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Date: (Filing No. S- )

**VETERANS AND LEGAL AFFAIRS**

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**STATE OF MAINE**

**SENATE**

**131ST LEGISLATURE**

**SECOND REGULAR SESSION**

COMMITTEE AMENDMENT “ ” to S.P. 682, L.D. 1695, “An Act to Provide for the Direct Shipment of Spirits to Consumers”

Amend the bill by striking out everything after the enacting clause and inserting the following:

**'Sec. 1. 28-A MRSA §1358** is enacted to read:

**§1358. Direct shipment of spirits**

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

A. "Case equivalent" has the same meaning as in section 1457, subsection 1-A, paragraph B.

B. "Common carrier" means a company that transports goods upon reasonable request, on regular routes and at set rates.

C. "Direct shipper" means a distillery, small distillery, rectifier or out-of-state spirits manufacturer that has obtained a spirits direct shipper license under subsection 2.

D. "Direct shipper discount rate" means a percentage that is equal to the percentage discount rate for small distilleries that sell their products directly to consumers under section 606, subsection 4-B.

E. "Fulfillment provider" means a bonded logistics agent of a direct shipper that provides fulfillment services, including warehousing, packaging, distribution and order processing for the shipment of spirits to a consumer and arranges for transport of spirits to a consumer by a common carrier and that has obtained a fulfillment provider registration under subsection 9.

F. "Outside the State" means any state other than this State and any territory or possession of the United States, but does not include a foreign country.

**2. Direct shipment of spirits; license required.** A distillery, small distillery, rectifier or out-of-state spirits manufacturer holding a federal basic distilled spirits plant permit

**COMMITTEE AMENDMENT**

1 located within or outside the State that has been issued a certificate of label approval by the  
2 United States Department of the Treasury, Alcohol and Tobacco Tax and Trade Bureau for  
3 a product to be shipped may obtain a spirits direct shipper license by filing with the bureau  
4 an application in a form determined by the bureau accompanied by an application fee of  
5 not more than \$200, a copy of the applicant's current federal basic distilled spirits plant  
6 permit and a list of spirits labels to be shipped in accordance with this section.

7 **3. Direct shipper application.** Before sending a shipment to a resident of this State,  
8 a direct shipper shall file an application for a spirits direct shipper license under subsection  
9 2 with the bureau on a form issued by the bureau along with a true copy of its current  
10 distillery, small distillery, rectifier or out-of-state spirits manufacturer license issued in this  
11 State or another state and a \$100 registration fee.

12 **4. Direct shipment requirements.** A direct shipper or the direct shipper's fulfillment  
13 provider may only ship spirits that were produced by or for the direct shipper, owned by  
14 the direct shipper or sold under the distillery name of the direct shipper in accordance with  
15 the direct shipper's federal basic distilled spirits plant permit to a recipient who is at least  
16 21 years of age and that are intended for personal use and not for resale. A direct shipper  
17 or the direct shipper's fulfillment provider shall label each package to be shipped in  
18 accordance with this section so that it conspicuously reads: "CONTAINS ALCOHOL:  
19 SIGNATURE OF A PERSON 21 YEARS OF AGE OR OLDER IS REQUIRED FOR  
20 DELIVERY."

21 **5. Common carrier.** Shipments made in accordance with this section must be made  
22 by a common carrier and must be accompanied by a shipping label that clearly indicates  
23 the name of the direct shipper and the name and residence address of the recipient. The  
24 common carrier shall obtain the signature of a person 21 years of age or older at the address  
25 listed on the shipping label prior to delivery of the shipment. The common carrier shall  
26 request photographic identification from the person signing for the shipment and verify that  
27 the person is 21 years of age or older.

28 **6. Shipment restrictions and limitations.** The following shipment restrictions and  
29 limitations apply to a direct shipper under this section.

30 **A.** A direct shipper may ship no more than one case equivalent of spirits per recipient  
31 address in a 3-month period and may not exceed 4 case equivalents of spirits per  
32 recipient address in a calendar year.

33 **B.** A direct shipper located within the State may ship to recipients in this State only  
34 spirits that the direct shipper is licensed to ship under subsection 2 and that are listed  
35 for sale in the State by the commission under section 81, subsection 3. A direct shipper  
36 under this paragraph may ship within the State no more than 60 case equivalents of  
37 spirits in a calendar year.

