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BUREAU OF ALCOHOLIC BEVERAGES AND LOTTERY OPERATIONS

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February 26, 2025

Testimony of the Bureau of Alcoholic Beverages and Lottery Operations
Joint Standing Committee on Veterans and Legal Affairs

In Support of LD 494

An Act to Update and Clarify Certain Provisions of State Liquor and Lottery Laws.

Senator Hickman, Representative Supica, and members of the Joint Standing Committee on Veterans and Legal Affairs: I am Louis Luchini and I'm the Director of the Bureau of Alcoholic Beverages and Lottery Operations. I'm here to testify in support of LD 494, *An Act to Update and Clarify Certain Provisions of State Liquor and Lottery Laws*.

LD 494 is a BABLO department bill. We'd like to thank Rep. Supica for sponsoring this legislation, as well as Rep. Doudera and Rep. Guerrette for co-sponsoring. The Bureau drafted this bill based on recommendations we've received over the past several months from industry stakeholders, BABLO staff, legislators and their constituent businesses. The goal is to support our business partners in Maine and to continue our work on streamlining the regulatory process.

There are several elements of the bill, so I will break down our testimony by parts of the bill.

Part A

Creation of a purveyor's license. Bill Sections A-1, A-7, A-8. Based on industry stakeholder feedback, we are proposing to create a new license type for agency liquor stores. These licensees will be able to provide spirits tastings to consumers at any time, and may keep an opened spirits bottle on the premises in an area not accessible by the public. Under current law, the agency store must remove a spirits bottle from the premises after a tasting event. This can be very expensive and cost prohibitive for agency stores, and many consumers are hesitant to buy an expensive spirits product without first trying it. Because of the proposed ability to offer unlimited tastings, this license is only available to stores whose sales are primarily in alcohol.

Vessel Definition. Section A-2. We are proposing to decrease the number of seats on a vessel to 12, from 25. This would enable smaller vessels to be eligible for a liquor license. This provision came from industry feedback in coastal communities. Many offer "sip and sail" types of excursions.

§10 Changes – premises with both an on-premises license and off-premises license. Sections A-3, 4. Under current law, these license holders are only allowed to serve alcohol for consumption on-premises when it is accompanied by a food order. We are proposing to strike that requirement and replace it with the requirement that food be available for free or purchase anytime an alcoholic beverage is sold for on-premises consumption. We feel this is a commonsense change that is more in line with all other licenses. We've received this request from multiple licensees.

Low Alcohol Spirits. Section A-5. Under current law, low alcohol spirits may only be sold by on- or off-premises wine licensees. The bill proposes to allow malt liquor licensees to sell low alcohol spirits products. Similarly, the bill allows a malt-only wholesaler to distribute low alcohol spirits products. This provision was included at the request of the MBDA.

Fortified Wines. Section A-6. The Bureau is proposing to allow both agency liquor stores and wholesalers to sell fortified wines to on-premises licensees. This provision was included based on industry feedback from reselling agency stores. Reselling agents frequently receive requests from restaurants to purchase fortified wines, like vermouth. We believe this will provide more access and options for restaurants and bars.

Off-Premises Catering. Sections A-9 – A-11. We are proposing to add licensed restaurants to the wide variety of licensees who are eligible for an off-premises catering license. Eligible licensees may apply for off-premises catering licenses to host events at locations other than their licensed premises. Events may be either a public event hosted by a charitable nonprofit or civic group, or a private event hosted by a person or organization.

Hotel Licensing. Sections A-12, 13. Current law requires hotels to have a minimum number of rooms in order to be eligible for a hotel liquor license. Municipalities with populations under 7,500 are required to have at least 12 rooms, and municipalities with populations over 7,500 are required to have at least 30 rooms. We feel this puts small businesses at a disadvantage. The Bureau is proposing to set a flat requirement of four rooms for a hotel, along with the approval of DHHS.

Transporting Alcohol within Hotel. Section A-14. The Bureau is proposing to clarify law in allowing a hotel customer to purchase an alcoholic beverage at the hotel bar and take it back to their room. This provision comes from feedback from hotels who frequently have guests request to take their drinks back to their rooms. We believe this change benefits both the hotel and the guests.

Merging License Criteria. Sections A-15 – A-18. The Bureau has been trying to simplify the licensing process for businesses. In this bill, we are proposing to merge the requirements of four similar license types: civic auditorium, auditorium, outdoor stadium, and performing arts center.

Wholesaler Taste Testing. Section A-19. This provision was included after discussions with the MBDA and is also included in LD 262. This would allow wholesalers to conduct taste testing events under §1402 on unlicensed premises. These events are hosted by wholesalers and only open to retailers – not the general public. Further description can be found in our testimony in support of LD 262.

Part B

Part B of the bill amends the Bureau’s annual reporting requirements to change from calendar year to fiscal year data. We believe this will provide more relevant information to the Legislature since our accounting, and the budget process, are based on the fiscal year. Requiring calendar year data also creates logistical difficulties for the Bureau. Statute requires us to first have the State Liquor and Lottery Commission approve the report before we submit it to the Legislature prior to the February 15th deadline.

