CHAPTER 57

CERTIFICATE OF APPROVAL HOLDER AND MAINE WHOLESALE LICENSEE AGREEMENT ACT

§1451. Definitions

As used in this chapter, unless the context indicates otherwise, the following terms have the following meanings. [PL 1987, c. 45, Pt. A, §4 (NEW).]

1. Agreement. "Agreement" means a commercial relationship, not required to be evidenced in writing, of definite or indefinite duration, between a certificate of approval holder and a wholesale licensee, under which the wholesale licensee is authorized to distribute one or more of the certificate of approval holder's brands of malt liquor, wine or beverages. The performance or accomplishment of any of the following acts shall constitute prima facie evidence of an "agreement" within the meaning of this definition:

A. The shipment, preparation for shipment or acceptance of any order by any certificate of approval holder or its agents for any malt liquor, wine or beverages to a wholesale licensee within the State; and [PL 1987, c. 45, Pt. A, §4 (NEW).]

B. The payment by a wholesale licensee and the acceptance of payment by any certificate of approval holder or its agent or the shipment of an order for malt liquor or beverages intended for sale in Maine. [PL 1987, c. 45, Pt. A, §4 (NEW).]

[PL 1987, c. 45, Pt. A, §4 (NEW).]

1-A. Certificate of approval holder. Notwithstanding section 2, subsection 8, "certificate of approval holder" means an in-state manufacturer of malt liquor or wine licensed under section 1355-A or an out-of-state manufacturer of or out-of-state wholesaler of malt liquor or wine that has been issued a certificate of approval under section 1361.
[PL 2019, c. 615, §6 (NEW); PL 2019, c. 615, §7 (AFF).]

2. Person. Notwithstanding section 2, subsection 23, "person" means a natural person, corporation, partnership, trust, agency or other entity as well as the individual officer, directors or persons in active control of the activities of that entity. "Person" also includes heirs, assigns, personal representatives and guardians.
[PL 1987, c. 45, Pt. A, §4 (NEW).]

3. Primary source of supply. "Primary source of supply" means the distillery, the bottler, the brewery, the winery, the brand owner or the designated agent of any distillery, brewery, winery or brand owner.
[PL 2021, c. 658, §253 (AMD).]

4. Territory or sale territory. "Territory" or "sale territory" means the area of primary sales responsibility expressly or implicitly designated by any agreement between a wholesale licensee and a certificate of approval holder for the brand or label of a certificate of approval holder.
[PL 1987, c. 45, Pt. A, §4 (NEW).]

5. Wholesale licensee. Notwithstanding section 2, subsection 34, "wholesale licensee" means a person holding a wholesale license under section 1401, offering malt liquor or wine for sale or resale to retailers, without regard to whether the business of the person is conducted under the terms of an agreement with a certificate of approval holder.
[PL 2021, c. 658, §254 (AMD).]

SECTION HISTORY

PL 1987, c. 45, §A4 (NEW). PL 2019, c. 615, §6 (AMD). PL 2019, c. 615, §7 (AFF). PL 2021, c. 658, §§253, 254 (AMD).

§1452. No inducement or coercion

1. Certificate of approval holder. No certificate of approval holder may:

A. Induce or coerce, or attempt to induce or coerce, any wholesale licensee to accept delivery of any liquor or any other commodity which has not been ordered by the wholesale licensee; [PL 1987, c. 45, Pt. A, §4 (NEW).]

B. Induce or coerce, or attempt to induce or coerce, any wholesale licensee to do any illegal act or thing by threatening to amend, cancel, terminate or refuse to renew any agreement existing between a certificate of approval holder and a wholesale licensee; or [PL 1987, c. 45, Pt. A, §4 (NEW).]

C. Require a wholesale licensee to assent to any condition, stipulation or provision limiting the wholesale licensee's right to sell the product of any other certificate of approval holder anywhere in the State if the acquisition of the product of another certificate of approval holder does not materially impair the quality of service or quantity of sales of the existing brand or brands of the certificate of approval holder seeking to impose the condition, stipulation or provision. [PL 2021, c. 658, §255 (AMD).]

[PL 2021, c. 658, §255 (AMD).]

SECTION HISTORY

PL 1987, c. 45, §A4 (NEW). PL 2021, c. 658, §255 (AMD).

