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VETERANS AND LEGAL AFFAIRS

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STATE OF MAINE

SENATE

132ND LEGISLATURE

FIRST SPECIAL SESSION

COMMITTEE AMENDMENT “ ” to S.P. 570, L.D. 1376, “An Act to Increase the Acceptable Level of Alcohol in a Low-alcohol Spirits Product and to Increase Availability of Those Products”

Amend the bill by striking out the title and substituting the following:

'An Act to Increase the Availability of Ready-to-drink Beverages Containing Spirits'

Amend the bill by striking out everything after the enacting clause and inserting the following:

'Sec. 1. 28-A MRSA §2, sub-§31, as amended by PL 2019, c. 404, §2, is further amended to read:

31. Spirits. "Spirits" means any liquor produced by distillation or, if produced by any other process, strengthened or fortified by the addition of spirits of any kind. "Spirits" does not include low-alcohol spirits products, a spirits cocktail product or fortified wine. ~~Beginning July 1, 2019, "spirits"~~ "Spirits" does not mean an additive or flavoring, such as an extract or concentrate, that:

A. Contains alcohol;

B. Is not intended to be consumed alone as a beverage or a food product but serves as a flavor enhancement to a beverage or a food product; and

C. Is not subject to excise tax under chapter 65.

Sec. 2. 28-A MRSA §2, sub-§31-E is enacted to read:

31-E. Spirits cocktail product. "Spirits cocktail product" means a product packaged as a single-serving ready-to-drink beverage containing spirits that contains more than 8% alcohol by volume but no more than 15% alcohol by volume.

Sec. 3. 28-A MRSA §13, as repealed and replaced by PL 2021, c. 658, §49, is amended to read:

§13. Low-alcohol spirits products and spirits cocktail products sold by wine licensees

1 **1. Retail sales.** Notwithstanding any provision of this Title to the contrary, a person
2 licensed to sell wine for on-premises or off-premises consumption may also sell low-
3 alcohol spirits products and spirits cocktail products. All provisions of this Title applicable
4 to wine, except chapters 65 and 67, apply to low-alcohol spirits products and spirits cocktail
5 products when sold by persons licensed to sell wine for on-premises or off-premises
6 consumption.

7 **2. Wholesale sales.** Notwithstanding any provision of this Title to the contrary, a
8 person licensed under section 1401 as an in-state wholesaler of wine may also sell and
9 distribute low-alcohol spirits products and spirits cocktail products.

10 **Sec. 4. 28-A MRSA §1355-A, sub-§5, ¶D,** as amended by PL 2021, c. 658, §226,
11 is further amended to read:

12 D. Except for spirits cocktail products and as otherwise provided in this section, spirits
13 produced by a holder of a distillery or small distillery license must be sold to the State
14 and are subject to the listing, pricing and distribution provisions of this Title.

15 **Sec. 5. 28-A MRSA §1355-A, sub-§5, ¶F-1,** as amended by PL 2023, c. 34, §5,
16 is further amended to read:

17 F-1. A distillery or small distillery may sell to the public for on-premises consumption
18 cocktails containing samples of a spirits cocktail product and spirits produced by the
19 distillery or small distillery under the conditions specified in this paragraph.

20 (1) A spirits cocktail product or a cocktail containing spirits may be sold only at
21 the manufacturing facility where the a spirits cocktail product and spirits are
22 produced or at an additional location licensed under paragraph B, subparagraph
23 (3).

24 (2) The distillery or small distillery may include wine or spirits not manufactured
25 by the distillery or small distillery as an ingredient in the cocktail only if the
26 distillery or small distillery purchased the wine or spirits from an agency liquor
27 store licensed as a reselling agent. This subparagraph does not apply to spirits
28 cocktail products.

29 (3) A cocktail may not contain more than 4 1/2 ounces of spirits.

