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Legislative Document

No. 1761

S.P. 593

In Senate, May 21, 2019

An Act To Assist Small Beer Manufacturers

Reference to the Committee on Veterans and Legal Affairs suggested and ordered printed.

A handwritten signature in black ink, appearing to read 'D M Grant'.

DAREK M. GRANT
Secretary of the Senate

Presented by Senator LUCHINI of Hancock.
Cosponsored by Speaker GIDEON of Freeport and
Representatives: HICKMAN of Winthrop, SCHNECK of Bangor.

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

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

3 **2-B. Barrel.** "Barrel" means 31 United States gallons.

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

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

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

10 **29-C. Small beer manufacturer.** "Small beer manufacturer" means a small
11 brewery or out-of-state brewer that is brewing, lagering and keggling, bottling or
12 packaging its own malt liquor, not to exceed 30,000 barrels per year.

13 **Sec. 4. 28-A MRSA §1355-A, sub-§3, ¶¶A and B**, as enacted by PL 2011, c.
14 629, §22, are amended to read:

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

17 B. A holder of a small brewery license may produce not more than ~~50,000 gallons~~
18 30,000 barrels of malt liquor per year.

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

23 (2) A holder of a small brewery license may sell or deliver its products to
24 licensed retailers or wholesalers. The licensee may sell, on the premises for
25 consumption off the premises, malt liquor produced at the licensed premises by
26 the bottle, by the case or in bulk to licensed retailers, including, but not limited
27 to, off-premises retail licensees, restaurants and clubs. Notwithstanding section
28 1361, the holder of a small brewery license may sell its products directly to a
29 retail licensee under this paragraph without selling to a wholesale licensee.

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

32 **1. Written notice.** Before any termination procedure initiated by the certificate of
33 approval holder, the certificate of approval holder shall give the wholesale licensee
34 written notice of any claimed deficiency existing in ~~his~~ the wholesale licensee's territory
35 and the certificate of approval holder shall give the wholesale licensee reasonable time or,
36 if the certificate of approval holder is a small beer manufacturer, at least 30 days
37 to correct the claimed deficiency or deficiencies. After this reasonable time has elapsed, the
38 certificate of approval holder shall provide the wholesale licensee at least 90 days prior

1 with written notice of any the certificate of approval holder's intent to amend, cancel,
2 terminate, ~~cancel or not~~ refuse to continue, refuse to renew any or cause the wholesale
3 licensee to resign from an agreement. The notice must state all the reasons for the at least
4 90 days prior to the effective date of the intended amendment, cancellation, termination,
5 ~~cancellation~~ refusal to continue, refusal to renew or nonrenewal causing of resignation.
6 The written notice must state all of the reasons for the intended amendment, cancellation,
7 termination, refusal to continue, refusal to renew or causing of resignation. The notice
8 provisions of this section do not apply if the reason for the intended amendment,
9 cancellation, termination, ~~cancellation~~ refusal to continue, refusal to renew or nonrenewal
10 causing of resignation is:

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

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

20 **§1457. Compensation**

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

33 **1-A. Reasonable compensation; small beer manufacturer.** The following
34 provisions apply only to a small beer manufacturer.

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

- 40 (1) The small beer manufacturer amends, cancels, terminates, refuses to
41 continue, refuses to renew or causes the wholesale licensee to resign from an

1 agreement, unless for good cause shown, as described in section 1454, or the
2 small beer manufacturer unreasonably withholds its consent to any assignment,
3 transfer or sale of a wholesale licensee's business; and

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

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

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

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

33 (2) Twice the wholesale licensee's total gross profits with respect to the
34 terminated brand or brands of the small beer manufacturer during the 12-month
35 period described in paragraph A if the wholesale licensee's total gross profits with
36 respect to the terminated brand or brands of the small beer manufacturer during
37 the 12-month period described in paragraph A are greater than that wholesale
38 licensee's total gross profits with respect to the terminated brand or brands of the
39 small beer manufacturer during the 12-month period immediately preceding the
40 12-month period described in paragraph A.

41 C. Notwithstanding section 1462, nothing in this chapter limits or prohibits a
42 wholesale licensee from limiting or waiving its right to receive reasonable
43 compensation for the value of the wholesale licensee's business related to the
44 terminated brand or brands of a small beer manufacturer under this section upon the

1 terms and conditions set forth in an agreement between the wholesale licensee and
2 the small beer manufacturer.

