

STATE OF MAINE

IN THE YEAR OF OUR LORD

TWO THOUSAND NINETEEN

S.P. 616 - L.D. 1826

An Act To Update the Laws Relating to Liquor Licensing and Enforcement**Be it enacted by the People of the State of Maine as follows:**

Sec. 1. 28-A MRSA §2, sub-§29-A, as enacted by PL 2005, c. 390, §1, is amended to read:

29-A. Small distillery. "Small distillery" means a distiller that produces ~~distilled~~ spirits in an amount that does not exceed 50,000 gallons per year.

Sec. 2. 28-A MRSA §2, sub-§31, as amended by PL 2017, c. 301, §2, is further amended to read:

31. Spirits. "Spirits" means any liquor produced by distillation or, if produced by any other process, strengthened or fortified by the addition of ~~distilled~~ spirits of any kind. "Spirits" does not include low-alcohol spirits products or fortified wine. Beginning July 1, 2019, "spirits" does not mean an additive or flavoring, such as an extract or concentrate, that:

- A. Contains alcohol;
- B. Is not intended to be consumed alone as a beverage or a food product but serves as a flavor enhancement to a beverage or a food product; and
- C. Is not subject to excise tax under chapter 65.

Sec. 3. 28-A MRSA §83-C, sub-§2-A is enacted to read:

2-A. Special pricing situations. Notwithstanding section 1651, the bureau may, by rule, set retail prices on spirits at different levels than those established by the commission in the following circumstances.

- A. The bureau may establish special retail prices on certain listed spirits items to be made available to the consumer at all agency liquor stores.
- B. The bureau may reduce the retail price of a listed spirits item that is unlikely to be sold for the retail price set by the commission.

C. The bureau may reduce, at the expense of the manufacturer or supplier, the retail price of those test-market spirits items that fail to meet set minimum gross profit standards after a 3-month period.

Sec. 4. 28-A MRSA §83-C, sub-§9, as enacted by PL 2013, c. 476, Pt. A, §9, is amended to read:

9. Report on expenditures. Report annually on expenditures and investments made by the bureau, including, but not limited to, reductions in the ~~list~~ retail price at which spirits are sold and incentives offered to agency liquor stores, to the joint standing committee of the Legislature having jurisdiction over appropriations and financial affairs and the joint standing committee of the Legislature having jurisdiction over alcoholic beverage matters. The report must include the impact of those spending initiatives on the number of cases of spirits sold in the State and on sales of spirits generally.

Sec. 5. 28-A MRSA §453, sub-§2-C, ¶A, as amended by PL 2017, c. 167, §4, is further amended to read:

A. If the applicant has previously held a license to sell malt liquor and wine for off-premises consumption, the applicant was not found by the District Court to have committed a violation of any provision of this Title or rule of the bureau within the last year;

Sec. 6. 28-A MRSA §460, sub-§2, ¶M-1, as amended by PL 2019, c. 79, §1, is further amended to read:

M-1. Spirits served at a taste-testing event must be provided by the agency liquor store or purchased, at the retail ~~list~~ price, by a licensed sales representative participating in the taste-testing event from existing stock available for purchase at the agency liquor store.

Sec. 7. 28-A MRSA §606, sub-§1, as amended by PL 2013, c. 368, Pt. V, §35, is further amended to read:

1. Purchase of liquor. Subject to the restrictions provided in subsection 1-A, a person licensed to sell spirits ~~and fortified wine~~ for on-premises consumption must purchase spirits ~~and fortified wine~~ from an agency liquor store licensed as a reselling agent under section 453-C. This subsection does not apply to public service corporations operating interstate.

Sec. 8. 28-A MRSA §606, sub-§1-A, ¶A, as amended by PL 2013, c. 476, Pt. A, §19, is further amended to read:

A. The sale price of spirits sold by a reselling agent to an establishment licensed for on-premises consumption must ~~equal~~ be the retail price established by the commission or the discounted retail price established by the bureau in accordance with subsection 1-C.

Sec. 9. 28-A MRSA §606, sub-§1-C, as amended by PL 2013, c. 476, Pt. A, §20, is further amended to read:

1-C. Price of state spirits sales to agency liquor stores. The bureau may offer discounts below the ~~list~~ retail price set by the commission on spirits sold to agency liquor stores.