30 **Sec. 6. 28-A MRSA §1355-A, sub-§5, ¶G,** as amended by PL 2021, c. 658, §226,
31 is further amended to read:

32 G. Notwithstanding paragraph D, a holder of a small distillery license that sells its
33 ~~products~~ spirits directly to consumers for off-premises consumption under paragraph
34 B, subparagraph (3), subsection 2, paragraph D or subsection 2, paragraph I,
35 subparagraph (4-A) may pay the bureau the difference between the distillery's price
36 charged to the bureau and the discounted retail price charged by the bureau under
37 section 606, subsection 4-B. A small distillery is not required to transport spirits that
38 will be sold for off-premises consumption as described in this paragraph to a warehouse
39 operated by the bureau or by a wholesale spirits provider. A holder of a small distillery
40 license shall record the quantity of spirits sold for off-premises consumption that were
41 not transported to a warehouse as described in this paragraph and submit monthly
42 reports of this information, along with the full amount of state liquor tax due as

prescribed by chapter 65, to the bureau in a manner prescribed by the bureau. This paragraph does not apply to spirits cocktail products.

Sec. 7. 28-A MRSA §1355-A, sub-§5, ¶H, as amended by PL 2021, c. 658, §226, is further amended to read:

H. Notwithstanding paragraph D, a holder of a small distillery license that sells its ~~products~~ spirits or offers complimentary samples of its ~~products~~ spirits directly to consumers for on-premises consumption under paragraph F-1 or under subsection 2, paragraph B or I may pay the bureau the difference between the distillery's price charged to the bureau and the discounted retail price charged by the bureau under section 606, subsection 4-B. A small distillery is not required to transport spirits that will be sold for on-premises consumption as described in this paragraph to a warehouse operated by the bureau or by the wholesale spirits provider. A holder of a small distillery license shall record the quantity of spirits sold for on-premises consumption that were not transported to a warehouse as described in this paragraph and submit monthly reports of this information, along with the full amount of state liquor tax due as prescribed by chapter 65, to the bureau in a manner prescribed by the bureau. This paragraph does not apply to spirits cocktail products.

Sec. 8. 28-A MRSA §1355-A, sub-§5, ¶J, as enacted by PL 2021, c. 658, §226, is amended to read:

J. A holder of a distillery or small distillery license may produce low-alcohol spirits products and spirits cocktail products.

(1) If a small distillery license holder produces low-alcohol spirits products or spirits cocktail products pursuant to this paragraph, the combined total of spirits, spirits cocktail products and low-alcohol spirits products produced at the small distillery may not exceed 50,000 gallons per year.

(2) The holder of a distillery license or a small distillery license that produces spirits cocktail products shall deliver spirits cocktail products to licensed retailers through a wholesale licensee in the same manner as a winery that produces and bottles more than 50,000 gallons of wine per year delivers wine to licensed retailers as provided in section 1361, subsection 4. This subparagraph does not apply to spirits cocktail products sold at the distillery licensee's manufacturing facility or at an off-premises location for which the distillery has a small distillery license pursuant to paragraph B.

Sec. 9. 28-A MRSA §1652, sub-§1-A, as amended by PL 2021, c. 8, §8, is further amended to read:

1-A. Excise tax on low-alcohol spirits products, spirits cocktail products and fortified wines. An excise tax is imposed on the privilege of manufacturing and selling low-alcohol spirits products, spirits cocktail products and fortified wines in the State. Except as provided in subsection 2-A, the in-state manufacturer or importing wholesale licensee shall pay an excise tax of \$1.24 per gallon on all low-alcohol spirits products, spirits cocktail products and fortified wines manufactured in or imported into the State.

Sec. 10. 28-A MRSA §1652, sub-§2-A, as amended by PL 2021, c. 8, §10, is further amended to read:

1 **2-A. Excise tax due; exemption.** On the 15th day of each month, every distillery,
2 brewery and winery shall pay the excise taxes due on malt liquor, wine, spirits cocktail
3 products and low-alcohol spirits products that that brewery or winery removed from areas
4 required to be bonded by the Federal Government. Malt liquor, wine, spirits cocktail
5 products or low-alcohol spirits products that a brewery or winery removes from areas
6 required to be bonded by the Federal Government for sale to an out-of-state wholesaler for
7 resale in another state or for sale under section 1357 directly to a consumer located in
8 another state are exempt from excise tax under this section.