§1453. Dual distributorship prohibited

1. Dual distributorship prohibited. A certificate of approval holder that designates a sales territory for which a wholesale licensee is primarily responsible may not enter into any agreement with any other wholesale licensee for the purpose of establishing an additional agreement for its brand or label in the same territory.

[PL 2021, c. 658, §256 (AMD).]

2. Certificate of approval holder to file list. Each certificate of approval holder shall file with its application for a certificate of approval or in-state manufacturer license a list giving the name and address of each bottler and wholesale licensee authorized to distribute products of that certificate of approval holder and designating the exclusive territory assigned to each wholesale licensee within the State. Unless authorized by the bureau, wholesale licensees may not sell those products to licensees outside of the exclusive territory allocated and designated.

A. Sales of wine to retail licensees at the wholesale licensee's warehouse must be considered a sale within the wholesale licensee's exclusive territory. [PL 2021, c. 658, §256 (AMD).]

[PL 2021, c. 658, §256 (AMD).]

3. Primary source of supply. A wholesale licensee may not purchase liquor from anyone other than the primary source of supply within the United States.

[PL 2021, c. 658, §256 (AMD).]

SECTION HISTORY

PL 1987, c. 45, §A4 (NEW). PL 2021, c. 658, §256 (AMD).

§1454. Cancellation

1. Good cause. Notwithstanding the terms, provisions or conditions of any agreement, no certificate of approval holder may amend, cancel, terminate or refuse to continue or renew any agreement, or cause a wholesale licensee to resign from an agreement, unless good cause can be established or proven for amendment, termination, cancellation, nonrenewal, noncontinuation or

causing a resignation. "Good cause" does not include the sale or purchase of a certificate of approval holder. "Good cause" includes, but is not limited to, the following:

A. Revocation of the wholesale licensee's license to do business in the State; [PL 1987, c. 45, Pt. A, §4 (NEW).]

B. Bankruptcy or insolvency of the wholesale licensee; [PL 1987, c. 45, Pt. A, §4 (NEW).]

C. Assignment for the benefit of creditors or similar disposition of the assets of the wholesale licensee; and [PL 1987, c. 45, Pt. A, §4 (NEW).]

D. Failure by the wholesale licensee to substantially comply, without reasonable excuse or justification, with any reasonable and material requirement imposed upon the wholesale licensee by the certificate of approval holder. [PL 2021, c. 658, §257 (AMD).]

[PL 2021, c. 658, §257 (AMD).]

SECTION HISTORY

PL 1987, c. 45, §A4 (NEW). PL 2021, c. 658, §257 (AMD).

§1455. Notice of intent to terminate

1. Written notices. Before any termination procedure initiated by the certificate of approval holder, the certificate of approval holder shall give the wholesale licensee a written notice of any claimed deficiency existing in the wholesale licensee's territory and the certificate of approval holder shall give the wholesale licensee reasonable time or, if the certificate of approval holder is a small beer manufacturer or a small hard cider manufacturer, at least 30 days to correct the claimed deficiency or deficiencies. After this time has elapsed, the certificate of approval holder shall provide the wholesale licensee with a written notice of the certificate of approval holder's intent to amend, cancel, terminate, refuse to continue, refuse to renew or cause the wholesale licensee to resign from an agreement at least 90 days prior to the effective date of the intended amendment, cancellation, termination, refusal to continue, refusal to renew or causing of resignation. The written notice must state all of the reasons for the intended amendment, cancellation, termination, refusal to continue, refusal to renew or causing of resignation. The notice provisions of this section do not apply if the reason for the intended amendment, cancellation, termination, refusal to continue, refusal to renew or causing of resignation is:

A. The bankruptcy or insolvency of the wholesale licensee; [PL 1987, c. 45, Pt. A, §4 (NEW).]

B. An assignment for the benefit of creditors or similar disposition of the assets of the wholesale licensee's business; [PL 1987, c. 45, Pt. A, §4 (NEW).]

C. Revocation of the wholesale licensee's license; or [PL 1987, c. 45, Pt. A, §4 (NEW).]

D. Conviction or a plea of guilty or no contest to a charge of violating a law relating to the business that materially affects the wholesale licensee's ability to remain in business. [PL 1987, c. 45, Pt. A, §4 (NEW).]

For purposes of this section, "small beer manufacturer" and "small hard cider manufacturer" have the same meanings as in section 1457, subsection 1-A.

