

Committee: VLA

LA: JS

File Name: G:\COMMITTEES\VLA\Bill amendments\129th S2\LL proposed amend. to LD 2131 (7.20.20 draft).docx

LR (item)#: 3164(02)

New Title?: No

Add Emergency?: No

Date: 7/21/2020

**Senator Luchini's Proposed Amendment to LD 2131,
An Act To Correct Errors, Inconsistencies and Conflicts in and To Revise the State's Liquor Laws**

Technical issue #8 from bill analysis. This amendment clarifies within the definition of "agency liquor store" that these stores sell all types of liquor, not just spirits. See 28-A M.R.S.A. §1010-A(1) (class VIII licenses, the only class available to agency liquor stores, authorize sale of spirits, wine and malt liquor).

Amend the bill by adding after section 2 the following new section:

Sec. 3. 28-A M.R.S.A. §2, sub-§1 is amended to read:

1. Agency liquor store. "Agency liquor store" means a person who is licensed by the bureau to sell spirits, wine and malt liquor to be consumed off the premises.

BABLO proposed amendment #1 in bill analysis. The language BABLO proposes to delete is part of the current law's definition of "hotel guest," which is moved to a new location in the bill and was used as the basis for creating the "bed and breakfast guest" definition. See also section 12 ("hotel guest" definition).

Amend the bill in section 3 as follows:

Sec. 3. 28-A M.R.S.A. §2, sub-§2-C is enacted to read:

2-C. Bed and breakfast guest. "Bed and breakfast guest" means a person whose name and address are registered on the registry maintained by the bed and breakfast and who is the bona fide occupant of a room of the bed and breakfast. ~~"Bed and breakfast guest" does not include a person whose name and address are registered on the bed and breakfast registry solely for the purpose of obtaining liquor.~~

Technical issue #23(a) from bill analysis - conflict with LD 2089 (spirits COA), as enacted. Both this bill and LD 2089 (as enacted) create new definitions for "certificate of approval holder." But, because LD 2089 required out-of-state spirits suppliers to obtain certificates of approval, the definition in LD 2089 was more comprehensive than the definition in LD 2131. See P.L. 2019, ch. 615, §1. If the definition is removed from LD 2131, the new definition enacted in LD 2089 will be the operative law.

Amend the bill by striking out all of section 7.

BABLO proposed amendment #1 from bill analysis. This amendment corresponds to BABLO's proposal for amending the definition of "bed and breakfast guest" in section 3 of the bill above.

Amend the bill in section 12 as follows:

Sec. 12. 28-A MRSA §2, sub-§12-B is enacted to read:

12-B. Hotel guest. "Hotel guest" means a person whose name and address are registered on the registry maintained by the hotel and who is the bona fide occupant of a room of the hotel. ~~"Hotel guest" does not include a person whose name and address are registered on the hotel registry solely for the purpose of obtaining liquor.~~

Technical issue #6 in bill analysis. The bill newly authorizes licensed breweries/small breweries and distilleries/small distilleries to manufacture low-alcohol spirits products. Due to a drafting oversight, the definition of "tenant brewery" was not amended in the bill to reflect this new authority.

Amend the bill in section 27 as follows:

Sec. 27. 28-A MRSA §2, sub-§32-A, as enacted by PL 2013, c. 345, §1, is amended to read:

32-A. Tenant brewer brewery. "Tenant brewer brewery" means a person who that has submitted a brewer's notice to and received approval from the United States Department of the Treasury, Alcohol and Tobacco Tax and Trade Bureau authorizing the brewer person to engage in an alternating proprietorship as defined by federal regulation and is licensed by the bureau to produce malt liquor and low-alcohol spirits products consisting of malt liquor to which spirits have been added at a manufacturing facility of another brewer who brewery that is licensed by the bureau.

BABLO proposed amendment #16 in bill analysis. The bill amends 28-A M.R.S.A. §83-C(2) to correct an error of law: the bureau sets wholesale spirits prices and makes recommendations to the commission regarding the retail prices of spirits; but the bureau does not set retail prices. BABLO proposed amending this provision of the bill to reverse the order of these statements to reflect the order in which these events occur in practice: first, the bureau makes retail price recommendations to the commission and then the bureau sets the wholesale price. (This is not a substantive change to the bill.)

