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Legislative Document

No. 1358

S.P. 444

In Senate, April 7, 2021

An Act To Provide for the Direct Shipment of Spirits to Consumers

Received by the Secretary of the Senate on April 5, 2021. Referred to the Committee on Veterans and Legal Affairs pursuant to Joint Rule 308.2 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 STEWART of Aroostook.
Cosponsored by Representative: PIERCE of Falmouth.

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

2 **Sec. 1. 28-A MRSA §1381, sub-§5**, as enacted by PL 2019, c. 615, §4 and affected
3 by §7, is amended to read:

4 **5. Shipment restrictions.** Except as provided in sections 1382, 2073 and 2075, a
5 person that has been issued a certificate of approval under this section may only transport
6 spirits into the State or cause spirits to be transported into the State only if the spirits are
7 delivered to a warehouse designated by the commission under section 81.

8 **Sec. 2. 28-A MRSA §1382** is enacted to read:

9 **§1382. Direct shipment of spirits by distilleries**

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

12 A. "Direct shipper" means a distillery licensed under subsection 2 that holds a current
13 manufacturer license under section 1355-A or, for a distillery outside the State, a
14 current manufacturer license from that state, territory or possession of the United
15 States.

16 B. "Outside the State" means in any other state or territory or possession of the United
17 States but does not include a foreign country.

18 **2. Direct shipment of spirits; licensure.** A direct shipper may ship spirits within the
19 State subject to the licensure requirements of this section. A distillery that holds a federal
20 basic spirits manufacturing permit may obtain an annual spirits direct shipper license by
21 filing with the bureau an application in a form determined by the bureau accompanied by
22 an application fee of not more than \$200 and a copy of the applicant's current federal basic
23 spirits manufacturing permit.

24 **3. Direct shipper application.** Before sending a shipment to a resident of this State,
25 a direct shipper must file an application for a spirits direct shipper license under subsection
26 2 with the bureau on a form issued by the bureau along with a true copy of its current
27 manufacturer license under section 1355-A or issued outside the State and a \$100
28 registration fee.

29 **4. Direct shipment of spirits; requirements.** A direct shipper may ship only spirits
30 produced by the direct shipper in accordance with the direct shipper's federal permit. A
31 direct shipper may ship spirits to a recipient only for personal use and not for resale. A
32 direct shipper shall label each package to be shipped in accordance with this section so that
33 it conspicuously reads "CONTAINS ALCOHOL: SIGNATURE OF A PERSON 21
34 YEARS OF AGE OR OLDER IS REQUIRED FOR DELIVERY."

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

1 **6. Bottle size and case limit.** A direct shipper may not ship a container of spirits of
2 less than 750 milliliters and may ship no more than 4 cases, each of which may contain no
3 more than 9 liters or an equivalent volume, to any one recipient address in a calendar year.

4 **7. Prohibited shipping areas.** A direct shipper may not ship to any address identified
5 by the bureau as within a prohibited shipping area or a municipality that has voted in any
6 particular local option election against the sale of all types of liquor.

7 **8. License renewal.** A direct shipper may annually renew its spirits direct shipper
8 license with the bureau by paying a \$50 renewal fee and providing the bureau with a true
9 copy of its manufacturer license under section 1355-A or issued outside the State.

10 **9. Sales tax registration and payment required.** As a condition of receiving a
11 certificate of approval, a shipper located outside the State shall comply with the provisions
12 of Title 36, Part 3, including all requirements relating to registration as a seller and the
13 collection, reporting and remittance of the sales and use taxes of the State, and shall agree
14 to be subject to the jurisdiction of the State for purposes of the enforcement of those
15 obligations. The requirements of this subsection apply notwithstanding any provision of
16 law of the State to the contrary.

17 **10. Payment of excise taxes.** A direct shipper located outside the State shall annually
18 pay to the bureau an excise tax of \$11.96 per gallon of spirits sold to residents of the State
19 in the preceding year. Spirits shipped by a direct shipper located outside the State are not
20 subject to any premium or additional tax under Title 28-A or Title 36.

21 **11. Report.** A direct shipper shall submit a report to the bureau annually in a manner
22 and form prescribed by the bureau that includes the total number of cases of spirits shipped
23 to recipients in the State and the name and residence address of shipment recipients in the
24 State, the common carrier used to deliver the shipments and the date, quantity and purchase
25 price of each shipment.

26 **12. Audit.** The bureau may perform an audit of a direct shipper's records relevant to
27 compliance with this section. A direct shipper shall provide copies of any records requested
28 by the bureau within 10 business days of that request.