Sec. 10. 28-A MRSA §606, sub-§4-A, as enacted by PL 2013, c. 269, Pt. A, §8 and amended by c. 368, Pt. V, §61, is further amended to read:

4-A. Discount rates for agency liquor stores; rulemaking. Beginning July 1, 2014, the bureau shall set the price of spirits at a minimum discount of 12% of the ~~list~~ retail price. The bureau may establish discount rates greater than 12%, including graduated discount rates, but those discount rates must be established by rules that ensure that any graduated discount rate is structured in a way that does not adversely affect agency liquor stores that stock a low level of inventory. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

Sec. 11. 28-A MRSA §606, sub-§4-B, as enacted by PL 2019, c. 168, §1, is amended to read:

4-B. Discount rate for small distilleries. Beginning July 1, 2019, the bureau shall set the price of spirits produced by a small distillery licensed under section 1355-A, subsection 5, paragraph B and retained by that small distillery for sale under section 1355-A, subsection 5, paragraph G or H at a discount of 22.75% of the ~~list~~ retail price.

Sec. 12. 28-A MRSA §708, sub-§7, as amended by PL 2009, c. 504, §1, is further amended to read:

7. Instant marketing promotions. ~~A~~ The bureau, a manufacturer or a supplier of spirits listed for sale by the commission may offer monetary rebates in the form of instant redeemable coupons attached to the spirits product as approved by the commission in accordance with conditions established by the commission or rules established by the commission bureau. Agency store licensees may redeem the coupons only upon proof of purchase and in accordance with the terms listed on the coupon. ~~Instant redeemable coupons included with a spirits product must be inserted in the package by the manufacturer or attached to the package by the manufacturer, manufacturer's agent or manufacturer's sales representative.~~ Instant redeemable coupons provided by the manufacturer's agent or manufacturer's sales representative must be made available to all agency store licensees electing to offer the coupon in an amount equal to the agency store's inventory of spirits products that are subject to the coupon promotion. ~~Instant redeemable coupons attached to spirits sold to on-premise retail licensees by reselling agents are for the benefit of the on-premise retail licensee.~~ The bureau, the manufacturer or the supplier of spirits may offer instant redeemable coupons to consumers through the bureau's, the manufacturer's or the supplier's publicly accessible website, other digital media platforms or print media. An instant redeemable coupon ~~attached to a~~ used in a manner provided in this subsection for a spirits product sold by an agency store licensee to a consumer is for the benefit of the consumer who purchases the spirits product.

Sec. 13. 28-A MRSA §708-C, as amended by PL 2017, c. 347, §2, is further amended to read:

§708-C. Donations to public broadcasting stations, municipal entities, incorporated civic organizations and national organizations

1. Donations for an auction or award. A person licensed by the bureau under section 1355-A, a certificate of approval holder, a manufacturer or supplier of ~~distilled~~ spirits or a wholesaler may donate a certificate to purchase its product or donate its product to a public broadcasting station, a municipal entity, an incorporated civic organization or a similarly purposed national organization designated by the United States Internal Revenue Service under the United States Internal Revenue Code of 1986, Section 501(c)(3) for the purpose of an auction or to offer as a prize, gift or award in conjunction with efforts to support the purposes of the incorporated civic organization, similarly purposed organization, municipal entity or public broadcasting station. Spirits donated in accordance with this subsection must be listed by the commission for sale in this State, clearly labeled as a donation and purchased from the State's wholesale liquor provider at ~~list~~ the wholesale price. A person authorized to make a donation in accordance with this subsection shall maintain a record of each donation, including the value of the donation and the date on which it was made. A recipient of a donation under this subsection must be 21 years of age or older.

2. Donations for consumption at on-premises events. A person licensed by the bureau under section 1355-A, a certificate of approval holder, a manufacturer or supplier of spirits or a wholesaler may donate its product or provide malt liquor, wine, spirits or fortified wine at a reduced price to a person licensed by the bureau to serve ~~alcoholic beverages~~ liquor for on-premises consumption at an event designed to benefit a municipal entity, an incorporated civic organization or a similarly purposed national organization designated by the United States Internal Revenue Service under the United States Internal Revenue Code of 1986, Section 501(c)(3). ~~Spirits donated in accordance with this subsection must have first been sold to the State or the State's contracted wholesaler for listing, pricing and distribution in accordance with this Title.~~ Spirits donated in accordance with this subsection must be listed by the commission for sale in this State, clearly labeled as a donation and purchased from the State's wholesale liquor provider at the wholesale price. A person authorized to make a donation or offer its product at a reduced price under this subsection shall maintain a record of the products donated or offered, including the value of each, the reduced price when applicable and the date on which the product was provided. All applicable excise taxes on donated malt liquor, wine, spirits and fortified wine must be remitted as required by this Title. A licensee provided product in accordance with this subsection:

- A. Shall maintain a record of each product received and the date on which it was received;
- B. Shall maintain a record of the name of the municipal entity, incorporated civic organization or similarly purposed national organization the event was designed to benefit and for which the product is provided;
- C. Shall ensure that the product provided is served only at the event designed to benefit the municipal entity, incorporated civic organization or similarly purposed national organization;

D. Shall ensure that excess product that was donated for the event is returned to the donor within a reasonable period after the event; and

E. Shall ensure that containers holding donated product are returned to the donor for recycling as appropriate and not presented for redemption under Title 32, chapter 28.

