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VETERANS AND LEGAL AFFAIRS

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STATE OF MAINE

SENATE

130TH LEGISLATURE

SECOND REGULAR SESSION

COMMITTEE AMENDMENT " " to S.P. 444, L.D. 1358, "An Act To Provide for the Direct Shipment of Spirits to Consumers"

Amend the bill by striking out all of section 2 and inserting the following:

'Sec. 2. 28-A MRSA §1382 is enacted to read:

§1382. Direct shipment of spirits

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Case equivalent" means a volume equivalent to 9 liters.

B. "Direct shipper" means a distillery, small distillery or rectifier licensed under subsection 2 that holds a current manufacturer license under section 1355-A or, for a distillery, small distillery or rectifier outside the State, a current manufacturer license from that state, territory or possession of the United States.

C. "Direct shipper discount rate" means the percentage discount off the retail price established in section 606, subsection 4-B for a small distillery licensed under section 1355-A that retains its products for sale to consumers under section 1355-A, subsection 5, paragraph G or H.

D. "Outside the State" means in any other state or territory or possession of the United States but does not include a foreign country.

2. Direct shipment of spirits; licensure. A direct shipper may ship spirits within the State subject to the licensure requirements of this section. A distillery, small distillery or rectifier that holds a federal basic spirits manufacturing permit may obtain an annual spirits direct shipper license by filing with the bureau an application in a form determined by the bureau accompanied by an application fee of not more than \$200 and a copy of the applicant's current federal basic spirits manufacturing permit.

3. Direct shipper application. Before sending a shipment to a customer in this State, a direct shipper must file an application for a spirits direct shipper license under subsection

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1 2 with the bureau on a form issued by the bureau along with a true copy of its current
2 manufacturer license under section 1355-A or issued outside the State and a \$100
3 registration fee.

4 **4. Direct shipment of spirits; requirements.** A direct shipper licensed under
5 subsection 2 may ship spirits directly to a customer in the State only under the following
6 conditions.

7 A. A direct shipper that is licensed under section 1355-A may ship directly to a
8 customer in the State only a spirits product produced by the direct shipper in
9 accordance with the direct shipper's federal basic spirits manufacturing permit that is
10 currently listed for sale in the State under section 81, subsection 3. A spirits product
11 shipped directly to a customer in the State under this paragraph must be sold at the
12 retail price established by the commission under section 1651, subsection 1. For each
13 spirits product shipped directly to a customer in the State under this paragraph, the
14 direct shipper shall pay to the bureau the difference between the direct shipper's price
15 charged to the bureau for the spirits product and an amount that is equal to the retail
16 price of the spirits product multiplied by the direct shipper discount rate.

17 B. A direct shipper that does not have a license under section 1355-A may ship directly
18 to a customer in the State only a spirits product produced by the direct shipper in
19 accordance with the direct shipper's federal basic spirits manufacturing permit that is
20 not currently listed for sale in the State under section 81, subsection 3 and may ship no
21 more than an aggregate of 200 case equivalents of spirits directly to customers in the
22 State per calendar year. A spirits product shipped directly to a customer in the State
23 under this paragraph must be sold at a price that is calculated pursuant to any rules
24 adopted by the bureau governing the retail price of spirits and any retail pricing formula
25 employed by the bureau to make recommendations to the commission regarding the
26 retail prices of spirits in the State. For each spirits product shipped directly to a
27 customer in the State under this paragraph, the direct shipper shall pay to the bureau
28 the difference between the average price the direct shipper charges wholesalers that
29 purchase the spirits product in the state in which the spirits product was produced and
30 an amount that is equal to the retail price established under this paragraph multiplied
31 by the direct shipper discount rate.

32 C. A direct shipper may ship spirits to a recipient only for personal use and not for
33 resale.

34 D. A direct shipper shall label each package to be shipped in accordance with this
35 section so that it conspicuously reads: "CONTAINS ALCOHOL: SIGNATURE OF A
36 PERSON 21 YEARS OF AGE OR OLDER IS REQUIRED FOR DELIVERY."

37 **5. Common carrier.** Shipments made in accordance with this section must be made
38 by a common carrier and must be accompanied by a shipping label that clearly indicates
39 the name of the direct shipper and the name and address of the recipient. The common
40 carrier shall obtain the signature of a person 21 years of age or older at the address listed
41 on the shipping label prior to delivery of the shipment. The common carrier shall request
42 photographic identification from the person signing for the shipment and verify that the
43 person is 21 years of age or older. The common carrier shall retain a record of each
44 shipment made under this section for a period of 2 years and shall furnish those records to
45 the bureau upon request.

1 **6. Bottle size and case limit.** A direct shipper may not ship a container of spirits of
2 less than 700 milliliters and may ship no more than 4 case equivalents to any one recipient
3 address in a calendar year.

4 **7. Prohibited shipping areas.** A direct shipper may not ship to any address identified
5 by the bureau as within a prohibited shipping area or a municipality that has voted in any
6 particular local option election against the sale of all types of liquor.

7 **8. License renewal.** A direct shipper may annually renew its spirits direct shipper
8 license with the bureau by paying a \$50 renewal fee and providing the bureau with a true
9 copy of its manufacturer license under section 1355-A or issued outside the State.

10 **9. Sales tax registration and payment required.** As a condition of receiving a
11 certificate of approval, a direct shipper located outside the State shall comply with the
12 provisions of Title 36, Part 3, including all requirements relating to registration as a seller
13 and the collection, reporting and remittance of the sales and use taxes of the State, and shall
14 agree to be subject to the jurisdiction of the State for purposes of the enforcement of those
15 obligations. The requirements of this subsection apply notwithstanding any provision of
16 law of the State to the contrary.