Amend the bill by striking and replacing section 50 of the bill with the following:

Sec. 50. 28-A MRSA §83-C, sub-§2, as enacted by PL 2013, c. 476, Pt. A, §9, is amended to read:

2. Price regulation. ~~Make recommendations to the commission regarding the retail prices of spirits sold in the State and Establish establish the wholesale and retail prices of spirits sold in this State.~~ The bureau shall adopt rules regarding the wholesale pricing of spirits and the retail pricing of spirits sold by to agency liquor stores. ~~An entity awarded a contract under section 90~~ The wholesale spirits provider is granted the privilege to distribute spirits under this Title and is immune from antitrust action so long as the entity wholesale spirits provider is in compliance with the bureau's rules and all other applicable laws and regulations;

New “technical issue” not raised in bill analysis. The new definition of “spirits supplier” in section 26 of the bill includes in-state and out-of-state spirits manufacturers. This amendment to the bill thus removes redundant language from a provision of law involving spirits pricing.

Amend the bill in section 51 as follows:

Sec. 51. 28-A MRSA §83-C, sub-§2-A, ¶C, as enacted by PL 2019, c. 404, §3, is amended to read:

C. The bureau may reduce, at the expense of ~~the manufacturer or~~ the spirits supplier, the retail price of those test-market spirits items that fail to meet set minimum gross profit standards after a 3-month period;

Current law: 28-A M.R.S.A. §90 of current law contains a conflict:

- §90(2) prohibits the commission from granting the wholesale spirits provider contract to an entity that holds any license to manufacture “**spirits**” in any state;
- §90(3) requires the RFP for the wholesale spirits provider contract to provide that a bidder may not hold or have a direct financial interest in a license to manufacture “**alcoholic beverages**” (presumably including spirits, wine and malt liquor) in any state.

LD 2131: resolves this conflict by adopting the broader prohibition against holding or having a direct financial interest in a license to manufacture “liquor.”

BABLO proposed amendment #4 in bill analysis: BABLO proposes to resolve the conflict in the opposite way: only prohibit the wholesale spirits provider from having a license or direct financial interest in a license to manufacture “spirits.” This proposal requires a conforming amendment to §502(2), which appears in section 79 of the bill.

Pine State proposed amendment #5 in bill analysis: James Bass proposed creating a de minimus exception to §90’s financial interest prohibition, which would allow the wholesale spirits provider to have an investment in ≤ 1% of the securities of a business entity with a liquor manufacturing license. This proposal requires a conforming amendment to §502(3), which appears in section 79 of the bill.

Amend the bill in section 58 as follows:

Sec. 58. 28-A MRSA §90, as enacted by PL 2013, c. 269, Pt. A, §4 and amended by c. 368, Pt. V, §61, is further amended to read:

§ 90. Contract for operations of wholesale ~~liquor~~ spirits activities

1. Statement of purpose. The Legislature finds that it is in the public interest to seek efficiencies and maximize growth in the State's wholesale spirits business while ensuring that growth in revenue from the business is achieved in a socially responsible manner. The contracting of the operations of the wholesale spirits business should serve this purpose and provide the State's agency liquor store partners with effective and efficient services in order to responsibly serve consumers of spirits in the State.

2. Contract for operations. The ~~Commissioner of Administrative and Financial Services, referred to in this section as “the commissioner,”~~ commissioner shall enter into a contract for warehousing,

distribution and spirits administration and a contract for spirits trade marketing, each for a term of 10 years. Each contract must be awarded pursuant to a competitive bid process in a manner similar to the process described in Title 5, chapter 155, subchapter 1-A. The commissioner is prohibited from contracting with a bidder ~~who also that holds or has a direct financial interest in, or that has a principal officer that holds or has a direct financial interest in, a business entity that holds a license or permit in this State or another state to distill, bottle or manufacture spirits spirits liquor. A minor investment in not more than 1% of the securities of a business entity does not constitute a financial interest prohibited by this subsection.~~

3. Development of request for bid proposals; fee. The commissioner shall develop a request for proposals designed to encourage vigorous bidding for the purpose of awarding 2 contracts for the operations of the State's wholesale spirits business. The commissioner shall request bids for the operation of spirits trade marketing separately from bids for the combined operations of warehousing, distribution and spirits administration. In order to be considered for a contract to conduct spirits trade marketing, a bidder must submit a nonrefundable application fee of up to \$5,000. In order to be considered for a contract to conduct warehousing, distribution and spirits administration, a bidder must submit a nonrefundable application fee of up to \$20,000. The application fee must be credited to an Other Special Revenue Funds account within the division of purchases within the Department of Administrative and Financial Services to be used for managing the application process. A request for proposals must inform potential bidders of the State's target gross revenue profit margin over the term of the contract and require the bidder to affirm that ~~neither the bidder, or nor any of the principal officers of the bidder, does not hold holds or have has a direct financial interest in a business entity that holds a license or permit in this State or any other another state for the distillation, bottling or manufacture of alcoholic beverages spirits liquor other than a minor investment in not more than 1% of the securities of such a business entity.~~ The request for proposals must instruct potential bidders to propose the scope of operations the bidder will provide and the fee for that service expressed as a percentage of revenue generated by the wholesale business. The request for proposals must direct bidders to indicate if the bidder intends to use subcontractors and to identify those subcontractors. The request for proposals must also inform potential bidders that they may propose incentives for the bidder intended to encourage responsible growth of revenue and enhanced efficiencies in services provided.