9 **Sec. 11. 28-A MRSA §1652, sub-§4,** as amended by PL 2021, c. 658, §264, is
10 further amended to read:

11 **4. Excise tax accounts and adjustments.** The bureau shall open an excise tax account
12 with each wholesale licensee and each certificate of approval holder and make the
13 following adjustments when appropriate. As used in this subsection, "certificate of
14 approval holder" means an in-state manufacturer of malt liquor, wine, spirits cocktail
15 products or low-alcohol spirits products licensed under section 1355-A or an out-of-state
16 manufacturer of or out-of-state wholesaler of malt liquor, wine, spirits cocktail products or
17 low-alcohol spirits products that has been issued a certificate of approval under section
18 1361.

19 A. The bureau may grant credits and make tax adjustments that it determines the
20 wholesale licensee or certificate of approval holder is entitled to upon the filing of
21 affidavits in the form prescribed by the bureau.

22 B. The bureau shall refund all excise tax paid by the wholesale licensee or certificate
23 of approval holder on all malt liquor, wine, spirits cocktail products or low-alcohol
24 spirits products that have been destroyed as long as the quantity and size are verified
25 by the bureau and the destruction is witnessed by an authorized representative of the
26 bureau.

27 C. If a wholesale licensee's inventories are destroyed by fire, flood or other natural
28 disaster, the bureau may refund the excise tax on the wholesale licensee's inventories.

29 D. Any wholesale licensee selling malt liquor, wine, spirits cocktail products or low-
30 alcohol spirits products to an instrumentality, a licensee for resale to an airline, a
31 training site or a ship chandler shall present proof of that sale to the bureau. The bureau
32 shall grant to the wholesale licensee a credit of all state excise tax paid in connection
33 with that sale under the following conditions.

34 (1) The bureau shall grant a credit for the excise tax on malt liquor, wine, spirits
35 cocktail products or low-alcohol spirits products sold by wholesale licensees to any
36 instrumentality of the United States or any Maine National Guard state training site
37 exempted by the bureau.

38 (2) The bureau shall grant a credit for the excise tax on malt liquor, wine, spirits
39 cocktail products or low-alcohol spirits products sold to any ship chandler as long
40 as the malt liquor, wine, spirits cocktail products and low-alcohol spirits products
41 are resold to vessels of foreign registry for consumption after that vessel has left
42 port or are resold for consumption on board vessels of United States registry that
43 are destined for a foreign port.

1 (3) The bureau shall grant a credit for the excise tax on malt liquor, wine, spirits
2 cocktail products and low-alcohol spirits products sold to a licensee registered with
3 the bureau for resale to licensed airlines or to unlicensed airlines for their
4 international flights.'

5 Amend the bill by relettering or renumbering any nonconsecutive Part letter or section
6 number to read consecutively.

7 SUMMARY

8 This amendment, which is the minority report of the committee, replaces the bill and
9 changes the title. The amendment defines "spirits cocktail product" to mean a product
10 packaged as a single-serving ready-to-drink beverage containing spirits that contains more
11 than 8% alcohol by volume but no more than 15% alcohol by volume. Under the
12 amendment, a licensed distillery or small distillery is authorized to distill, rectify or blend
13 spirits cocktail products. Except for spirits cocktail products sold at the manufacturing
14 facility or at an off-premises location licensed to the distillery, delivery of spirits cocktail
15 products to licensed retailers must be made by a wholesale licensee in the same manner as
16 wine. The excise tax on spirits cocktail products under the amendment is \$1.24 per gallon
17 and is paid by the manufacturer or the wholesale licensee.

18 FISCAL NOTE REQUIRED

19 (See attached)