intended amendment, termination, cancellation or nonrenewal. The notice provisions of this section do not apply if the reason for the amendment, termination, cancellation or nonrenewal is:

- A. The bankruptcy or insolvency of the wholesale licensee; [1987, c. 45, Pt. A, §4 (NEW).]
- B. An assignment for the benefit of creditors or similar disposition of the assets of the wholesale licensee's business; [1987, c. 45, Pt. A, §4 (NEW).]
- C. Revocation of the wholesale licensee's license; or [1987, c. 45, Pt. A, §4 (NEW).]
- D. Conviction or a plea of guilty or no contest to a charge of violating a law relating to the business that materially affects the wholesale licensee's ability to remain in business. [1987, c. 45, Pt. A, §4 (NEW).]

[1987, c. 45, Pt. A, §4 (NEW) .]

SECTION HISTORY

1987, c. 45, §A4 (NEW).

§1456. ASSIGNMENT, TRANSFER OR SALE OF BUSINESS

No certificate of approval holder may unreasonably withhold consent to any assignment, transfer or sale of the wholesale licensee's business whenever the wholesale licensee to be substituted meets the material and reasonable qualifications and standards required of its wholesale licensees. [1987, c. 45, Pt. A, §4 (NEW).]

SECTION HISTORY

1987, c. 45, §A4 (NEW).

§1457. COMPENSATION

1. Reasonable compensation. Any certificate of approval holder which amends, cancels, terminates or refuses to continue or renew any agreement, or causes a wholesale licensee to resign, unless for good cause shown, as defined in section 1454, from an agreement or unreasonably withholds consent to any assignment, transfer or sale of a wholesale licensee's business, shall pay the wholesale licensee reasonable compensation for the value of the wholesale licensee's business related to the terminated brand or brands. The value of the wholesale licensee's business includes inventory and other tangible assets and its good will.

[1987, c. 45, Pt. A, §4 (NEW) .]

2. Neutral arbitrator. If the certificate of approval holder and the wholesale licensee are unable to agree on the reasonable compensation to be paid for the value of the wholesale licensee's business, as defined in subsection 1, they shall submit the matter to a neutral arbitrator selected by the parties, or, if they cannot agree, by the Chief Justice of the Supreme Judicial Court. The costs of the arbitration shall be paid 1/2 by the wholesale licensee and 1/2 by the certificate of approval holder or otherwise the arbitration proceeding shall be governed by the Maine Uniform Arbitration Act.

[1987, c. 45, Pt. A, §4 (NEW) .]

SECTION HISTORY

1987, c. 45, §A4 (NEW).

§1458. JUDICIAL REMEDIES

1. Suit against certificate of approval holder. If a certificate of approval holder engages in conduct prohibited under this chapter, a wholesale licensee may maintain a suit against the certificate of approval holder.

[1987, c. 45, Pt. A, §4 (NEW) .]

2. Equitable relief. The court may grant equitable relief necessary to remedy the effects of conduct which it finds to exist and which is prohibited under this chapter, including, but not limited to, declaratory judgment and injunctive relief.

[1987, c. 45, Pt. A, §4 (NEW) .]

3. Punitive damages, costs and fees. If the court finds that the certificate of approval holder has acted in bad faith in invoking the amendment, termination, cancellation or nonrenewal provisions of this chapter or has unreasonably withheld its consent to any assignment, transfer or sale of the wholesale licensee's agreement, the court may award punitive damages, as well as actual damages, costs and attorneys fees.

[1987, c. 45, Pt. A, §4 (NEW) .]

SECTION HISTORY

1987, c. 45, §A4 (NEW).

§1459. PRICE OF PRODUCT

No certificate of approval holder, whether by means of a term or condition of an agreement or otherwise, may fix or maintain the price at which the wholesale licensee sells any product. [1987, c. 45, Pt. A, §4 (NEW).]

SECTION HISTORY

1987, c. 45, §A4 (NEW).

§1460. RETALIATORY ACTION PROHIBITED

1. Retaliatory action prohibited. A certificate of approval holder may not take retaliatory action against a wholesale licensee who files or indicates an intention to file a complaint of alleged violation of state or federal law or regulation by the certificate of approval holder with the appropriate state or federal regulatory authority.

[1987, c. 45, Pt. A, §4 (NEW) .]

2. Retaliatory action described. Retaliatory action includes, but is not limited to:

A. Refusal without good cause to continue the agreement; or [1987, c. 45, Pt. A, §4 (NEW).]

B. A material reduction in the quality of service or quantity of products available to the wholesale licensee under the agreement. [1987, c. 45, Pt. A, §4 (NEW).]

[1987, c. 45, Pt. A, §4 (NEW) .]

SECTION HISTORY

1987, c. 45, §A4 (NEW).

§1461. MANAGEMENT AND PERSONNEL OF WHOLESALE LICENSEE

No certificate of approval holder may require or prohibit any change in management or personnel of any wholesale licensee unless the current or potential management or personnel fails to meet reasonable qualifications and standards required by the certificate of approval holder. [1987, c. 45, Pt. A, §4 (NEW).]

SECTION HISTORY

1987, c. 45, §A4 (NEW).

§1462. NO WAIVER; GOOD FAITH SETTLEMENTS

No certificate of approval holder may require any wholesale licensee to waive compliance with any provisions of this chapter. Nothing in this chapter limits or prohibits good faith settlements of disputes voluntarily entered into between the parties. [1987, c. 45, Pt. A, §4 (NEW).]

SECTION HISTORY

1987, c. 45, §A4 (NEW).

§1463. SALE OF CERTIFICATE OF APPROVAL HOLDER

1. Purchaser obligated. The purchaser of a certificate of approval holder is obligated to all of the terms and conditions of the agreement in effect on the date of purchase.

[1987, c. 45, Pt. A, §4 (NEW) .]

2. Purchase defined. "Purchase," as defined for the purposes of this chapter, includes, but is not limited to:

A. Sale of stock; [1987, c. 45, Pt. A, §4 (NEW).]

B. Sale of assets; [1987, c. 45, Pt. A, §4 (NEW).]

C. Merger; [1987, c. 45, Pt. A, §4 (NEW).]

D. Lease; [1987, c. 45, Pt. A, §4 (NEW).]

E. Transfer; or [1987, c. 45, Pt. A, §4 (NEW).]

F. Consolidation. [1987, c. 45, Pt. A, §4 (NEW).]

[1987, c. 45, Pt. A, §4 (NEW) .]

SECTION HISTORY

1987, c. 45, §A4 (NEW).

§1464. COVERAGE

The provisions of this chapter apply to agreements between certificate of approval holders and wholesale licensees in existence on September 16, 1979, and those entered into after that date. [1987, c. 45, Pt. A, §4 (NEW).]

SECTION HISTORY

1987, c. 45, §A4 (NEW).

§1465. RIGHT OF FREE ASSOCIATION

No certificate of approval holder or wholesale licensee may restrict or inhibit, directly or indirectly, the right of free association of certificate of approval holders or wholesale licensees for any lawful purpose. [1987, c. 45, Pt. A, §4 (NEW).]

SECTION HISTORY

1987, c. 45, §A4 (NEW).

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