[PL 2021, c. 658, §258 (AMD).]

SECTION HISTORY

PL 1987, c. 45, §A4 (NEW). PL 2019, c. 529, §8 (AMD). PL 2021, c. 658, §258 (AMD).

§1456. Assignment, transfer or sale of business

No certificate of approval holder may unreasonably withhold consent to any assignment, transfer or sale of the wholesale licensee's business whenever the wholesale licensee to be substituted meets the material and reasonable qualifications and standards required of its wholesale licensees. [PL 1987, c. 45, Pt. A, §4 (NEW).]

SECTION HISTORY

PL 1987, c. 45, §A4 (NEW).

§1457. Compensation

1. Reasonable compensation.
[PL 2019, c. 529, §9 (RP).]

1-A. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Affected brand or brands" means the brand or brands of a certificate of approval holder that will no longer be distributed by a wholesale licensee after the certificate of approval holder makes a triggering change to the agreement between the certificate of approval holder and the wholesale licensee. [PL 2019, c. 529, §9 (NEW).]

B. "Case equivalent" means a volume equivalent to 24 12-ounce units. [PL 2019, c. 529, §9 (NEW).]

C. "Good cause" has the same meaning as described in section 1454. [PL 2019, c. 529, §9 (NEW).]

D. "Small beer manufacturer" means a small brewery or out-of-state brewery that brews, lagers and kegs, bottles or packages its own malt liquor, not to exceed 30,000 barrels per year. [PL 2021, c. 658, §259 (AMD).]

E. "Small hard cider manufacturer" means a small winery or out-of-state winery that ferments, ages or bottles any amount of wine, as long as it ferments, ages or bottles no more than 3,000 barrels per year of wine that is hard cider. [PL 2019, c. 529, §9 (NEW).]

F. "Triggering change" means an amendment, cancellation in whole or in part, termination, refusal to continue or refusal to renew an agreement by a certificate of approval holder or the resignation of a wholesale licensee from an agreement if the resignation is caused by the certificate of approval holder, unless good cause can be established or proven for the amendment, cancellation, termination, refusal to continue, refusal to renew or caused resignation. "Triggering change" includes the unreasonable withholding of consent by a certificate of approval holder to any assignment, transfer or sale of a wholesale licensee's business. [PL 2019, c. 529, §9 (NEW).]
[PL 2021, c. 658, §259 (AMD).]

1-B. Reasonable compensation; general rule. Except as otherwise provided in subsections 1-C and 1-D, if a certificate of approval holder makes a triggering change to an agreement, the certificate of approval holder shall pay the wholesale licensee reasonable compensation for the fair market value of the wholesale licensee's business related to the affected brand or brands. The fair market value of the wholesale licensee's business related to the affected brand or brands includes inventory and other tangible assets and the wholesale licensee's good will.
[PL 2019, c. 529, §9 (NEW).]

1-C. Exception; small beer manufacturer or small hard cider manufacturer. Notwithstanding subsection 1-B, a small beer manufacturer or small hard cider manufacturer must pay a wholesale licensee reasonable compensation in accordance with subsection 1-D if:

A. The small beer manufacturer makes a triggering change to an agreement that prevents the wholesale licensee from continuing to distribute a brand or brands of malt liquor or the small hard cider manufacturer makes a triggering change to an agreement that prevents the wholesale licensee from continuing to distribute a brand or brands of hard cider; and [PL 2019, c. 529, §9 (NEW).]

B. During the 12-month period immediately preceding the date on which the small beer manufacturer or the small hard cider manufacturer provides the wholesale licensee with the first

written notice of the triggering change, if notice is required under section 1455, or the date on which the small beer manufacturer or small hard cider manufacturer unreasonably withholds its consent to any assignment, transfer or sale of the wholesale licensee's business, the total number of case equivalents of the affected brand or brands of malt liquor or hard cider distributed by the wholesale licensee was less than 10,000 and represented no more than 3% of the total number of case equivalents of all brands of liquor for all certificate of approval holders that were distributed by the wholesale licensee. [PL 2019, c. 529, §9 (NEW).]

[PL 2019, c. 529, §9 (NEW).]