17 **10. Report.** A direct shipper shall submit a report to the bureau annually in a manner
18 and form prescribed by the bureau that includes the total number of case equivalents of
19 spirits shipped to recipients in the State and the name and residence address of shipment
20 recipients in the State, the common carrier used to deliver the shipments and the date,
21 quantity and purchase price of each shipment.

22 **11. Audit.** The bureau may perform an audit of a direct shipper's records relevant to
23 compliance with this section. A direct shipper shall provide copies of any records requested
24 by the bureau within 10 business days of that request.

25 **12. Violation.** A person, including a common carrier, who knowingly causes a direct
26 shipment in violation of this section is subject to a fine up to \$500 for a first offense and
27 up to \$1,000 for any subsequent violation of this section. A direct shipper or common
28 carrier who knowingly delivers spirits to a person under 21 years of age is subject to a fine
29 up to \$5,000. The bureau may suspend or revoke a spirits direct shipper license for failure
30 to comply with the shipping limits and reporting requirements required by this section. The
31 bureau may accept payment of an offer in compromise in lieu of suspension; such payments
32 must be determined by rules adopted by the bureau.

33 **13. Jurisdiction.** A direct shipper, as a condition of licensure, is subject to the
34 jurisdiction and enforcement authority of the State for the purposes of enforcement of this
35 section.

36 **14. Not subject to beverage container law.** Notwithstanding Title 38, chapter 33, a
37 container of spirits shipped pursuant to this section does not require a refund value for
38 beverage container control purposes.

39 **15. Rules.** The bureau shall adopt rules to carry out the purposes of this section. Rules
40 adopted pursuant to this section are routine technical rules as defined in Title 5, chapter
41 375, subchapter 2-A.'

42 Amend the bill by inserting after section 8 the following:

1 **'Sec. 9. Appropriations and allocations.** The following appropriations and
 2 allocations are made.

3 **ADMINISTRATIVE AND FINANCIAL SERVICES, DEPARTMENT OF**
 4 **Alcoholic Beverages - General Operation 0015**

5 Initiative: Provides funding for programming costs to incorporate direct shipping of spirits
 6 to customers.

7	GENERAL FUND	2021-22	2022-23
8	All Other	\$0	\$131,630
9			
10	GENERAL FUND TOTAL	\$0	\$131,630

11 **Alcoholic Beverages - General Operation 0015**

12 Initiative: Provides funding for one Liquor Tax Auditor position, one Office Associate II
 13 position, one Liquor Licensing Inspector position and associated All Other costs.

14	GENERAL FUND	2021-22	2022-23
15	POSITIONS - LEGISLATIVE COUNT	0.000	3.000
16	Personal Services	\$0	\$227,431
17	All Other	\$0	\$47,717
18			
19	GENERAL FUND TOTAL	\$0	\$275,148

20

21 **ADMINISTRATIVE AND FINANCIAL**
 22 **SERVICES, DEPARTMENT OF**
 23 **DEPARTMENT TOTALS**

24		2021-22	2022-23
25	GENERAL FUND	\$0	\$406,778
26			
27	DEPARTMENT TOTAL - ALL FUNDS	\$0	\$406,778

28

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

31

SUMMARY

32 The bill allows in-state and out-of-state distilleries to ship their own spirits products
 33 directly to recipients located within the State upon receiving a direct shipper license from
 34 the Department of Administrative and Financial Services, Bureau of Alcoholic Beverages
 35 and Lottery Operations. This amendment, which is a minority report of the committee,
 36 makes the following changes to the bill:

37 1. It allows the bureau to issue direct shipper licenses also to in-state and out-of-state
 38 small distilleries and rectifiers for the sale of spirits directly to customers located in the
 39 State;

40 2. It clarifies that an in-state distillery, small distillery or rectifier may ship directly to
 41 customers in the State spirits products that it produces and that are currently listed for sale

1 in the State. Each spirits product must be sold at the retail price established by the State
2 Liquor and Lottery Commission;

3 3. It clarifies that an out-of-state distillery, small distillery or rectifier may ship directly
4 to customers in the State a maximum of 200 case equivalents per calendar year of spirits
5 products that it produces and that are not currently listed for sale in the State. Each spirits
6 product must be sold at a price that is calculated pursuant to any rules adopted by the bureau
7 governing the retail price of spirits and any retail pricing formula employed by the bureau
8 to make recommendations to the commission regarding the retail prices of spirits in the
9 State;

10 4. It authorizes the direct shipment of spirits in containers of at least 700 milliliters in
11 volume. The bill requires that spirits containers for direct shipment be at least 750 milliliters
12 in volume;

13 5. It requires common carriers to retain records of each shipment of spirits that is made
14 directly to a customer in the State for a period of 2 years and to furnish those records to the
15 bureau upon request; and

16 6. It replaces the bill’s requirement that direct shippers pay an excise tax of \$11.96 per
17 gallon on spirits that are directly shipped to customers in the State with a requirement that,
18 for each spirits product directly shipped to a customer in the State, the direct shipper must
19 pay to the bureau an amount similar to the amount that a small distillery would be required
20 to pay to the bureau under current law if it had produced that spirits product and retained
21 that spirits product for resale directly to customers for on-premises or off-premises
22 consumption.

23 **FISCAL NOTE REQUIRED**

24 **(See attached)**