NOTE: Section 58 of the bill makes minor amendments to all of 28-A M.R.S.A. §90, but because only §90(1)-(3) are affected by these proposals the remainder of §90 is not reproduced here.

Current law: does not indicate who may pour samples of liquor during taste-testing events hosted by an off-premises retailer. But, current law does require the off-premises retailer to identify in the request to conduct the event whether a licensed sales representative will be pouring samples and, if so, to verify that that sales representative completed an approved alcohol server education course.

LD 2131: amends §460 (spirits taste-testing events), §1205 (wine taste-testing events) and §1207 (malt liquor taste-testing events) to clarify who may pour samples at these taste-testing events:

- the owner or an employee of the off-premises retailer;
- a sales representative named in the request to conduct the event; or
- if the product was manufactured in Maine, the licensed Maine manufacturer of the product or the manufacturer's employee.

BABLO proposed amendment #12 in bill analysis: BABLO proposes that each of these taste-testing event statutes be amended to remove the requirement that the names of the sales representatives be listed in the requests to conduct these events. This proposal also requires amendments to the other taste-testing event statutes in section 211 and section 214 of the bill.

BABLO proposed amendment #13 in bill analysis: BABLO also requests that spirits suppliers also be authorized to pour samples at these events. (This expands the list of people authorized to pour samples to include out-of-state spirits manufacturers and distributors.) Because "spirits supplier" is defined to include both in-state and out-of-state manufacturers of spirits and their agents or representatives, there is no need to retain the language of the bill that separately authorizes licensed in-state spirits manufacturers and their employees to pour spirits samples at these events.

Amend the bill in section 76 as follows:

Sec. 76. 28-A MRSA §460, sub-§2, ¶P is enacted to read:

P. Spirits may be poured for the taste-testing event only by the owner or an employee of the agency liquor store, by a sales representative licensed under section 1502 whose name is listed on the request to conduct the taste-testing event as required by subsection 2-A, paragraph D or by the spirits supplier, if the manufacturer of the spirits being poured is licensed under section 1355-A, by the manufacturer or an employee of the manufacturer.

Amend the bill by adding after section 76 the following new section:

Sec. 77. 28-A MRSA §460, sub-§2-A, as enacted by P.L. 2019, c. §79, §1 is amended to read:

2-A. Written permission from the bureau. An agency liquor store must obtain the written permission of the bureau before conducting a taste-testing event using the following procedure.

A. The agency liquor store shall request authority to conduct a taste-testing event using forms prescribed by the bureau.

B. The agency liquor store may submit a separate form for each taste-testing event or a single form listing some or all of the taste-testing events the agency liquor store requests authority to conduct in a calendar month under this section, section 1205 and section 1207.

C. The request must indicate the date and time for each taste-testing event and the liquor product or products that will be offered at each event.

~~D. The request must indicate whether a sales representative licensed under section 1502 will be pouring or providing samples, or both, for each taste testing event and include verification that the sales representative has successfully completed an alcohol server education course approved by the bureau.~~

BABLO proposed amendment #4 in bill analysis & Pine State proposed amendment #5 in bill analysis. See the explanation of these proposals described above regarding section 58 of the bill.

Amend the bill in section 79 as follows:

Sec. 79. 28-A MRSA §502, as enacted by PL 2003, c. 20, Pt. SS, §4 and affected by §8 and c. 51, Pt. C, §2, is repealed and the following enacted in its place:

§ 502. Wholesale spirits provider; prohibited financial interests

The wholesale spirits provider and each principal officer of the wholesale spirits provider may not hold or possess:

1. Agency liquor store license. An agency liquor store license;

2. License to manufacture liquor. A license in this State or another state to manufacture liquor spirits; or

3. Direct financial interest in prohibited license. A direct financial interest in a license described in subsection 1 or 2, except that a minor investment in not more than 1% of the securities of a business entity holding a license described in subsection 1 or 2 does not constitute a financial interest prohibited by this subsection.