For purposes of this section, "municipal entity" means a county, city, town or municipal agency or department.

Sec. 14. 28-A MRSA §709, sub-§1, ¶A, as amended by PL 2013, c. 504, §1, is further amended to read:

A. ~~No~~ A licensee ~~or~~ employee of a licensee or agent of a licensee may not:

- (1) Offer or deliver any free liquor to any person or group of persons;
- (2) Deliver more than ~~2 drinks containing~~ 4 1/2 ounces of spirits, a carafe containing more than one liter or 33.8 ounces of wine, or any serving or pitcher containing more than one liter or 33.8 ounces of malt liquor, to one person at one time;
- (3) Sell, offer to sell or deliver to any person or group of persons an unlimited number of drinks for a fixed price, except at private functions not open to the public;
- (4) Encourage or permit, on the licensed premises, any game or contest that involves drinking or the awarding of drinks as prizes; or
- (5) Engage in any other practice the specific purpose of which is to encourage customers of the licensee to drink to excess.

Sec. 15. 28-A MRSA §710, sub-§1, as amended by PL 2013, c. 207, §1, is further amended to read:

1. Advertising outside of licensed premises. A person, except wholesale licensees and certificate of approval holders, may not advertise or permit to be advertised, by more than ~~2~~ 5 signs, on the outside of any licensed premises, or on any building, ground or premises under that person's control and contiguous or adjacent to the licensed premises:

- A. The fact that the licensee has liquor or any brand of liquor for sale;
- B. The price at which liquor is sold by the licensee; or
- C. Any other advertisement that indicates any reference to liquor other than the name of the licensed premises, an image accompanying the name of the licensed premises or a brand name or image appearing on a patio umbrella in an outside seating area of the licensed premises.

For agency liquor stores, ~~one~~ 2 of the ~~2~~ 5 signs permitted by this subsection ~~is an~~ are agency liquor store ~~sign~~ signs as described by rule.

Sec. 16. 28-A MRSA §1012, sub-§6, ¶C, as enacted by PL 2009, c. 458, §2, is amended to read:

C. A minibar may be stocked with beer, wine and ~~distilled~~ spirits as well as other complementary merchandise;

Sec. 17. 28-A MRSA §1012, sub-§6, ¶¶E and F, as enacted by PL 2009, c. 458, §2, are amended to read:

E. Supplies of ~~distilled~~ spirits for a hotel minibar must be purchased from an agency liquor store licensed as a reselling agent under section 453-C;

F. A hotel must maintain invoices for all ~~alcoholic beverages~~ liquor stocked in a minibar and must maintain records of all sales of ~~alcoholic beverages~~ liquor sold or dispensed from a minibar;

Sec. 18. 28-A MRSA §1051, sub-§6, as enacted by PL 2005, c. 319, §3, is amended to read:

6. Spirits taste-testing events on retail licensee's premises. A distiller, licensed ~~distilled~~ spirits sales representative and the State's wholesale liquor provider, with the written permission of the bureau, may rent or lease an area or room from an on-premises retail licensee for the purpose of inviting retail licensees to taste test spirits. Spirits taste-testing events must be conducted during hours that are authorized by the bureau for the sale of the product on the premises. The following conditions apply to all taste testing conducted under this subsection.

A. The distiller, licensed ~~distilled~~ spirits sales representative or the State's wholesale liquor provider may provide the products for taste testing only if the retail price has been paid and a record of the transaction is maintained and made available to the bureau.

B. The taste-testing activity may be conducted only within a special designated area or room.

C. The taste-testing activity may be open only to invited retail licensees or their authorized agents and not to family members, guests or the general public.

D. After the taste-testing activity is concluded, the distiller, licensed ~~distilled~~ spirits sales representative or wholesale liquor provider, as applicable, shall remove all products supplied for the taste-testing activity from the retail licensee's premises.

Sec. 19. 28-A MRSA §1051, sub-§8, ¶D, as enacted by PL 2013, c. 258, §1, is amended to read:

D. A person may not be served more than a total of 1 1/2 ounces, in 1/2 ounce servings, of ~~distilled~~ spirits having an alcohol content of 80 proof or less; or, for ~~distilled~~ spirits containing an alcohol content of greater than 80 proof, a person may not be served more than a total of 3/4 of an ounce in 1/4 ounce servings.