29 **13. Violation.** A person, including a common carrier, who knowingly causes a direct
30 shipment in violation of this section is subject to a fine up to \$500 for a first offense and
31 up to \$1,000 for any subsequent violation of this section. A direct shipper or common
32 carrier who knowingly delivers spirits to a person under 21 years of age is subject to a fine
33 up to \$5,000. The bureau may suspend or revoke a spirits direct shipper license for failure
34 to comply with the shipping limits and reporting requirements required by this section. The
35 bureau may accept payment of an offer in compromise in lieu of suspension; such payments
36 must be determined by rules adopted by the bureau.

37 **14. Jurisdiction.** A direct shipper, as a condition of licensure, is subject to the
38 jurisdiction and enforcement authority of the State for the purposes of enforcement of this
39 section.

40 **15. Not subject to beverage container law.** Notwithstanding Title 38, chapter 33, a
41 container of spirits shipped pursuant to this section does not require a refund value for
42 beverage container control purposes.

1 **16. Rules.** The bureau shall adopt rules to carry out the purposes of this section. Rules
2 adopted pursuant to this section are routine technical rules as defined in Title 5, chapter
3 375, subchapter 2-A.

4 **Sec. 3. 28-A MRSA §2073, sub-§3, ¶E,** as amended by PL 2013, c. 476, Pt. A,
5 §33, is further amended by amending subparagraph (4) to read:

6 (4) To any licensed pharmacist in the State for use in the compounding of
7 prescriptions and other medicinal use, but not for sale by pharmacists unless
8 compounded with or mixed with other substances; ~~or~~

9 **Sec. 4. 28-A MRSA §2073, sub-§3, ¶E,** as amended by PL 2013, c. 476, Pt. A,
10 §33, is further amended by amending subparagraph (5) to read:

11 (5) To any physician, surgeon, osteopath, chiropractor, optometrist, dentist or
12 veterinarian for medicinal use only; ~~or~~

13 **Sec. 5. 28-A MRSA §2073, sub-§3, ¶E,** as amended by PL 2013, c. 476, Pt. A,
14 §33, is further amended by enacting a new subparagraph (6) to read:

15 (6) To a recipient by a common carrier under section 1382, subsection 5 or section
16 1403-A, subsection 5.

17 **Sec. 6. 28-A MRSA §2075, sub-§1-B,** as enacted by PL 2003, c. 452, Pt. P, §6
18 and affected Pt. X, §2, is amended to read:

19 **1-B. Permitted importation.** An individual may transport into the State and may
20 transport from place to place within the State spirits for the individual's personal use in a
21 quantity not greater than 4 quarts and a common carrier may deliver to a recipient under
22 section 1382, subsection 5 up to the amount of spirits allowed in section 1382, subsection
23 6.

24 **Sec. 7. 28-A MRSA §2075, sub-§2,** as amended by PL 2013, c. 368, Pt. V, §50, is
25 further amended to read:

26 **2. Transportation of spirits within State.** A person, except for a common carrier
27 under section 1382, subsection 5, may not transport or cause to be transported any spirits
28 within the State in a quantity greater than 4 quarts unless the spirits were purchased from
29 an agency liquor store.

30 **Sec. 8. 28-A MRSA §2075, sub-§2-A,** as amended by PL 2015, c. 166, §7, is
31 further amended to read:

32 **2-A. Evidence.** ~~The~~ Except for possession by a common carrier under section 1382,
33 subsection 5, the possession of more than 8 quarts of spirits in one or more containers that
34 are not labeled in accordance with Title 38, section 3105 is prima facie evidence of a
35 violation of this section.

36 SUMMARY

37 This bill allows distilleries located inside and outside of the State to ship spirits
38 manufactured by the distilleries directly to recipients for personal use upon licensure of the
39 distilleries by the Department of Administrative and Financial Services, Bureau of
40 Alcoholic Beverages and Lottery Operations. Patterned on the provisions in the liquor laws
41 allowing for direct shipment of wine, direct shipment of spirits requires use of a common

1 carrier, requires that a recipient be 21 years of age or older with identification and requires
2 the direct shipper to register for and pay sales tax. Out-of-state direct shippers also must
3 pay an excise tax of \$11.96 per gallon but are not subject to any other premium or additional
4 tax under the Maine Revised Statutes, Title 28-A or Title 36. The direct shipper is required
5 to report to the bureau and is subject to audit by the bureau.