New technical amendment not in bill analysis. The headnote for section 606 of Title 28-A is misleading. Although agency liquor stores must purchase spirits from the bureau, on-premises retailers must purchase spirits from a reselling agent (an agency liquor store with a separate reselling agent license).

Amend the bill in section 87 by changing the headnote of §606 on page 26, line 25 as follows:

§606. ~~Liquor bought~~ ~~Spirits purchased from bureau; sale to government agencies~~ ~~Purchase of spirits by licensees, government instrumentalities, airlines, ferry services, hospitals and state institutions~~

BABLO proposed amendment #11 in bill analysis. The bill proposes to amend §603(3) to clarify that only persons with licenses to sell spirits for on-premises or off-premises consumption may order spirits in advance of the effective date of that license. BABLO proposes further clarification by replacing the phrase "license to sell spirits for . . . off-premises consumption" with the phrase "agency liquor store."

Amend the bill in section 87, subsection 3, page 27 lines 10-13 as follows:

3. Prospective licensees may order liquor spirits in advance. Upon approval of the bureau, ~~persons who have a person that has been issued an agency liquor store license or a license, to sell spirits for on-premises or off-premises consumption~~ effective at a future date, may order liquor spirits in advance of the effective date of the license and may advertise the effective date.

Technical issue #22(a) from bill analysis - fixing conflicts with LD 2088 (3-tiers), as enacted. The bill contains amendments to 28-A M.R.S.A. §707(3)(B) and (5)(A)—replacing the word “foreign” with “out-of-state”—but both of those provisions of law were repealed and replaced as part of LD 2088 (the three-tier bill). See P.L. 2019, ch. 665, §§2, 6.

Amend the bill by striking out all of sections 93 and 94.

Technical issue #25 from bill analysis - align statutes enacted by LD 2088 and LD 2089. LD 2088, as enacted, clarified that the three-tier prohibitions apply to “out-of-state spirits suppliers” and defined those entities as out-of-state manufacturers or distributors whose products are listed for sale in Maine. P.L. 2019, ch. 665, §10. LD 2089, as enacted, requires “out-of-state spirits suppliers”—the same entities—to obtain a certificate of approval via new 28-A M.R.S.A. §1381. P.L. 2019, ch. 615, §2. It may make sense to amend the definition of “out-of-state spirits supplier” in the three-tier provisions (from LD 2088) to clarify that the definition applies to entities with a certificate of approval under new §1381 (as required in LD 2089). Note: that is how the three-tier statute refers to out-of-state malt liquor or wine wholesalers and out-of-state malt liquor or wine manufacturers.

Amend the bill by adding after section 94 the following new section.

Sec. 94. 28-A M.R.S.A. §707, sub-§8, ¶B, as enacted by P.L. 2019. c. 665, §10, is repealed and replaced with the following:

B. “Out-of-state spirits supplier” means an out-of-state spirits manufacturer that has been issued a certificate of approval under section 1381 or a person that engages in the out-of-state purchase of spirits for resale to the bureau that has been issued a certificate of approval under section 1381.

Technical issue #7 from bill analysis. The bill changed the phrase “alcoholic beverage” to “liquor” in §708(2). But, this section involves wholesale licensees, who sell malt liquor and wine but not spirits. Thus, the word “liquor” should be replaced with the phrase “malt liquor or wine.”

Amend the bill in section 96 in subsection 2 on page 30, lines 37-39 and page 31, lines 1-2 as follows:

2. Wholesale licensees. A wholesale licensee may not offer to retail licensees any special discounts, volume discounts, depletion allowances, other reduced prices or discounts, or refunds except bona fide price reductions under section 1408 offered to all retail licensees. A wholesale licensee may not offer any free merchandise, rebate, refund or gift to ~~the a purchaser of an alcoholic beverage~~ malt liquor or wine.

New “technical issue” not raised in bill analysis. The new definition of “spirits supplier” in section 26 of the bill includes both manufacturers and their agents or representatives. This amendment thus removes redundant language from the statute involving marketing promotions.