Sec. 20. 28-A MRSA §1052-D, sub-§1, as enacted by PL 2013, c. 531, §4, is amended to read:

1. Taste-testing event license. A person who has been issued a license under section 1355-A, a wholesaler licensed under section 1401 ~~or~~, a person who has been

granted a certificate of approval from the bureau, a supplier or foreign manufacturer of spirits or a broker may apply jointly in any combination for a license to participate in a taste-testing event subject to the conditions prescribed by this section. For the purposes of this section, "broker" means a person who represents suppliers or manufacturers of spirits and "foreign manufacturer of spirits" means a person who produces spirits outside of the State.

Sec. 21. 28-A MRSA §1052-D, sub-§4, as enacted by PL 2013, c. 531, §4, is amended to read:

4. Fee. The license fee for a taste-testing event license is \$20 for each manufacturer licensed under section 1355-A, sponsored manufacturer, wholesaler licensed under section 1401 ~~or~~, certificate of approval holder or broker.

Sec. 22. 28-A MRSA §1052-D, sub-§6, as enacted by PL 2013, c. 531, §4, is amended to read:

6. Up to 10 licensed events per year; one event per license. A certificate of approval holder, a manufacturer licensed under section 1355-A, a supplier or foreign manufacturer of spirits, a broker or a wholesaler licensed under section 1401 may obtain up to 10 licenses under this section per calendar year. Each license permits a taste-testing event lasting up to 4 consecutive days.

Sec. 23. 28-A MRSA §1052-D, sub-§7, ¶I, as enacted by PL 2013, c. 531, §4, is amended to read:

I. A licensee under this section who is a manufacturer licensed under section 1355-A, is a wholesaler licensed under section 1401 or is a certificate of approval holder may provide for taste testing any malt liquor or wine that the licensee, wholesaler or manufacturer manufactures or distributes that is registered and authorized for distribution and sale under this Title ~~or~~. A licensee under this section who is a manufacturer of spirits licensed under section 1355-A, a supplier or foreign manufacturer of spirits or a broker may provide for taste testing any spirits the licensee or manufacturer manufactures listed for sale by the bureau commission. Excise taxes for malt liquor and wine under section 1652 must be paid before the scheduled date of the taste-testing event.

Sec. 24. 28-A MRSA §1052-D, sub-§7, ¶K, as enacted by PL 2013, c. 531, §4, is amended to read:

K. Each manufacturer, sponsored manufacturer, wholesaler ~~or~~, certificate of approval holder or broker licensed to take part in the taste-testing event shall make available to the bureau or local law enforcement agency upon request a list of the persons designated by the respective licensee to serve malt liquor, wine or spirits for taste testing at the event. The list must be accompanied by an affidavit attesting that no person designated to serve alcohol for taste testing has been found to have violated any state or federal law prohibiting the sale or furnishing of alcohol to a minor.

Sec. 25. 28-A MRSA §1052-D, sub-§7, ¶L, as enacted by PL 2013, c. 531, §4, is amended to read:

L. Each manufacturer, sponsored manufacturer, wholesaler or certificate of approval holder or broker shall provide to any person designated to serve malt liquor, wine or spirits for taste testing a badge or similar means of identification that clearly identifies the name of the manufacturer, sponsored manufacturer, supplier, wholesaler or certificate of approval holder. The badge or similar means of identification must be worn in a manner so that it is conspicuous and clearly visible to a person being served.

Sec. 26. 28-A MRSA §1355-A, sub-§5, ¶G, as amended by PL 2019, c. 168, §3, is further amended to read:

G. Notwithstanding paragraph D, a holder of a small distillery license that sells its products directly to consumers for off-premises consumption under paragraph B, subparagraph (3) or subsection 2, paragraph C, D or E may pay the bureau the difference between the distillery's price charged to the bureau and the discounted ~~list~~ retail price charged by the bureau under section 606, subsection 4-B. A small distillery is not required to transport spirits that will be sold for off-premises consumption as described in this paragraph to a warehouse operated by the bureau or by a wholesaler contracted by the bureau under section 90. A holder of a small distillery license shall record the quantity of spirits sold for off-premises consumption that were not transported to a warehouse as described in this paragraph and submit monthly reports of this information, along with the full amount of state liquor tax due as prescribed by chapter 65, to the bureau in a manner prescribed by the bureau.