38 **C.** A direct shipper located outside the State may ship to recipients in this State only  
39 spirits that the direct shipper is licensed to ship under subsection 2 and that are not  
40 listed for sale in the State by the commission under section 81, subsection 3. A direct  
41 shipper under this paragraph may ship within the State no more than 60 case  
42 equivalents of spirits in a calendar year. If, within a 12-month period, a direct shipper  
43 under this paragraph ships more than 10 case equivalents of a single spirits product  
44 within the State, the direct shipper must request that that spirits product be listed by the  
45 commission under section 81, subsection 3.

1 **7. Prohibited shipping areas.** A direct shipper may not ship to any address in an area  
2 identified by the bureau as a prohibited shipping area or a local option area.

3 **8. License renewal.** A direct shipper may annually renew its spirits direct shipper  
4 license with the bureau by paying a \$50 renewal fee and providing the bureau with a true  
5 copy of its current distillery, small distillery, rectifier or out-of-state spirits manufacturer  
6 license issued in this State or another state.

7 **9. Fulfillment provider; registration.** A direct shipper may use a fulfillment provider  
8 that is registered under this subsection.

9 A. A fulfillment provider that is not a common carrier and that does not hold a direct  
10 shipper, manufacturer or retail license issued by the bureau and that is not owned or  
11 controlled by a common carrier, direct shipper, manufacturer or retail licensee may  
12 register with the bureau in a manner prescribed by the bureau. A registration must  
13 include the information required in paragraph B and a registration fee of not more than  
14 \$50 per physical premises. A fulfillment provider registering pursuant to this  
15 subsection shall register with the bureau for each physical premises from which the  
16 fulfillment provider will ship spirits under this section. A fulfillment provider may only  
17 ship spirits to a recipient in the State if the fulfillment provider maintains a current  
18 registration, as applicable, under this subsection and only if the spirits shipped are  
19 provided by a direct shipper licensed under this section.

20 B. A fulfillment provider registration must include the following:

21 (1) The address of each premises from which the fulfillment provider will ship  
22 spirits to recipients in the State;

23 (2) The name, address and license number of each direct shipper on whose behalf  
24 the fulfillment provider will ship spirits to recipients in the State; and

25 (3) Any other information as determined by the bureau.

26 C. A fulfillment provider registration must be renewed every 2 years. If there is a  
27 material change in the information provided to the bureau related to the initial  
28 registration or renewal, the fulfillment provider shall provide updated information to  
29 the bureau not later than 14 days after the change.

30 D. A fulfillment provider shall make all commercially reasonable efforts to verify the  
31 validity of each direct shipper license prior to making any shipments under this section.  
32 Continuous failure to verify the validity of licenses may result in the suspension of the  
33 fulfillment provider's registration and imposition of a fine.

34 **10. Direct shipper spirits pricing.** Spirits shipped under this section must be sold at  
35 the retail price determined by the commission pursuant to section 1651, subsection 1.  
36 Spirits shipped under this section by a direct shipper located outside the State under  
37 subsection 6, paragraph C must be sold at a price equivalent to the retail price for spirits  
38 sold to the State with a supplier price as reported by the direct shipper to the bureau under  
39 subsection 13. If the direct shipper modifies the supplier price from the price reported to  
40 the bureau under subsection 13, the direct shipper shall notify the bureau prior to  
41 implementing the modified price.

42 **11. Sales tax registration and payment required.** A direct shipper shall comply  
43 with the provisions of Title 36, Part 3, including all requirements relating to registration as

1 a seller and the collection, reporting and remittance of the sales and use taxes of the State,  
2 and a direct shipper located outside the State shall agree to be subject to the jurisdiction of  
3 the State for purposes of the enforcement of those obligations. The requirements of this  
4 subsection apply notwithstanding any provision of law of the State to the contrary.

5 **12. Payment to bureau.** A direct shipper shall pay quarterly to the bureau amounts  
6 as follows.

7 A. A direct shipper within the State under subsection 6, paragraph B shall pay to the  
8 bureau the difference between the direct shipper's price charged to the bureau for that  
9 spirits product and the amount equal to the retail price for that spirits product multiplied  
10 by the direct shipper discount rate.