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

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

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

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

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

32 **3. Neutral arbitrator; small beer manufacturer.** Subject to subsection 1-A, and
33 notwithstanding any provision of this Title to the contrary or the terms, conditions or
34 other provisions of any agreement, if the small beer manufacturer and the wholesale
35 licensee are unable to agree on the reasonable compensation to be paid for the fair market
36 value of the wholesale licensee's business related to the terminated brand or brands of the
37 small beer manufacturer within 7 days of the date on which the small beer manufacturer
38 amends, cancels, terminates, refuses to continue, refuses to renew or causes the wholesale
39 licensee to resign from an agreement or the date on which the small beer manufacturer
40 unreasonably withholds its consent to any assignment, transfer or sale of the wholesale
41 licensee's business, the small beer manufacturer and the wholesale licensee shall submit
42 the matter to final and binding arbitration before a neutral arbitrator selected by the
43 parties or, if the parties are unable to agree on the arbitrator within an additional 7 days,
44 by the Chief Justice of the Supreme Judicial Court, and the arbitration proceeding must

1 be governed by the Uniform Arbitration Act, as modified by the terms and conditions set
2 forth in this subsection. The arbitration proceeding must commence within 10 days of the
3 date on which the arbitrator is selected by the parties. Each of the parties shall, at least 7
4 days before the date of the commencement of the arbitration proceeding, submit to the
5 arbitrator and the other party the party's final offer as to the amount of reasonable
6 compensation to be paid for the fair market value of the wholesale licensee's business
7 related to the terminated brand or brands of the small beer manufacturer, together with
8 any relevant evidence in support of that amount. The arbitrator shall choose which of the
9 final offers from the parties is the amount of reasonable compensation to be paid for the
10 fair market value of the wholesale licensee's business related to the terminated brand or
11 brands of the small beer manufacturer. If a party fails to submit its final offer as to the
12 amount of reasonable compensation to be paid for the fair market value of the wholesale
13 licensee's business related to the terminated brand or brands of the small beer
14 manufacturer at least 7 days before the date of the commencement of the arbitration
15 proceeding, except for reasonable excuse or delay by the party, the arbitrator shall choose
16 the other party's final offer and the other party's final offer must serve as the arbitrator's
17 decision on the matter. If the parties reach an agreement as to the amount of reasonable
18 compensation to be paid for the fair market value of the wholesale licensee's business
19 related to the terminated brand or brands of the small beer manufacturer before the
20 arbitrator issues the arbitrator's decision on the matter, the parties may submit a joint final
21 offer, which the arbitrator shall accept, and the parties' joint final offer must serve as the
22 arbitrator's decision on the matter. The arbitrator may hold hearings and administer
23 oaths, examine witnesses and documents, take testimony and receive evidence and issue
24 subpoenas to compel the attendance of witnesses and the production of records. A person
25 who fails to obey the subpoena of the arbitrator may be punished for contempt of court on
26 application by the arbitrator to the Superior Court for the county in which the failure
27 occurs. The arbitrator may use other information in addition to that provided by or
28 elicited from the parties. The arbitrator shall issue a decision on the matter within 15
29 days of the date of commencement of the arbitration proceeding. The costs of the
30 arbitration must be paid by the nonprevailing party, and the arbitrator may award the
31 prevailing party its reasonable attorney's fees and costs.

32 **SUMMARY**

33 This bill changes the definition of "small brewery" by increasing the amount of malt
34 liquor a small brewery may brew from 50,000 gallons to 30,000 barrels per year. It
35 defines a "small beer manufacturer" as a small brewery or out-of-state brewer that is
36 brewing, lagering and kegging, bottling or packaging its own malt liquor, not to exceed
37 30,000 barrels per year. If a small beer manufacturer terminates its distribution
38 relationship with a wholesale licensee, unless for good cause, causes a wholesale licensee
39 to resign from an agreement, unless for good cause, or unreasonably withholds its consent
40 to any assignment, transfer or sale of a wholesale licensee's business and that small beer
41 manufacturer's brands make up no more than 3% of the wholesale licensee's business, the
42 bill sets the maximum amount of the termination fee that the wholesale licensee is
43 entitled to receive from that small beer manufacturer in connection with the termination.
44 The bill amends the laws governing certain notice requirements that the small beer
45 manufacturer must satisfy in connection with the termination, provides expedited

1 arbitration proceedings for a small beer manufacturer and a wholesale licensee in
2 connection with a dispute regarding the amount of the termination fee and provides that,
3 regardless of whether the terminated wholesale licensee has received payment of the
4 termination fee from the small beer manufacturer, upon written notice of the termination
5 to the wholesale licensee, the small beer manufacturer may appoint a new wholesale
6 licensee to distribute the relevant products in the terminated wholesale licensee's territory
7 or, if the small beer manufacturer is a small brewery, sell the terminated brand or brands
8 of the small beer manufacturer directly to retail licensees in the terminated wholesale
9 licensee's territory without selling the brand or brands to a wholesale licensee. Lastly,
10 this bill allows a wholesale licensee and a small beer manufacturer to agree upon or limit
11 the amount of a termination fee pursuant to a distribution agreement as long as that
12 termination fee does not exceed the maximum amount of the termination fee, as set forth
13 in the bill.