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DEPARTMENT OF ADMINISTRATIVE AND FINANCIAL SERVICES
BUREAU OF ALCOHOLIC BEVERAGES AND LOTTERY OPERATIONS

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January 28, 2026

Re: LD 2160, An Act to Modify Provisions of Law Affecting Small Distilleries

Senator Hickman, Representative Supica, and members of the Veterans and Legal Affairs Committee: I'm Louis Luchini, Director of the Bureau of Alcoholic Beverages and Lottery Operations, and I'm here to testify in opposition to portions of LD 2160, An Act to Modify Provisions of Law Affecting Small Distilleries.

The craft distilling industry is an innovative part of Maine's economy and important partner for BABLO. This bill proposes several changes to the laws regulating small distilleries. BABLO opposes some sections and is neither for nor against others. We'll give a brief background on the laws regulating small distilleries and will break down our testimony by section for simplicity.

Background

A small distillery may distill, rectify, blend or bottle less than 50,000 gallons of spirits per year. Maine's small distilleries benefit from two significant provisions over their larger or out-of-state counterparts. First, small distilleries benefit from a lower markup on the retail price of spirits. Second, any spirits product sold directly from a small distillery benefits from a higher profit margin than if sold through the State system and agency store network.

There have been several legislative changes in recent sessions to support Maine's craft distillers. In the past, in order to sell their own product in their own facility, small distilleries were first required to drive products from their distillery to the bailment warehouse in Augusta, have the product checked, and then drive back to the distillery. In addition, small distilleries were required to sell their product to the State and then purchase it back in order to sell it from their distillery.

Both of these provisions were positively changed and streamlined by the Legislature. Now, small distilleries accomplish this through an accounting transaction. They no longer drive to Augusta – each month, they report the number of bottles sold directly from their distillery. Rather than sell the product to the State and buy it back, they can simply pay the difference owed to the State in a monthly transfer report. Reporting ensures that the proper amount of premium tax is collected and that product gallonage does not exceed the threshold for a small distiller.

Small distilleries benefit significantly from sales made directly from their distillery. If sales flow through the State, the distillery sells the product to the State, and agency stores sell the product to the public, receiving a profit margin, or discount rate, of 18%. When a small distillery sells directly from their distillery, they receive a discount rate of 22.75%, per 28-A MRS §606(4-B). This is comprised of the 18% that would normally go to the agency store, plus a supplemental 4.75%.

Section 1

Prohibited fees. This section lists two "prohibited fees" that may not be charged to small distilleries – a spirits administration services fee and a spirits trade marketing services fee. Under 28-A MRS §90, BABLO contracts with a wholesale spirits provider for spirits administration and trade marketing services. The current vendor is Pine State. It's important to note that the spirits contract costs are not charged to or paid for by a small distillery. The State pays the contracted wholesale spirits provider a percentage of total revenues generated by the wholesale business, in accordance with 28-A MRS §90(4)(B). In the past, this has been a misunderstanding by industry members and as a result, the Legislature supplemented the discount rate provided to small distilleries for products sold directly from their premises to 22.75% as described above.

Inspection Frequency. This section prohibits any State agency from inspecting a small distillery more frequently than once every 3 years. BABLO opposes this provision, and we assume that other state agencies do as well. Inspections are not frequent but are a matter of public health and safety.

Reporting frequency. This provision changes the reporting frequency to quarterly (instead of monthly) for small distilleries. As mentioned above, the reporting was put into place to simplify the transaction process of selling product to the State. While we don't have a position, this will complicate our monthly sales reporting process.

Section 2

This section allows on-premises licensees to purchase product directly from small distilleries. The Bureau has no position on this provision, and will note that this would put small distilleries on par with small breweries and small wineries. Currently, reselling agency stores make sales to on-premises licensees, and are also required to report on-premises data. If the committee moves forward with this provision, we would prefer that a small distillery would also report data on sales to on-premises licensees in the same manner as an agency store. Additionally, we would ask for clarity on if the small distillery discount rate of 22.75% would apply to these sales made directly from the distillery.

Section 3

This section proposes to allow small distilleries to sell any beverage alcohol produced by a small manufacturer without obtaining an additional liquor license. BABLO opposes this section of the bill. Manufacturing licenses only provide the ability to sample a distillery's own product; if a distillery wants to expand beyond that, they would have to obtain a chapter 43 license in the same manner as a small brewery, small winery, or restaurant that chooses to sell alcohol.

Section 4

This section extends a small distiller license term to 3 years from one. The Bureau opposes this change. For the committee's reference, the license fee for a small distillery is $100 per year.

Section 5

This provision allows small distilleries to self-distribute their products, similar to small breweries and small wineries. The Bureau is neither for nor against, though as we mention later, this raises the potential for commerce clause conflicts. Similar to Section 2 of this bill, we would also ask for clarity on if these self-distributed sales qualify for the 22.75% discount rate for small distilleries.

This provision is also broadly written to allow distilleries to self-distribute to licensed retailers and wholesalers. BABLO wants to ensure that this does not permit small distilleries to sell spirits to non-agency retail stores or to on-premises locations that do not hold a license to sell spirits. Spirits should not be sold to a wholesaler. Should the committee choose to move forward with this provision, we'd recommend breaking out different requirements for spirits versus low-alcohol spirits.

Section 6 – clarification that small distilleries may distribute spirits products legally.

Section 7

Exception for small distilleries. This section states that a small distillery may mail product directly to persons out of state. The Legislature has already passed similar legislation (P.L. 2021 ch. 8) permitting in state manufacturers to sell direct to consumers out of state, provided they are in compliance with the receiving state's laws. We believe this section is unnecessary.

Lastly, BABLO recommends the committee consider whether dormant commerce clause conflicts may arise by providing in-state distillers preferential treatment over their out-of-state counterparts, specifically allowing in-state distillers to self-distribute and prohibiting the imposition of fees on in-state distillers. These discriminatory provisions may run afoul of the Supreme Court's holding in *Granholm v. Heald,* 544 U.S. 460 (2005) and, accordingly, may violate the dormant commerce clause.

Thank you for your time. I'm happy to answer any questions.