

PLEASE NOTE: Legislative Information **cannot** perform research, provide legal advice, or interpret Maine law. For legal assistance, please contact a qualified attorney.

An Act To Assist Small Beer Manufacturers

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

Sec. 1. 28-A MRSA §2, sub-§2-B is enacted to read:

2-B. Barrel. "Barrel" means 31 United States gallons.

Sec. 2. 28-A MRSA §2, sub-§29, as amended by PL 1993, c. 730, §12, is further amended to read:

29. Small brewery. "Small brewery" means a facility that is brewing, lagering and kegging, bottling or packaging its own malt liquor, not to exceed ~~50,000 gallons~~30,000 barrels per year.

Sec. 3. 28-A MRSA §2, sub-§29-C is enacted to read:

29-C. Small beer manufacturer. "Small beer manufacturer" means a small brewery or out-of-state brewer that is brewing, lagering and kegging, bottling or packaging its own malt liquor, not to exceed 30,000 barrels per year.

Sec. 4. 28-A MRSA §1355-A, sub-§3, ¶¶A and B, as enacted by PL 2011, c. 629, §22, are amended to read:

A. A holder of a brewery license may produce more than ~~50,000 gallons~~30,000 barrels of malt liquor per year.

B. A holder of a small brewery license may produce not more than ~~50,000 gallons~~30,000 barrels of malt liquor per year.

(1) Upon application by a holder of a small brewery license ~~whose brewery that~~ has produced malt liquor in an amount that exceeds ~~50,000 gallons~~30,000 barrels in one year, the bureau may renew that holder's small brewery license for only one additional year.

(2) A holder of a small brewery license may sell or deliver its products to licensed retailers or wholesalers. The licensee may sell, on the premises for consumption off the premises, malt liquor produced at the licensed premises by the bottle, by the case or in bulk to licensed retailers, including, but not limited to, off-premises retail licensees, restaurants and clubs. Notwithstanding section 1361, the holder of a small brewery license may sell its products directly to a retail licensee under this paragraph without selling to a wholesale licensee.

Sec. 5. 28-A MRSA §1455, sub-§1, as enacted by PL 1987, c. 45, Pt. A, §4, is amended to read:

1. Written notice. Before any termination procedure initiated by the certificate of approval holder, the certificate of approval holder shall give the wholesale licensee written notice of any claimed deficiency existing in ~~his~~the wholesale licensee's territory and the certificate of approval holder shall give the wholesale licensee reasonable time or, if the certificate of approval holder is a small beer manufacturer, at least 30 days to correct the claimed deficiency or deficiencies. After this reasonable time has elapsed, the certificate of approval holder shall provide the wholesale licensee ~~at least 90 days prior with~~at least 90 days prior with written notice of ~~any~~the certificate of approval holder's intent to amend, ~~cancel~~, terminate, ~~cancel or not~~refuse to continue, refuse to renew any or cause the wholesale licensee to resign from an agreement. ~~The notice must state all the reasons for that at least 90 days prior to the effective date of the intended amendment, cancellation, termination, cancellation, refusal to continue, refusal to renew or nonrenewal causing of resignation. The written notice must state all of the reasons for the intended amendment, cancellation, termination, refusal to continue, refusal to renew or causing of resignation. The notice provisions of this section do not apply if the reason for the intended amendment, cancellation, termination, cancellation, refusal to continue, refusal to renew or nonrenewal causing of resignation is:~~

- A. The bankruptcy or insolvency of the wholesale licensee;
- B. An assignment for the benefit of creditors or similar disposition of the assets of the wholesale licensee's business;
- C. Revocation of the wholesale licensee's license; or
- D. Conviction or a plea of guilty or no contest to a charge of violating a law relating to the business that materially affects the wholesale licensee's ability to remain in business.

Sec. 6. 28-A MRSA §1457, as enacted by PL 1987, c. 45, Pt. A, §4, is amended to read:

§ 1457. Compensation

1. Reasonable compensation; certificate of approval holder. ~~Any~~Except as otherwise provided in this section, if a certificate of approval holder which amends, cancels, terminates or, refuses to continue or, refuses to renew any agreement, or causes a wholesale licensee to resign from an agreement, unless for good cause shown, as defined described in section 1454, from an agreement or a certificate of approval holder unreasonably withholds its consent to any assignment, transfer or sale of a wholesale licensee's business, that certificate of approval holder shall pay the wholesale licensee reasonable compensation for the fair market value of the wholesale licensee's business related to the terminated brand or brands of the certificate of approval holder. The fair market value of the wholesale licensee's business related to the terminated brand or brands of the certificate of approval holder includes inventory and other tangible assets and its good willgoodwill.

1-A. Reasonable compensation; small beer manufacturer. The following provisions apply only to a small beer manufacturer.