Amend the bill in section 96 in subsection 7 on page 31, lines 23-44 and page 32, lines 1-9 as follows:

7. Instant marketing promotions. The bureau, ~~a manufacturer~~ or a spirits supplier of spirits listed for sale by the commission may offer monetary rebates in the form of instant redeemable coupons as approved by the commission in accordance with conditions established by the commission or rules established by the bureau. Agency liquor store licensees may redeem the coupons only upon proof of purchase and in accordance with the terms listed on the coupon. Instant redeemable coupons provided by the ~~manufacturer's agent or manufacturer's sales representative~~ spirits supplier must be made available to all agency liquor store licensees electing to offer the coupon in an amount equal to the agency liquor store's inventory of spirits products that are subject to the coupon promotion. The bureau, ~~the manufacturer~~ or the spirits supplier of spirits may offer instant redeemable coupons to consumers through the bureau's, ~~the manufacturer's~~ or the spirits supplier's publicly accessible website, other digital media platforms or print media. An instant redeemable coupon used in a manner provided in this subsection for a spirits product sold by an agency liquor store licensee to a consumer is for the benefit of the consumer who purchases the spirits product.

This section does not prohibit a certificate of approval holder from including a certificate, instant redeemable coupon or merchandise in or on a package of beer malt liquor, wine or low-alcohol spirits product for sale by an ~~off-premise~~ off-premises retailer. The package containing the certificate, instant redeemable coupon or merchandise must be packaged by the certificate of approval holders holder at the brewery or winery. Upon approval of the bureau, a certificate of approval holder may offer a mail-in rebate for a malt liquor, wine or low-alcohol spirits product for consumers through print or electronic media, attached to the package of malt liquor, wine or low-alcohol spirits product or displayed near where the malt liquor, wine or low-alcohol spirits product is offered for sale for off-premises consumption. Mail-in rebates authorized by this paragraph must require the inclusion of the original dated sales receipt for the product to which the rebate is applied. ~~Mail-in rebates~~ must be redeemed by the certificate of approval holder and may not exceed the purchase price of the malt liquor, wine or low-alcohol spirits product to which the rebate is applied. The commission may approve mail-in rebates that offer an incrementally greater discount based upon increased volume of purchased product.

This section does not prohibit the unconditional distribution of merchandise to the patrons of an ~~on-premise~~ on-premises establishment.

Technical issue #2 from bill analysis. This amendment ensures consistent use of the defined term “full meal” in this §1051(4). This change is not strictly necessary, but consistent use of the term is advisable.

Amend the bill in section 158 as follows:

Sec. 158. 28-A MRSA §1051, sub-§4, as enacted by PL 1997, c. 306, §1, is amended to read:

4. Partially Removal of partially consumed bottles of wine from premises. Notwithstanding subsection 3, any establishment licensed by the State to sell wine on the premises may permit a person who has purchased a full course meal, and purchased and partially consumed a bottle of table wine with the full meal, to remove the partially consumed bottle from the premises upon departure, ~~provided that as~~

long as the person is not visibly intoxicated as provided in section 2503, subsection 7; and the bottle of table wine is removed and transported in a manner consistent with subsection 5.

Technical issue #14 from bill analysis. *The bill adds language to §1052-D(7)(I) identifying the types of liquor that sponsored manufacturers of spirits, wine or malt liquor may offer at a taste-testing festival. But, the very next paragraph, ¶J, already specifies the types of malt liquor or wine may be offered by sponsored manufacturers at these festivals. Thus this amendment strikes the language added by the bill to ¶I and simply amends ¶J to cover sponsored spirits manufacturers.*

Amend the bill in section 163 (the portion amending §1052-D(7)(I) and (J)) as follows:

I. ~~A licensee under this section who is a manufacturer licensed under section 1355-A, is a wholesaler licensed under section 1401 or is a certificate of approval holder~~ A person licensed under subsection 1 may provide for taste testing any malt liquor or wine that the licensee ~~, wholesaler or manufacturer~~ manufactures or distributes that is registered and authorized for distribution and sale under this Title ~~. A licensee under this section who is a manufacturer of spirits licensed under section 1355-A, a supplier or foreign manufacturer of spirits or a broker may provide for taste testing or any spirits that the licensee manufactures or distributes that are listed for sale by the commission. A sponsored manufacturer may provide for taste testing any spirits, wine or malt liquor that the sponsored manufacturer manufactures.~~ Excise taxes for malt liquor and wine under section 1652 must be paid before the scheduled date of the taste-testing event.

J. A sponsored manufacturer may, for the purpose of promoting sprits, wine or malt liquor ~~or wine~~ for distribution and sale in the State, provide for taste testing any sprits, wine or malt liquor ~~or wine~~ that the sponsored manufacturer manufactures outside the State that has been registered with the United States Department of the Treasury, Alcohol and Tobacco Tax and Trade Bureau. All containers of sprits, wine or malt liquor ~~or wine~~ served in accordance with this paragraph, including empty containers, must be removed from the State following the taste-testing event. All sprits, wine and malt liquor ~~and wine~~ provided for the taste-testing event under this paragraph is subject to excise taxes under section 1652 and premiums, when applicable, under section 1703.

