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Before the Joint Standing Committee on Veterans and Legal Affairs

LD 1695 – “An Act to Provide for the Direct Shipment of Spirits to Consumers”

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Senator Hickman, Representative Supica and members of the Joint Standing Committee on Veterans and Legal Affairs, my name is Gregg Mineo and I am the Director of the Bureau of Alcoholic Beverages and Lottery Operations. I am providing the following testimony in opposition to LD 1695.

### **Constitutional Issue - Violation of Dormant Commerce Clause**

As written this bill violates the Dormant Commerce Clause of the U.S. Constitution which prohibits states from passing legislation that discriminates against or excessively burdens interstate commerce, in particular protectionist state policies that favor in-state businesses over out-of-state businesses. LD 1695 would allow Maine’s distillers to ship an unlimited volume of their product within Maine’s borders, while limiting out-of-state spirits manufacturers to only those products not listed by the Bureau and to a quantity of 200 cases. Additionally, this bill would establish separate means of establishing the price of product for Maine distillers versus out-of-state spirits manufacturers; frankly, creating a system that would allow out-of-state spirits manufacturers to bypass and undercut Maine’s spirits pricing formula.

The Committee should understand that LD 1695 will not allow Maine distillers to ship their products directly to consumers in other states. Whether or not Maine distillers are able to do so is dependent upon the policies of the receiving state, and at present only Alaska, Kentucky, Nebraska, New Hampshire, North Dakota, and the District of Columbia allow direct to consumer shipping of spirits—none of which are especially large markets. Conversely, this bill will open Maine up for out-of-state spirits manufacturers from every state to ship their products directly to Maine consumers, subjecting Maine’s distillers to a wave of competition where there is no reciprocity from states with large populations and economies of size.

### **Common Carrier Deficiencies**

LD 1695 is severely lacking controls over common carriers and leaves the Bureau with insufficient regulatory authority to address violations. The bill establishes no licensing/registration mechanism or reporting requirements for common carriers engaged in the direct-to-consumer shipping of spirits. Unless common carriers are licensees/registrants of the Bureau, the Bureau does not have administrative

authority under which to assess fines and other graduated enforcement for violations such as leaving a box clearly marked as containing spirits with a minor. This is an existing deficiency of the existing wine shipping law. Twenty-one states that allow wine shipping require common carriers to be licensed/registered by their liquor regulatory agency and the Bureau would like to see this deficit remedied within Maine's wine shipping law rather than exacerbated by replicating it within the direct-to-consumer shipment of spirits. Furthermore, reporting requirements for common carriers would create additional audit records to reconcile direct shippers' reporting against.

### **Pricing and Taxation**

As mentioned previously with regard to the Dormant Commerce Clause, the divergent pricing schemes depending upon a product's origin is not practicable. LD 1695 proposes that for direct shippers located out-of-state, a product's price would be set based upon the prevailing retail price in the state of the producer. In Control States those prices are formulated by many different methods, but in open states they would be impossible to determine.

All direct shippers, whether in-state or out-of-state, should be subject to the Bureau's pricing formula. The retail price of a given bottle is easily determinable by entering the manufacturer's FOB into the online pricing calculator. Additionally, the pricing formula already accounts for the premium tax which is earmarked for substance use disorder treatment and produces a stable retail price as the basis upon which the sales tax due to Maine is calculated.

In closing, the Bureau was directed by Resolve 2021, ch. 175 to conduct a study of direct-to-consumer shipping of spirits and wine, which will be presented later today. This is a comprehensive report on the status of direct-to-consumer shipping across the country. As part of this study, the Bureau was directed to meet with stakeholders who provided recommendations for direct-to-consumer shipping—this bill is not particularly reflective of those stakeholder discussions.

Thank you for allowing me to testify before the Committee today, and I am happy to answer any questions, and of course will be available for the work session.