

LR 3333

Draft for Public
Hearing 7/31/2020

LR(item): 3333(01)

Sponsor: Senator Luchini

Drafter: JS

Doc. Name: G:\COMMITTEES\VLA\Bill drafts\129th 2nd special\333301 (final draft to Revisor 7.24).docx

Date: July 24, 2020

An Act To Extend the Ability of Restaurants and Bars To Serve Alcohol To Go

Emergency preamble. Whereas, acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, the spread of the novel coronavirus disease referred to as COVID-19 has created a public health emergency; and

Whereas, in response to this public health emergency, the Governor issued an Executive Order on March 18, 2020, requiring all restaurants and bars, including tasting rooms, to close their dine-in facilities but permitting restaurants and bars to offer carry-out, delivery and drive-through food and beverage services, including carry-out, delivery and drive-through liquor sales; and

Whereas, although restaurants across the State were permitted to re-open by June 17, 2020, restaurants are required to limit indoor seating capacity to prevent spread of the virus while the reopening of bars and tasting rooms has been postponed until further notice; and

Whereas, it is impossible to ascertain when the current public health emergency will abate, rendering the economic survival of such businesses dependent on their ability to provide carry-out, delivery and drive-through food and beverage services, including carry-out, delivery and drive-through liquor sales; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 28-A MRSA §1056 is enacted to read:

§1056. Authorized delivery and carry out sales of liquor by qualified on-premises retailers; repeal

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

A. "Approved cocktail" means a beverage prepared by combining liquor with a non-alcoholic liquid or liquids that:

- (1) Is prepared on the day of sale by an employee of a qualified on-premises retailer who is at least 17 years of age;**
- (2) Contains no more than 4 1/2 ounces of spirits; and**
- (3) Is sealed in an approved container.**

B. "Approved container" means a tamper-evident container that:

(1) Does not contain openings or straw holes;

(2) Is sealed in a manner prescribed by the bureau by rule that makes opening the container or tampering with the contents of the container easily detectable; and

(3) Is affixed with a label that identifies the qualified on-premises retailer that prepared and sold the approved cocktail and that meets any additional requirements established by the bureau by rule.

C. "Original container" means, with respect to a wine or malt liquor product, the container in which the wine or malt liquor product was sealed when the qualified on-premises retailer obtained the wine or malt liquor product from an in-state manufacturer or a wholesale licensee.

D. "Passenger area" has the same meaning as in Title 29-A, section 2112-A.

E. "Qualified on-premises retailer" means an establishment that has notified the bureau in accordance with subsection 2 of its intention to sell spirits, wine or malt liquor for off-premises consumption and:

(1) That possesses license to sell spirits, wine or malt liquor for on-premises consumption under chapter 43 if the license is within the category of licenses that the bureau has authorized, by rule, to sell liquor for off-premises consumption in accordance with the conditions set forth in this section; or

(2) That does not possess a license under chapter 43 but is licensed as a distillery or small distillery under section 1355-A and operates a tasting room.

2. Authorized delivery and carry out sales of liquor for off-premises consumption.

Notwithstanding any other provision of law to the contrary, a qualified on-premises retailer may sell liquor for off-premises consumption only under the following conditions.

A. A qualified on-premises retailer must notify the bureau of its intention to sell liquor for off-premises consumption on a form prepared and approved by the bureau prior to engaging in off-premises sales.

B. A qualified on-premises retailer may sell for off-premises consumption only the type or types of liquor that it is authorized to sell for on-premises consumption pursuant to its chapter 43 license or §1355-A distillery or small distillery license. A qualified on-premises retailer authorized to sell wine may sell wine for off-premises consumption only in an original container. A qualified on-premises retailer authorized to sell malt liquor may sell malt liquor for off-premises consumption only in an original container. A qualified on-premises retailer authorized to sell spirits may sell spirits for off-premises consumption only as an ingredient of an approved cocktail prepared by an employee of that qualified on-premises retailer.

C. Liquor sold for off-premises consumption must be accompanied by a food order and a sales receipt with a time stamp that indicates the time of purchase. This paragraph does not apply to liquor sold by a qualified on-premises retailer that meets the requirements of subsection I, paragraph E, subparagraph (2).

D. Liquor sold for off-premises consumption may not be delivered to a minor or to a visibly intoxicated person.

E. Liquor sold for off-premises consumption must be delivered with the accompanying food order to a customer on the premises or to a customer at a remote location if the delivery to the remote location is made by a person who is at least 21 years of age. If a motor vehicle is used to make the delivery, the liquor may not be transported within the passenger area of the motor vehicle.

3. Rulemaking. The bureau shall adopt rules carry out the purposes of this section, which must include, but are not limited to, rules:

A. Identifying the categories of on-premises retailers licensed under chapter 43 that may, consistent with the purposes of this section and after consideration of the types of food sold by each category of license, sell liquor for off-premises consumption under this section;

B. Defining the type of food order that must accompany a sale of liquor for off-premises consumption by a qualified on-premises retailer as required by subsection 2, paragraph C; and

C. Establishing requirements for the sealing and labeling of approved containers by qualified on-premises retailers.

Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

4. Repeal. This section is repealed April 15, 2022.

Emergency clause. In view of the emergency cited in the preamble, this legislation takes effect when approved.

SUMMARY

This bill temporarily permits, until April 15, 2022, certain categories of on-premises retailers to sell liquor to customers through take-out and delivery service if the liquor is accompanied by a food order. The bill also temporarily permits licensed Maine distilleries and small distilleries that operate tasting rooms but that do not operate licensed on-premises retail establishments to sell spirits through take-out and delivery service unaccompanied by a food order.

Under the bill, wine and malt liquor may only be sold for off-premises consumption in an original container. Spirits may only be sold for off-premises consumption as an ingredient of an approved cocktail, which must be sealed in a tamper-evident container bearing a label identifying the vendor. A person who delivers wine, malt liquor or approved cocktails to a customer by motor vehicle under the bill must be at least 21 years of age and the liquor may only be transported in the non-passenger area of the motor vehicle.

The bill directs the Department of Administrative and Financial Services, Bureau of Alcoholic Beverages and Lottery Operations, to adopt rules governing the categories of on-premises retailers that may engage in liquor take-out and delivery services, the type of food order that must accompany a take-out or delivery sale of liquor and the requirements for sealing and labeling the tamper-evident containers in which approved cocktails must be sold.