

BABLO Proposed Amendment to LD 205

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

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

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

10           **Whereas,** although restaurants across the State were permitted to reopen June 17,  
11 2020, restaurants are required to limit indoor seating capacity to prevent spread of the virus  
12 while the reopening of bars and tasting rooms has been postponed until further notice; and

13           **Whereas,** it is impossible to ascertain when the current public health emergency will  
14 abate, rendering the economic survival of restaurants, bars and tasting rooms dependent on  
15 their continued ability to provide carry-out, delivery and drive-through food and beverage  
16 services, including carry-out, delivery and drive-through liquor sales; and

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

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

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

23 **§1056. Authorized take-out and delivery sales of liquor by qualified on-premises**  
24 **retailers; repeal**

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

27           A. "Approved cocktail" means a beverage prepared by combining liquor with liquors  
28 or a nonalcoholic liquid or liquids and that:

29                   (1) Is prepared on the day of sale by an employee of a qualified on-premises  
30 retailer who is at least 17 years of age ~~who is in the presence of an employee who is~~  
at least 21 years of age and is in a supervisory capacity;

31                   (2) Contains no more than 4 1/2 ounces of spirits; and

32                   (3) Is sealed in an approved container.

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

34                   (1) Does not contain openings or straw holes;

35                   (2) Is sealed ~~using a crown capped glass bottles, a screw top bottle cap that break~~  
apart when opened or a vacuum and heat-sealed pouch in a manner prescribed by  
the bureau by rule using that makes opening the container or tampering with the  
contents of the container easily detectable; and

36                   (3) Has an affixed label that identifies the qualified on-premises retailer ~~with~~  
the name and license number that prepared and sold the approved cocktail ~~and that~~  
meets any additional requirements established by the bureau by rule, the ingredients  
of the approved cocktail and the date of creation.

B-1. "Food order" means the food requirement of the qualified on-premises retailer as set forth in this Title as either a full course meal or food.

1  
2 C. "Original container" means, with respect to a wine or malt liquor product, the  
3 container in which the wine or malt liquor product was sealed when the qualified on-  
4 premises retailer obtained the wine or malt liquor product from an in-state  
5 manufacturer or a wholesale licensee.

6 D. "Qualified on-premises retailer" means an establishment ~~that has a food requirement~~  
set forth under this Title specific to the type of on-premises retailer defined in this  
chapter 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:

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

9 (2) That does not possess a license under this chapter but is licensed as a distillery  
10 or small distillery under section 1355-A ~~and serves samples of its products to the~~  
11 public for on-premises consumption or sells its products to the public for off-  
12 premises consumption as authorized by section 1355-A, subsection 2.

13 **2. Authorized take-out and delivery sales of liquor for off-premises consumption.**

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

16 A. Prior to engaging in sales of liquor for off-premises consumption, a qualified on-  
17 premises retailer shall notify the bureau of its intention to sell liquor for off-premises  
18 consumption on a form prepared and approved by the bureau.

19 B. A qualified on-premises retailer may sell for off-premises consumption only the  
20 type or types of liquor that it is authorized to sell for on-premises consumption pursuant  
21 to its license issued under this chapter or to its distillery or small distillery license issued  
22 under section 1355-A. A qualified on-premises retailer authorized to sell wine may  
23 sell wine for off-premises consumption only in an original container. A qualified on-  
24 premises retailer authorized to sell malt liquor may sell malt liquor for off-premises  
25 consumption only in an original container. A qualified on-premises retailer authorized  
26 to sell spirits may sell spirits for off-premises consumption only as an ingredient of an  
27 approved cocktail. ~~A distillery or small distillery may only produce an approved~~  
cocktail using product produced by the distillery or small distillery in accordance with  
section 1355-A, subsection 2, paragraph D.

28 This paragraph does not prohibit a qualified on-premises retailer that meets the  
29 requirements of subsection 1, paragraph D, subparagraph (2) from selling spirits for  
30 off-premises consumption pursuant to its authority under section 1355-A, subsection  
34 2.

35 C. Liquor sold for off-premises consumption must be accompanied by a food order  
36 and a sales receipt with a time stamp that indicates the time of purchase. This paragraph  
37 does not apply to liquor sold by a qualified on-premises retailer that meets the  
38 requirements of subsection 1, paragraph D, subparagraph (2).

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

41 E. Liquor sold for off-premises consumption must be delivered with the accompanying

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42 food order to a customer on the premises or to a customer at a remote location. Delivery  
43 to a customer at a remote location must be made by a person who is at least 21 years  
44 of age who is an employee of the qualified on-premises retailer. A qualified on-  
premises retailer is prohibited from using or contracting with a 3<sup>rd</sup> party person or  
business for the delivery of liquor whether the order is accompanied by a food order.

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~~1 3. Rulemaking. The bureau shall adopt rules to carry out the purposes of this section,  
2 which must include, but are not limited to, rules:~~

~~3 A. Identifying the categories of on-premises retailers licensed under this chapter that  
4 consistent with the purposes of this section and after consideration of the types of food  
5 sold under each category of license, may sell liquor for off-premises consumption  
6 under this section;~~

~~7 B. Defining the type of food order that must accompany a sale of liquor for off-  
8 premises consumption by a qualified on-premises retailer as required by subsection 2,  
9 paragraph C; and~~

~~10 C. Establishing requirements for the sealing and labeling of approved containers by  
11 qualified on-premises retailers.~~

~~12 Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5,  
13 chapter 375, subchapter 2-A.~~

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

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

174 SUMMARY

185 This bill temporarily permits, until April 15, 2022, certain categories of on-premises  
196 retailers to sell liquor to customers through take-out and delivery service if the liquor is  
207 accompanied by a food order. The bill also temporarily permits licensed Maine distilleries  
218 and small distilleries that operate tasting rooms but that do not operate licensed on-premises  
229 retail establishments to sell spirits through take-out and delivery service unaccompanied  
2310 by a food order.

2411 Wine and malt liquor may be sold for off-premises consumption only in an original  
2512 container. Spirits may be sold for off-premises consumption only as an ingredient of an  
2613 approved cocktail, which must be sealed in a tamper-evident container bearing a label  
2714 identifying the vendor. A person who delivers wine, malt liquor or approved cocktails to  
2815 a customer by motor vehicle must be at least 21 years of age.

~~29 The bill directs the Department of Administrative and Financial Services, Bureau of  
30 Alcoholic Beverages and Lottery Operations to adopt rules governing the categories of on-  
31 premises retailers that may engage in liquor take-out and delivery services, the type of food  
32 order that must accompany a take-out or delivery sale of liquor and the requirements for  
33 sealing and labeling the tamper-evident containers in which approved cocktails must be  
3416 sold.~~