1-D. Reasonable compensation; alternative calculation. Notwithstanding subsection 1-B, if a small beer manufacturer or small hard cider manufacturer makes a triggering change to an agreement that meets the requirements of subsection 1-C, the small beer manufacturer or small hard cider manufacturer shall pay the wholesale licensee reasonable compensation for the fair market value of the wholesale licensee's business related to the affected brand or brands of malt liquor or hard cider in accordance with this subsection.

A. If the wholesale licensee's total gross profits with respect to the affected brand or brands during the 12-month period described in subsection 1-C were equal to or less than the wholesale licensee's total gross profits with respect to the affected brand or brands during the next preceding 12-month period, the small beer manufacturer or small hard cider manufacturer shall pay as reasonable compensation an amount equal to the wholesale licensee's total gross profits with respect to the affected brand or brands during the 12-month period described in subsection 1-C. [PL 2019, c. 529, §9 (NEW).]

B. If the wholesale licensee's total gross profits with respect to the affected brand or brands during the 12-month period described in subsection 1-C were greater than the wholesale licensee's total gross profits with respect to the affected brand or brands during the next preceding 12-month period, the small beer manufacturer or small hard cider manufacturer shall pay as reasonable compensation an amount equal to twice the wholesale licensee's total gross profits with respect to the affected brand or brands during the 12-month period described in subsection 1-C. [PL 2019, c. 529, §9 (NEW).]

This subsection does not govern the reasonable compensation that a small hard cider manufacturer is required to pay a wholesale licensee for the fair market value of the wholesale licensee's business related to an affected brand or brands of wine that is not hard cider.

[PL 2019, c. 529, §9 (NEW).]

1-E. Waiver. Notwithstanding section 1462, nothing in this chapter prevents a wholesale licensee from limiting or waiving its right to receive reasonable compensation under subsection 1-B or 1-D from a small beer manufacturer or a small hard cider manufacturer in an agreement between the wholesale licensee and the small beer manufacturer or the small hard cider manufacturer.

[PL 2019, c. 529, §9 (NEW).]

2. Neutral arbitrator. If the certificate of approval holder and the wholesale licensee are unable to agree on the amount of reasonable compensation to be paid for the fair market value of the wholesale licensee's business related to the affected brand or brands of the certificate of approval holder, they shall submit the matter to a neutral arbitrator selected by the parties, or, if they cannot agree, by the Chief Justice of the Supreme Judicial Court. The costs of the arbitration must be paid 1/2 by the wholesale licensee and 1/2 by the certificate of approval holder or otherwise the arbitration proceeding must be governed by the Uniform Arbitration Act. The arbitrator shall issue a written decision on the matter no later than 45 days after the date of the commencement of the arbitration proceeding.

[PL 2019, c. 529, §9 (AMD).]

3. Distribution during arbitration. Notwithstanding any provision of this Title to the contrary or the terms, conditions or other provisions of any agreement, when a small beer manufacturer or a

small hard cider manufacturer makes a triggering change to an agreement, the small beer manufacturer or the small hard cider manufacturer may immediately:

A. If the small beer manufacturer is a small brewery, sell the affected brand or brands of malt liquor directly to retail licensees in the wholesale licensee's territory in accordance with section 1355-A, subsection 3, paragraph B, subparagraph (2); [PL 2019, c. 529, §9 (NEW).]

B. If the small hard cider manufacturer is a small winery, sell the affected brand or brands of hard cider directly to retail licensees in the wholesale licensee's territory in accordance with section 1355-A, subsection 4, paragraph B, subparagraph (1); [PL 2019, c. 529, §9 (NEW).]

C. Appoint one or more new wholesale licensees to sell the affected brand or brands of malt liquor or hard cider in all or any portion of the territory of the wholesale licensee subject to the triggering change; or [PL 2019, c. 529, §9 (NEW).]

D. Engage in any combination of actions described in paragraphs A, B and C, if applicable. [PL 2019, c. 529, §9 (NEW).]

[PL 2019, c. 529, §9 (AMD).]

SECTION HISTORY

PL 1987, c. 45, §A4 (NEW). PL 2019, c. 529, §9 (AMD). PL 2021, c. 658, §259 (AMD).

§1458. Judicial remedies

1. Suit against certificate of approval holder. If a certificate of approval holder engages in conduct prohibited under this chapter, a wholesale licensee may maintain a suit against the certificate of approval holder.

[PL 1987, c. 45, Pt. A, §4 (NEW).]