Note: Section 163 of the bill amends all of §1052-D, but only sub-§7(I) & (J) are shown here.

Technical issue #15 from bill analysis. *Current law requires a restaurant that gives spirits samples to customers to purchase those spirits from the "State or the State's contracted wholesaler." The bill changes "State's contracted wholesaler" to "wholesale spirits provider," the correct statutory term. This technical amendment proposes to eliminate "wholesale spirits provider" because that entity does not take title to the spirits; instead, spirits must be purchased from BABLO.*

Amend the bill in section 168 as follows:

Sec. 168. 28-A MRSA §1055, sub-§1, ¶G, as enacted by PL 2015, c. 142, §3, is amended to read:

G. Spirits served as a sample must be purchased from the bureau ~~State or the State's contracted wholesaler~~ wholesale spirits provider.

***BABLO proposed amendment #12 from bill analysis.** This proposal removes the requirement that sales representatives who will pour samples at a wine taste-testing event hosted by an off-premises retailer under §1205 or at a malt liquor taste-testing event hosted by an off-premises retailer under §1207 be named in the application for the event. See explanation above for section 76 of this amendment.*

Amend the bill in section 211 as follows:

Sec. 211. 28-A MRSA §1205, sub-§2, ¶N is enacted to read:

N. Wine may be poured for the taste-testing event only by the owner or an employee of the off-premises retail licensee, by a sales representative licensed under section 1502 whose name is listed on the request to conduct the taste testing event as required by subsection 2-A, paragraph D or, if the manufacturer of the wine being poured is licensed under section 1355-A, by the manufacturer or an employee of the manufacturer.

Amend the bill by adding the following after section 211:

Sec. 212. 28-A MRSA §1205, sub-§2-A as enacted by P.L. 2019, c. 79, §2 is amended to read:

2-A. Written permission from the bureau. An off-premises retail licensee must obtain the written permission of the bureau before conducting a taste-testing event using the following procedure.

- A. The retail licensee shall request authority to conduct a taste-testing event using forms prescribed by the bureau.
- B. The retail licensee may submit a separate form for each taste-testing event or a single form listing some or all of the taste-testing events the retail licensee requests authority to conduct in a calendar month under this section, section 460 and section 1207.
- C. The request must indicate the date and time for each taste-testing event and the liquor product or products that will be offered at each event.
- ~~D. The request must indicate whether a sales representative licensed under section 1502 will be pouring or providing samples, or both, for each taste-testing event and include verification that the sales representative has successfully completed an alcohol server education course approved by the bureau.~~

Amend the bill in section 214 as follows:

Sec. 214. 28-A MRSA §1207, sub-§2, ¶N is enacted to read:

N. Malt liquor may be poured for the taste-testing event only by the owner or an employee of the off-premises retail licensee, by a sales representative licensed under section 1502 whose name is listed on the request to conduct the taste testing event as required by subsection 2-A, paragraph D or, if the manufacturer of the malt liquor being poured is licensed under section 1355-A, by the manufacturer or an employee of the manufacturer.

Amend the bill by adding after section 214 the following new section:

Sec. 215. 28-A MRSA §1207, sub-§2-A as enacted by P.L. 2019, c. 79, §3 is amended to read

2-A. Written permission from the bureau. An off-premises retail licensee must obtain the written permission of the bureau before conducting a taste-testing event using the following procedure.

A. The retail licensee shall request authority to conduct a taste-testing event using forms prescribed by the bureau.

B. The retail licensee may submit a separate form for each taste-testing event or a single form listing some or all of the taste-testing events the retail licensee requests authority to conduct in a calendar month under this section, section 460 and section 1205.

C. The request must indicate the date and time for each taste-testing event and the liquor product or products that will be offered at each event.

~~D. The request must indicate whether a sales representative licensed under section 1502 will be pouring or providing samples, or both, for each taste-testing event and include verification that the sales representative has successfully completed an alcohol server education course approved by the bureau.~~

Technical issue #23(c) from bill analysis - fixing conflicts with LD 2089 (spirits COA), as enacted. Section 218 of the bill corrects §1351, the statute defining who must obtain a COA, by removing in-state manufacturers because they obtain licenses not COAs. That change was also made via LD 2089, which was enacted in March. See P.L. 2019, Ch. 615, §2. LD 2089 additionally required out-of-state spirits manufacturers to obtain COAs and added these entities to the list of entities who must obtain a COA §1351. Section 218 of the bill should therefore be removed to retain the new law from LD 2089.