Sec. 27. 28-A MRSA §1355-A, sub-§5, ¶H, as amended by PL 2019, c. 168, §4, is further amended to read:

H. Notwithstanding paragraph D, a holder of a small distillery license that sells its products directly to consumers for on-premises consumption under paragraph E or subsection 2, paragraph B, E or F may pay the bureau the difference between the distillery's price charged to the bureau and the discounted ~~list~~ retail price charged by the bureau under section 606, subsection 4-B. A small distillery is not required to transport spirits that will be sold for on-premises consumption as described in this paragraph to a warehouse operated by the bureau or by a wholesaler contracted by the bureau under section 90. A holder of a small distillery license shall record the quantity of spirits sold for on-premises consumption that were not transported to a warehouse as described in this paragraph and submit monthly reports of this information, along with the full amount of state liquor tax due as prescribed by chapter 65, to the bureau in a manner prescribed by the bureau.

Sec. 28. 28-A MRSA §1504, as amended by PL 2017, c. 35, §2, is further amended to read:

§1504. Samples of products

A person licensed under section 1502 as a sales representative for a ~~distilled~~ spirits manufacturer or supplier may give a retail licensee samples of ~~distilled~~ spirits under the following conditions.

- 1. Invoice required.** The ~~distilled~~ spirits must be accompanied by an invoice.

2. Product registered. The distilled spirits must be listed by the commission for sale in this State and clearly labeled as a sample.

~~**3. Taxes paid.** Taxes must be paid on each item and the distilled spirits must be purchased from the State's wholesale liquor provider.~~

3-A. Partial-bottle spirits samples. Samples must be decanted from the distilled spirits product bottle and provided to licensees licensed for on-premises consumption. The ~~agent~~ sales representative providing the sample shall maintain a log stating the names of the licensees who sampled the product and the amount sampled. Partial-bottle samples must be properly sealed between tastings.

4. Sampling record. The sales representative who provides the sample shall maintain a log stating the names of the retail licensees who sampled the distilled spirits and the amount sampled.

5. Full-bottle samples. The maximum amount of unopened full-bottle samples of distilled spirits given to a retail licensee by a sales representative may not exceed 6 liters per year per distiller represented by that sales representative. Individual samples may not exceed one liter. A full-bottle sample is an unopened bottle of spirits provided to an agency liquor store or an on-premises retail licensee licensed to sell spirits.

6. Retail sampling. Samples poured from a bottle of spirits designated for retail sampling may be provided to an on-premises licensee licensed to serve spirits and to an agency liquor store on the premises of the agency liquor store if the person receiving the sample is 21 years of age or older and is in a supervisory or managerial position with the agency liquor store. Bottles of spirits designated for retail sampling must be properly sealed between samplings.

7. Records maintained. Records of samples given or received under this section must be maintained for a 2-year period by the retail licensee giving or receiving samples.

8. Access to samples. A sales representative shall request samples from bailment inventory of a supplier housed at the State's wholesale liquor provider's warehouse for the purposes described under this section.

Sec. 29. 28-A MRS §1651, sub-§1, as amended by PL 2015, c. 166, §6, is further amended to read:

1. State spirits tax. Except as provided in section 83-C, subsection ~~2~~ 2-A, the commission shall determine and set the ~~list~~ retail price at which to sell all spirits to agency liquor stores that will produce ~~an aggregate state liquor tax~~ sufficient revenue to pay all ~~liquor-related~~ spirits-related expenses of the ~~Bureau of Alcoholic Beverages and Lottery Operations~~ bureau and to return to the Liquor Operation Revenue Fund established in Title 30-A, section 6054 and the General Fund an amount substantially equal to the amount of state ~~liquor~~ spirits tax collected in the previous fiscal year.

C. The ~~commission~~ bureau shall ~~add any cost to the State related to handling containers returned for~~ charge agency liquor stores the refund value pursuant to Title

38, section 3103 ~~to the established price without markup~~ in addition to the wholesale price for each product purchased.

Sec. 30. 28-A MRSA §1651, sub-§2, as amended by PL 2013, c. 368, Pt. V, §§48 and 61, is repealed.

Sec. 31. 28-A MRSA §1651, sub-§3, as enacted by PL 1987, c. 45, Pt. A, §4, is amended to read:

3. Applicability of tax. Taxes on spirits imposed by the State do not apply to sales of spirits by manufacturers, bottlers and rectifiers holding licenses ~~from the commission~~ issued by the bureau:

- A. To any instrumentality of the United States;
- B. To any vessel of foreign registry;
- C. To industrial establishments for use as an ingredient in the manufacture of food products; or
- D. For use as an ingredient in the manufacture of commodities which by reason of their nature cannot be used for beverage purposes.