2. Equitable relief. The court may grant equitable relief necessary to remedy the effects of conduct which it finds to exist and which is prohibited under this chapter, including, but not limited to, declaratory judgment and injunctive relief.

[PL 1987, c. 45, Pt. A, §4 (NEW).]

3. Punitive damages, costs and fees. If the court finds that the certificate of approval holder has acted in bad faith in invoking the amendment, termination, cancellation or nonrenewal provisions of this chapter or has unreasonably withheld its consent to any assignment, transfer or sale of the wholesale licensee's agreement, the court may award punitive damages, as well as actual damages, costs and attorneys fees.

[PL 1987, c. 45, Pt. A, §4 (NEW).]

SECTION HISTORY

PL 1987, c. 45, §A4 (NEW).

§1459. Price of product

No certificate of approval holder, whether by means of a term or condition of an agreement or otherwise, may fix or maintain the price at which the wholesale licensee sells any product. [PL 1987, c. 45, Pt. A, §4 (NEW).]

SECTION HISTORY

PL 1987, c. 45, §A4 (NEW).

§1460. Retaliatory action prohibited

1. Retaliatory action prohibited. A certificate of approval holder may not take retaliatory action against a wholesale licensee who files or indicates an intention to file a complaint of alleged violation of state or federal law or regulation by the certificate of approval holder with the appropriate state or federal regulatory authority.

[PL 1987, c. 45, Pt. A, §4 (NEW).]

2. Retaliatory action described. Retaliatory action includes, but is not limited to:

A. Refusal without good cause to continue the agreement; or [PL 1987, c. 45, Pt. A, §4 (NEW).]

B. A material reduction in the quality of service or quantity of products available to the wholesale licensee under the agreement. [PL 1987, c. 45, Pt. A, §4 (NEW).]

[PL 1987, c. 45, Pt. A, §4 (NEW).]

SECTION HISTORY

PL 1987, c. 45, §A4 (NEW).

§1461. Management and personnel of wholesale licensee

No certificate of approval holder may require or prohibit any change in management or personnel of any wholesale licensee unless the current or potential management or personnel fails to meet reasonable qualifications and standards required by the certificate of approval holder. [PL 1987, c. 45, Pt. A, §4 (NEW).]

SECTION HISTORY

PL 1987, c. 45, §A4 (NEW).

§1462. No waiver; good faith settlements

No certificate of approval holder may require any wholesale licensee to waive compliance with any provisions of this chapter. Nothing in this chapter limits or prohibits good faith settlements of disputes voluntarily entered into between the parties. [PL 1987, c. 45, Pt. A, §4 (NEW).]

SECTION HISTORY

PL 1987, c. 45, §A4 (NEW).

§1463. Sale of certificate of approval holder

1. Purchaser obligated. The purchaser of a certificate of approval holder is obligated to all of the terms and conditions of the agreement in effect on the date of purchase.
[PL 1987, c. 45, Pt. A, §4 (NEW).]

2. Purchase defined. "Purchase," as defined for the purposes of this chapter, includes, but is not limited to:

A. Sale of stock; [PL 1987, c. 45, Pt. A, §4 (NEW).]

B. Sale of assets; [PL 1987, c. 45, Pt. A, §4 (NEW).]

C. Merger; [PL 1987, c. 45, Pt. A, §4 (NEW).]

D. Lease; [PL 1987, c. 45, Pt. A, §4 (NEW).]

E. Transfer; or [PL 1987, c. 45, Pt. A, §4 (NEW).]

F. Consolidation. [PL 1987, c. 45, Pt. A, §4 (NEW).]

[PL 1987, c. 45, Pt. A, §4 (NEW).]

SECTION HISTORY

PL 1987, c. 45, §A4 (NEW).

§1464. Coverage

The provisions of this chapter apply to agreements between certificate of approval holders and wholesale licensees in existence on September 16, 1979, and those entered into after that date. [PL 1987, c. 45, Pt. A, §4 (NEW).]

SECTION HISTORY

PL 1987, c. 45, §A4 (NEW).

§1465. Right of free association

No certificate of approval holder or wholesale licensee may restrict or inhibit, directly or indirectly, the right of free association of certificate of approval holders or wholesale licensees for any lawful purpose. [PL 1987, c. 45, Pt. A, §4 (NEW).]

SECTION HISTORY

PL 1987, c. 45, §A4 (NEW).

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