Amend the bill by striking out all of section 218.

Technical issue #22(c) from bill analysis - fixing conflicts with LD 2088 (3-tiers), as enacted. As enacted, LD 2088 repealed and replaced §707(3) and (4). Cross-references to those sections appear in §1355-A(2-B)(B), and were corrected as part of LD 2088. See P.L. 2019, ch. 665, §11. But, because LD 2131 was printed before LD 2088 was enacted, the old cross-references still appear in LD 2131. I emailed Suzanne Gresser, and she indicated this should be fixed in LD 2131 if possible.

Amend the bill in section 219, subsection 2-B on page 73 line 39 to page 74, line 9 as follows:

2-B. Grandfathering of certain licenses issued prior to January 1, 2018. The bureau may not suspend, revoke or refuse to renew a license issued under this section or chapter 43 or 45 that was initially issued prior to January 1, 2018 solely on the basis that:

A. The establishment licensed under chapter 43 or 45 was determined by the bureau after the license was issued to not be exclusively held or exclusively owned by a person licensed to manufacture liquor under this section; or

B. The licensee is in violation of section 707, subsection 2, ~~3-3-A~~ or ~~4-5-A~~, if the violation existed in the same manner at the time the license was initially issued or at the time the license was renewed.

The prohibition described in this subsection does not apply if the reason for suspension, revocation or refusal to renew is due to the licensee's substantial misrepresentation of or failure to disclose material facts required for the issuance or renewal of the license.

Technical issue #22(b) from bill analysis - fixing conflicts with LD 2088 (3-tiers), as enacted. Section 222 of the bill makes several technical amendments to 28-A M.R.S.A. §1363, but that section of law was repealed as part of LD 2088 (the three-tier bill). See P.L. 2019, ch. 665, §12.

Amend the bill by striking out all of section 222.

Technical issue #23(e) from bill analysis - fixing conflicts with LD 2089 (spirits COA), as enacted. Section 225 of the bill would create new 28-A M.R.S.A. §1364(5), which provides that in-state spirits manufacturers are excluded from the requirement that “certificate of approval holders” send to the bureau copies of invoices they sent to wholesale licensees (because wholesale licensees deal in malt liquor and wine, not spirits). LD 2089 also created a new 28-A M.R.S.A. §1364(5), but that provision was more comprehensive because it also excluded out-of-state spirits suppliers, who were newly required to obtain COAs in that bill, from the invoice requirement. See P.L. 2019, Ch. 615, §3. Thus, this proposal removes the less comprehensive §1364(5) from this bill and allows the more comprehensive version enacted through LD 2089 to stand.

Amend the bill by striking out all of section 225.

Technical issue #23(d) from bill analysis - fixing conflicts with LD 2089 (spirits COA), as enacted. LD 2089 enacted new 28-A M.R.S.A. §1381, which requires out-of-state spirits suppliers to obtain certificates of approval. See P.L. 2019, ch. 615, §4. As enacted in LD 2089, §1381(5) contains cross-references to current statutes governing importation and transportation of spirits—but those statutes are repealed and replaced in this bill. This proposed amendment corrects the cross references in newly enacted §1381(5).

Amend the bill by adding after section 227 the following new section:

Sec. 228. 28-A M.R.S.A. §1381, sub-§5, as enacted by P.L. 2019, c. 615, §4, is amended to read:

5. Shipment restrictions. Except as provided in sections ~~2073~~ 2073-A and ~~2075~~ 2073-E, a person that has been issued a certificate of approval under this section may only transport spirits into the State or cause spirits to be transported into the State if the spirits are delivered to a warehouse designated by the commission under section 81.

Technical issue #23(e) from bill analysis - fixing conflicts with LD 2089 (spirits COA), as enacted.

- Section 230 of the bill would create new 28-A M.R.S.A. §1401-A, which excludes in-state spirits manufacturers from the definition of “certificate of approval holder” as that phrase is used in Title 28-A, Chapter 55, which involves only malt liquor and wine.
- Section 248 of the bill would create new 28-A M.R.S.A. §1451(1-A), which similarly excludes in-state spirits manufacturers from the definition of “certificate of approval holder” as that phrase is used in Title 28-A, Chapter 57, which involves only malt liquor and wine.

LD 2089 similarly enacted new §1401-A and §1451(1-A). See P.L. 2019, ch. 615, §§5-6. The LD 2089 versions were more comprehensive, however, because they excluded out-of-states spirits suppliers (who were newly required to obtain COAs in that bill) from the relevant definitions of “certificate of approval holder.” This proposal removes the less comprehensive versions of §1401-A and §1451(1-A) from this bill and allows the more comprehensive versions enacted through LD 2089

Amend the bill by striking out all of section 230.