Part C

Part C relates to industry trade practices. The bill establishes a monetary cap of \$750 for “things of value” that may be received by a licensee each year. Many industry stakeholders have asked our enforcement division to increase the current amount or adjust the eligible products in this category.

Under current rule, there is a \$300 annual cap on certain things of value that may be provided to licensees. Part C also specifies that if one licensee is selling goods to another licensee, that the product be sold at market value. The bill also clarifies in law that giving a “thing of value” cannot be used to induce a retailer to purchase one product to the exclusion of another. This is similar to federal trade practice law that prohibits exclusionary practices.

After meeting with the MBDA, we believe that a lower cap of \$600 would be appropriate. We’d also like to clarify that the things of value cannot be cash, gift cards, or similar types of monetary payment.

Part D

Part D proposes to repeal §710, which regulates signage. Attached to my testimony is the full text of §710 that would be repealed. We have heard concerns about this outright repeal and are happy to work with stakeholders to find a more palatable solution.

Under current law, certain licensees are limited to 5 signs that advertise alcohol. Licensees may only display one sign inside the building that is visible from the outside. We feel many of these provisions are vague and overly restrictive, making them difficult and punitive to enforce. It has also resulted in inconsistent enforcement over the years.

Thanks for your time in considering the department’s bill. I’m happy to answer any questions.

Potential Amendment:

This amendment would allow brokers to place mail-in rebates on a spirits product. Brokers are hired by manufacturers to work in states or regions. Rebates would include “neckers” that you may see hung on the bottle necks in stores. These are difficult to attach in the manufacturing facility, and the longstanding practice has been to allow brokers to attach them. We’d like to add clarity to the law, as outlined below:

28-A MRS §708, sub-§6, as amended by PL 2017, c. 153, §1, is further amended to read:

6. Marketing and mail-in promotions. Upon approval by the commission, promotional materials designed to encourage a consumer to purchase a spirits product to be attached to or displayed near the spirits product where it is offered for sale for off-premises consumption may be offered by those whose spirits products are listed by the commission. Upon approval by the commission, a mail-in rebate may be provided to consumers through print or electronic media, attached to the spirits product or displayed near the spirits product where the spirits product is offered for sale for off-premises consumption. Mail-in rebates approved by the commission must be redeemed by the manufacturer and not by the retail licensee and may not exceed the purchase price of the spirits product. Mail-in rebates authorized by this subsection must require the inclusion of the original dated sales receipt for the spirits product to which the rebate is applied. The commission may approve mail-in rebates that offer an incrementally greater discount based upon increased volume of purchased product. Mail-in rebates, certificates or merchandise included with a spirits product must be inserted in the package or attached to the package by the manufacturer or the manufacturer’s designated broker.

§710. Advertising signs

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 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; [PL 1987, c. 45, Pt. A, §4 (NEW).]
- B. The price at which liquor is sold by the licensee; or [PL 1987, c. 45, Pt. A, §4 (NEW).]
- 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. [PL 2019, c. 404, §15 (AMD).]

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

[PL 2019, c. 404, §15 (AMD).]

2. Advertising inside of licensed premises. A licensee may display no more than one sign inside the licensed premises, where it may be seen from the outside, advertising the fact that the licensee has liquor for sale. The sign may not be more than 750 square inches in total area.

[PL 1987, c. 342, §46 (AMD).]

3. Exception. Subsection 1 does not prohibit the display of signs advertising sponsorship of specific sporting events and cultural events or sponsorship of a transportation system for transporting the public as long as the signs are not displayed on a licensed establishment as defined in section 2, subsection 15. Signs on a licensed establishment advertising sponsorship may be displayed with prior bureau approval.

The bureau shall adopt rules implementing this subsection.

[PL 1993, c. 730, §32 (NEW).]

SECTION HISTORY

PL 1987, c. 45, §A4 (NEW). PL 1987, c. 342, §46 (AMD). PL 1993, c. 730, §32 (AMD). PL 1997, c. 373, §69 (AMD). PL 2013, c. 207, §1 (AMD). PL 2019, c. 404, §15 (AMD).

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Repealed Hotel Law:

4. Required number of sleeping rooms. Each hotel must be equipped with at least the required number of adequate sleeping rooms.

A. The number of rooms required is based on the population of the municipality in which the hotel is located, as reported in the 1960 Federal Decennial Census. If the population reported in the most recent Federal Decennial Census is at least 20% less than the population reported in the 1960 census, the most recent Federal Decennial Census must be used to determine the number of rooms required.

(1) If the hotel is located in a municipality having a population of 7,500 or less, the hotel must have at least 12 adequate sleeping rooms.

(2) If the hotel is located in a municipality having a population of more than 7,500, the hotel must have at least 30 adequate sleeping rooms. [PL 1991, c. 824, Pt. D, §4 (RPR).]

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