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September 19, 2023

Senator Craig Hickman, Senate Chair
Representative Laura Supica, House Chair
Members of the Joint Standing Committee on Veteran's and Legal Affairs
100 State House Station
Augusta, ME 04333-0100

RE: PL 2021, c. 658 (LD 1643, An Act To Correct Errors, Inconsistencies and Conflicts in and To Revise the State's Liquor Laws) – Stakeholder Engagement Report on Contract Brewing

Senator Hickman, Representative Supica and Members of the Committee on Veterans and Legal Affairs:

Background

Contract brewing is the practice by which a licensed brewer contracts with another licensed brewer to manufacture product on their behalf. Contract brewing is permitted under federal law and has been occurring in Maine for at least 25 years. However, nowhere in Title 28-A is contract brewing defined or addressed, which leaves State regulators without any direct statutory references to this commonplace practice.

In accordance with federal law, contracted product undergoes an in-bond transfer and is transferred from the contracted brewery's federally bonded premises to the requesting brewery's federally bonded premises. Prior to 2017, the contracted brewery was responsible for filing federal label registrations and excise tax, but now either party may file and currently the contracting brewery takes responsibility for filing state label registrations and excise tax reports with the Bureau.

Current State

Maine breweries operate on both sides of contract brewing, contracting with breweries both inside and outside of Maine. A brewery might opt to utilize contract brewing for a multitude of reasons, including if it becomes short-staffed or lacks production capacity to keep up with fluctuating demand, or as a means of increasing volume and offerings without making a significant capital investment in its physical plant. On the flip side, contract brewing allows

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breweries with excess production capacity an additional income stream and is a large component of some breweries' business models. Although most breweries use contract brewing only occasionally as needed, there are licensed Maine breweries that have extremely limited production capabilities and rely almost entirely upon contract brewing to manufacture their branded product. This far end of the spectrum is the source of the rub for the Distributors, who view these breweries as unfairly accessing the privileges of being an in-state brewery.

Stakeholder Meetings

The Bureau conducted stakeholder meetings both separately and in combination with representatives of the Maine Brewers' Guild and the Maine Beer & Wine Distributors. The meetings were inconclusive with the only area of consensus relating to the existing practice of counting contracted product toward the small brewery production cap of the contracting brewery, not the contracted brewery.

The Maine Brewers' Guild favors wide latitude for Maine breweries to utilize contract brewing to support their business needs and is strongly opposed to the imposition of minimum on-premises production requirements. The Brewers did not object to state law being clarified, as requested by the Distributors and if the Committee deems necessary, to indicate that contract brewed product counts towards the 30,000-barrel small brewery production cap of the contracting brewery.

The Maine Beer & Wine Distributors recommend that the Committee explore defining contract brewing but do not believe that they possess enough data or detail to recommend minimum production thresholds. The Distributors support adherence to existing law and remain open to further conversations with stakeholders as they reported hearing from many breweries in support of further defining contract brewing.

Statutory changes pertaining to contract brewing are not currently a high priority for the Bureau, especially with the Brewers and the Distributors at odds.