Amend the bill by striking out all of section 248.

Current law allows wineries and small wineries to produce low-alcohol spirits products that qualify as fortified wine and to import spirits for this purpose. See existing §1355-A(4)(C).

LD 2131 Adds authority for breweries and small breweries to produce low-alcohol spirits products containing malt liquor and to import spirits for this purpose. See new §1355-A(3)(E).

Note: the bill also adds similar authority for distilleries and small distilleries to produce low-alcohol spirits products. See §1355-A(5)(J). The authority for distilleries and small distilleries to import spirits for this purpose existed in current law, which was relocated in the bill to §2073-E(1)(F).

BABLO proposed amendment #19 from bill analysis. BABLO notes that the in-state spirits transportation statute, §2073-B(2)(B)(2), allows imported spirits to be transported to a winery or brewery for these purposes but should also allow delivery to a small winery or small brewery, who may also produce fortified wine and low-alcohol spirits products. Although BABLO suggests that this provision should further mention a distillery or a small distillery, but as is mentioned above the authority of distilleries and small distilleries to import spirits for use in manufacturing spirituous products exists in §2073-E(1)(F) of the bill.

Amend the bill in section 266 as follows:

Sec. 266. 28-A M.R.S.A. §2073-B is enacted to read:

§ 2073-B. In-state transportation of spirits

1. Prohibition. Except as provided in subsection 2, section 1201-A or section 2073-E, a person may not transport more than 4 liters of spirits within the State unless the spirits were legally purchased from:

A. An agency liquor store; or

B. An in-state manufacturer authorized under section 1355-A to sell spirits for off-premises consumption.

2. Exceptions. Notwithstanding subsection 1, a person may transport spirits within the State in the following circumstances.

A. An individual may transport spirits within the State in accordance with a permit issued under 2073-A, subsection 2, paragraph B.

B. A person may transport spirits the person transported into the State pursuant to section 2073-A, subsection 2, paragraph C to:

(1) A warehouse designated by the commission under section 81; or

(2) A winery, brewery, bottler or rectifier licensed under section 1355-A;

(3) A winery or small winery licensed under section 1355-A, for the production of fortified wine; or

(4) A brewery or small brewery licensed under section 1355-A, for the production of low-alcohol spirits products containing malt liquor.

C. A licensed in-state manufacturer of spirits may transport spirits produced by the manufacturer or may cause a common carrier or contract carrier authorized by the Department of Public Safety to transport spirits produced by the manufacturer to:

(1) A warehouse designated by the commission under section 81;

(2) A winery, brewery, bottler or rectifier licensed under section 1355-A;

(3) A winery or small winery licensed under section 1355-A, for the production of fortified wine; or

(4) A brewery or small brewery licensed under section 1355-A, for the production of low-alcohol spirits products containing malt liquor.

(3) (4) Any location to which the licensed in-state manufacturer of spirits is authorized to transport its own products under section 1355-A; or

(4) (5) The state line for transportation outside the State.

D. The wholesale spirits provider may transport spirits between warehouses designated by the commission under section 81 or to agency liquor stores as provided in section 503.

E. A reselling agent may transport spirits to on-premises retail licensees as provided in section 459.

Each shipment of spirits transported within the State in accordance with paragraph B, C, D or E must be accompanied by an invoice that includes the purchase number and the names of the sender and intended recipient of the spirits.

3. Penalties. The following penalties apply to violations of this section.

A. A person that transports within the State a quantity of less than 40 liters of spirits in violation of this section commits a civil violation for which a fine of not more than \$500 may be adjudged.

B. A person that transports within the State a quantity of 40 or more liters of spirits in violation of this section commits a Class E crime, which is a strict liability crime as defined in Title 17-A, section 34, subsection 4-A.

4. Evidence. The possession of more than 8 liters of spirits in one or more containers that are not labeled in accordance with Title 38, section 3105 is prima facie evidence of a violation of this section.

5. Forfeiture. Notwithstanding section 2221-A, a court shall order spirits transported within the State in violation of this section to be forfeited to the State and disposed of as provided in section 2229:

A. If a person fails to appear in court either in person or by counsel on the date and time specified in response to a Uniform Summons and Complaint issued for a violation of this section; or

B. As part of every adjudication and imposition of a fine under subsection 3, paragraph A and every conviction under subsection 3, paragraph B.

SUMMARY

To be drafted after language of proposed amendment is finalized.