11 B. A direct shipper outside the State under subsection 6, paragraph C shall pay to the  
12 bureau the difference between the direct shipper's supplier price for that spirits product  
13 as reported to the bureau under subsection 13 and the amount equal to the retail price  
14 as determined under subsection 10 for that spirits product multiplied by the direct  
15 shipper discount rate.

16 **13. Reporting.** Reports to the bureau regarding direct shipments of spirits are  
17 governed by this subsection.

18 A. A direct shipper shall submit a report to the bureau quarterly in a manner and form  
19 prescribed by the bureau that includes the following:

20 (1) The total number of case equivalents per spirits product shipped to recipients  
21 in the State and, for a direct shipper located in the State, shipments made outside  
22 the State;

23 (2) For a direct shipper located outside the State, the supplier price and the  
24 calculated retail price under subsection 10 for each spirits product shipped to  
25 recipients in the State;

26 (3) The name and residence address of shipment recipients in the State;

27 (4) The name and registration of the designated fulfillment providers, if applicable;

28 (5) The common carrier used to deliver each shipment; and

29 (6) The date, quantity and purchase price of each shipment.

30 B. A fulfillment provider shall submit a report to the bureau quarterly in a manner and  
31 form prescribed by the bureau that includes the following:

32 (1) The name as it appears on the direct shipper license, physical address and  
33 license number of the direct shipper on whose behalf the fulfillment provider  
34 shipped spirits under this section;

35 (2) The date of each shipment;

36 (3) The name and business address of the common carrier that transported the  
37 shipment and the unique tracking number for each shipment;

38 (4) The weight of each package shipped; and

39 (5) The name and residence address of each recipient.

1 C. A common carrier shall submit a report to the bureau quarterly in a manner and  
2 form prescribed by the bureau that includes the following:

- 3 (1) The name of the common carrier;  
4 (2) The name and address of the direct shipper and, if applicable, the fulfillment  
5 provider that used the common carrier for a shipment of spirits;  
6 (3) The name and address of each recipient;  
7 (4) The weight of each package delivered to each recipient;  
8 (5) The unique tracking number for each shipment; and  
9 (6) The date of delivery.

10 A failure by a common carrier to comply with the reporting requirements of this  
11 paragraph that continues for more than 30 days after receiving from the bureau a notice  
12 of that failure may result in the suspension of the common carrier's license to operate  
13 in the State or the imposition of any other penalty the relevant licensing authority in  
14 the State is authorized to impose.

15 D. If no spirits were shipped to a recipient in this State and, for a direct shipper located  
16 in the State, no spirits were shipped to a recipient outside the State during the reporting  
17 period, a report indicating such must be submitted to the bureau.

18 **14. Audit and records retention.** The bureau may perform an audit of a direct  
19 shipper's, fulfillment provider's or common carrier's records relevant to compliance with  
20 this section. A direct shipper, fulfillment provider or common carrier shall provide copies  
21 of any records requested by the bureau within 20 business days of that request.

22 A. A direct shipper shall maintain the books, records and documents supporting a  
23 report submitted under subsection 13, paragraph A or D for 2 years after the reporting  
24 date, unless otherwise directed by the bureau.

25 B. A fulfillment provider shall maintain the books, records and documents supporting  
26 a report submitted under subsection 13, paragraph B or D for 2 years after the reporting  
27 date, unless otherwise directed by the bureau.

28 C. A common carrier shall maintain the books, records and documents supporting a  
29 report submitted under subsection 13, paragraph C or D, including an electronic or  
30 paper copy of each recipient's signature, for 2 years after the reporting date, unless  
31 otherwise directed by the bureau.

32 **15. Violation.** A person, including a common carrier or fulfillment provider, that  
33 knowingly causes a direct shipment in violation of this section is subject to a fine of up to  
34 \$500 for a first offense and up to \$1,000 for any subsequent violation of this section. A  
35 direct shipper, fulfillment provider or common carrier who knowingly delivers spirits to a  
36 person who has not attained 21 years of age is subject to a fine of up to \$5,000. The bureau  
37 may suspend or revoke a spirits direct shipper license under subsection 2 for failure to  
38 comply with the shipping limits and reporting requirements required by this section. The  
39 bureau may accept payment of an offer in compromise in lieu of suspension; such payments  
40 must be determined by rules adopted by the bureau.