A. Notwithstanding any provision of this Title to the contrary or the terms, conditions or other provisions of any agreement, a small beer manufacturer shall pay a wholesale licensee reasonable compensation for the fair market value of the wholesale licensee's business related to a terminated brand or brands of the small beer manufacturer if:

(1) The small beer manufacturer amends, cancels, terminates, refuses to continue, refuses to renew or causes the wholesale licensee to resign from an agreement, unless for good cause shown, as described in section 1454, or the small beer manufacturer unreasonably withholds its consent to any assignment, transfer or sale of a wholesale licensee's business; and

(2) During the 12-month period immediately preceding the date on which the small beer manufacturer provides the wholesale licensee with written notice of the small beer manufacturer's intent to amend, cancel, terminate, refuse to continue, refuse to renew or cause the wholesale licensee to resign from an agreement, if required under section 1455, or the small beer manufacturer unreasonably withholds its consent to any assignment, transfer or sale of the wholesale licensee's business, the wholesale licensee's total number of case purchases as computed in 24 12-ounce-equivalent units of the terminated brand or brands of the small beer manufacturer that are distributed by the wholesale licensee represents no more than 3% of the wholesale licensee's total number of case purchases as computed in 24 12-ounce-equivalent units of all of the brands of certificate of approval holders, including, without limitation, the terminated brand or brands of the small beer manufacturer, that are distributed by the wholesale licensee.

The fair market value of the wholesale licensee's business related to the terminated brand or brands of the small beer manufacturer includes inventory and other tangible assets and its goodwill.

B. Notwithstanding any provision of this Title to the contrary, for purposes of this subsection, reasonable compensation for the fair market value of the wholesale licensee's business related to the terminated brand or brands of the small beer manufacturer is an amount equal to:

(1) The wholesale licensee's total gross profits with respect to the terminated brand or brands of the small beer manufacturer during the 12-month period described in paragraph A if the wholesale licensee's total gross profits with respect to the terminated brand or brands of the small beer manufacturer during the 12-month period described in paragraph A are equal to or less than that wholesale licensee's total gross profits with respect to the terminated brand or brands of the small beer manufacturer during the 12-month period immediately preceding the 12-month period described in paragraph A; or

(2) Twice the wholesale licensee's total gross profits with respect to the terminated brand or brands of the small beer manufacturer during the 12-month period described in paragraph A if the wholesale licensee's total gross profits with respect to the terminated brand or brands of the small beer manufacturer during the 12-month period described in paragraph A are greater than that wholesale licensee's total gross profits with respect to the terminated brand or brands of the small beer manufacturer during the 12-month period immediately preceding the 12-month period described in paragraph A.

C. Notwithstanding section 1462, nothing in this chapter limits or prohibits a wholesale licensee from limiting or waiving its right to receive reasonable compensation for the value of the wholesale licensee's business related to the terminated brand or brands of a small beer manufacturer under this section upon the terms and conditions set forth in an agreement between the wholesale licensee and the small beer manufacturer.

D. Notwithstanding any provision of this Title to the contrary or the terms, conditions or other provisions of any agreement and regardless of whether a small beer manufacturer and a wholesale licensee have agreed upon, or a small beer manufacturer has paid to a wholesale licensee, reasonable compensation for the fair market value of the wholesale licensee's business related to the terminated brand or brands of the small beer manufacturer, if a small beer manufacturer amends, cancels, terminates, refuses to continue, refuses to renew or causes a wholesale licensee to resign from an agreement, unless for good cause shown, as described in section 1454, or a small beer manufacturer unreasonably withholds its consent to any assignment, transfer or sale of a wholesale licensee's business, that small beer manufacturer may immediately:

(1) If the small beer manufacturer is a small brewery, sell the terminated brand or brands of the small beer manufacturer directly to retail licensees in the terminated wholesale licensee's territory under section 1355-A without selling the brand or brands to a wholesale licensee;

(2) Appoint one or more new wholesale licensees to sell the terminated brand or brands of the small beer manufacturer in all or any portion of the terminated wholesale licensee's territory; or

(3) Take any combination of actions described in subparagraphs (1) and (2), if applicable.

2. Neutral arbitrator; certificate of approval holder. ~~If~~Except as otherwise provided in this section, if the certificate of approval holder and the wholesale licensee are unable to agree on the reasonable compensation to be paid for the fair market value of the wholesale licensee's business, as defined in subsection 1 related to the terminated brand or brands of the certificate of approval holder, they shall submit the matter to a neutral arbitrator selected by the parties, or, if they cannot agree, by the Chief Justice of the Supreme Judicial Court. The costs of the arbitration shall~~must~~be paid 1/2 by the wholesale licensee and 1/2 by the certificate of approval holder or otherwise the arbitration proceeding shall~~must~~be governed by the Maine Uniform Arbitration Act.

3. Neutral arbitrator; small beer manufacturer. Subject to subsection 1-A, and notwithstanding any provision of this Title to the contrary or the terms, conditions or other provisions of any agreement, if the small beer manufacturer and the wholesale licensee are unable to agree on the reasonable compensation to be paid for the fair market value of the wholesale licensee's business related to the terminated brand or brands of the small beer manufacturer within 7 days of the date on which the small beer manufacturer amends, cancels, terminates, refuses to continue, refuses to renew or causes the wholesale licensee to resign from an agreement or the date on which the small beer manufacturer unreasonably withholds its consent to any assignment, transfer or sale of the wholesale licensee's business, the small beer manufacturer and the wholesale licensee shall submit the matter to final and binding arbitration before a neutral arbitrator selected by the parties or, if the parties are unable to agree on the arbitrator within an additional 7 days, by the Chief Justice of the Supreme Judicial Court, and the arbitration proceeding must be governed by the Uniform Arbitration Act, as modified by the terms and conditions set forth in this subsection. The arbitration proceeding must commence within 10 days of the date on which the arbitrator is selected by the parties. Each of the parties shall, at least 7 days before the date of the commencement of the arbitration proceeding, submit to the arbitrator and the other party the party's final offer as to the amount of reasonable compensation to be paid for the fair market value of the wholesale licensee's business related to the terminated brand or brands of the small beer manufacturer, together with any relevant evidence in support of that amount. The arbitrator shall choose which of the final offers from the parties is the amount of reasonable compensation to be paid for the fair market value of the wholesale licensee's business related to the terminated brand or brands of the small beer manufacturer. If a party fails to submit its final offer as to the amount of reasonable compensation to be paid for the fair market value of the wholesale licensee's business related to the terminated brand or brands of the small beer manufacturer at least 7 days before the date of the commencement of the arbitration proceeding, except for reasonable excuse or delay by the party, the arbitrator shall choose the other party's final offer and the other party's final offer must serve as the arbitrator's decision on the matter. If the parties reach an agreement as to the amount of reasonable compensation to be paid for the fair market value of the wholesale licensee's business related to the terminated brand or brands of the small beer manufacturer before the arbitrator issues the arbitrator's decision on the matter, the parties may submit a joint final offer, which the arbitrator shall accept, and the parties' joint final offer must serve as the arbitrator's decision on the matter. The arbitrator may hold hearings and administer oaths, examine witnesses and documents, take testimony and receive evidence and issue subpoenas to compel the attendance of witnesses and the production of records. A person who fails to obey the subpoena of the arbitrator may be punished for contempt of court on application by the arbitrator to the Superior Court for the county in which the failure occurs. The arbitrator may use other information in addition to that provided by or elicited from the parties. The arbitrator shall issue a decision on the matter within 15 days of the date of commencement of the arbitration proceeding. The costs of the arbitration must be paid by the nonprevailing party, and the arbitrator may award the prevailing party its reasonable attorney's fees and costs.

SUMMARY

This bill changes the definition of "small brewery" by increasing the amount of malt liquor a small brewery may brew from 50,000 gallons to 30,000 barrels per year. It defines a "small beer manufacturer"

as a small brewery or out-of-state brewer that is brewing, lagering and kegging, bottling or packaging its own malt liquor, not to exceed 30,000 barrels per year. If a small beer manufacturer terminates its distribution relationship with a wholesale licensee, unless for good cause, causes a wholesale licensee to resign from an agreement, unless for good cause, or unreasonably withholds its consent to any assignment, transfer or sale of a wholesale licensee's business and that small beer manufacturer's brands make up no more than 3% of the wholesale licensee's business, the bill sets the maximum amount of the termination fee that the wholesale licensee is entitled to receive from that small beer manufacturer in connection with the termination. The bill amends the laws governing certain notice requirements that the small beer manufacturer must satisfy in connection with the termination, provides expedited arbitration proceedings for a small beer manufacturer and a wholesale licensee in connection with a dispute regarding the amount of the termination fee and provides that, regardless of whether the terminated wholesale licensee has received payment of the termination fee from the small beer manufacturer, upon written notice of the termination to the wholesale licensee, the small beer manufacturer may appoint a new wholesale licensee to distribute the relevant products in the terminated wholesale licensee's territory or, if the small beer manufacturer is a small brewery, sell the terminated brand or brands of the small beer manufacturer directly to retail licensees in the terminated wholesale licensee's territory without selling the brand or brands to a wholesale licensee. Lastly, this bill allows a wholesale licensee and a small beer manufacturer to agree upon or limit the amount of a termination fee pursuant to a distribution agreement as long as that termination fee does not exceed the maximum amount of the termination fee, as set forth in the bill.