

Sen. Hickman's Proposed Amendment to LD 1358
(for 2/9/22 Work Session)

Committee: VLA

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Changes to bill shown **highlighted**

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

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

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

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

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

§1382. Direct shipment of spirits ~~by distilleries~~

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

A. "Case equivalent" means a volume equivalent to 9 liters.

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

C. "Direct shipper discount rate" means a percentage equal to the percentage discount off of the retail price established in section 606, subsection 4-B for a small distillery licensed under section 1355-A that retains its products for sale to customers under section 1355-A, subsection 5, paragraph G or H.

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

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

3. Direct shipper application. Before sending a shipment to a ~~resident of customer in~~ this State, a direct shipper must file an application for a spirits direct shipper license under subsection 2 with the bureau on a form

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issued by the bureau along with a true copy of its current manufacturer license under section 1355-A or issued outside the State and a \$100 registration fee.

4. Direct shipment of spirits; requirements. A direct shipper licensed under subsection 2 may ship spirits directly to a customer in the State only under the following conditions.

A. A direct shipper that is licensed under section 1355-A may ship directly to a customer in the State only spirits produced by the direct shipper in accordance with the direct shipper's federal permit that are currently listed for sale in the State under section 81, subsection 2. A spirits product shipped directly to a customer in the State under this paragraph must be sold at the retail price established by the commission under section 1651, subsection 1. For each spirits product shipped directly to a customer in the State under this paragraph, the direct shipper shall pay to the bureau the difference between the direct shipper's price charged to the bureau for the spirits product and an amount that is equal to the retail price of the spirits product multiplied by the direct shipper discount rate.

B. A direct shipper that does not have a license under section 1355-A may ship directly to a customer in the State only spirits produced by the direct shipper in accordance with the direct shipper's federal permit that are not currently listed for sale in the State under section 81, subsection 2 and may ship no more than an aggregate of 200 case equivalents of spirits directly to consumers in the State per calendar year. A spirits product shipped directly to a customer in the State under this paragraph must be sold at the prevailing retail price in the state in which the spirits product was produced. For each spirits product shipped directly to a customer in the State under this paragraph, the direct shipper shall pay to the bureau the difference between the average price the direct shipper charges wholesalers that purchase the spirits product in state in which the spirits product was produced and an amount that is equal to the prevailing retail price of the spirits product in the state in which the spirits product was produced multiplied by the direct shipper discount rate.

C. A direct shipper may ship spirits to a recipient only for personal use and not for resale.

D. A direct shipper shall label each package to be shipped in accordance with this section so that it conspicuously reads "CONTAINS ALCOHOL: SIGNATURE OF A PERSON 21 YEARS OF AGE OR OLDER IS REQUIRED FOR DELIVERY."

5. Common carrier. Shipments made in accordance with this section must be made by a common carrier and must be accompanied by a shipping label that clearly indicates the name of the direct shipper and the name and address of the recipient. The common carrier shall obtain the signature of a person 21 years of age or older at the address listed on the shipping label prior to delivery of the shipment. The common carrier shall request photographic identification from the person signing for the shipment and verify that the person is 21 years of age or older. The common carrier shall retain a record of each shipment made under this section for a period of 2 years and shall furnish those records to the bureau upon request.

6. Bottle size and case limit. A direct shipper may not ship a container of spirits of less than 750-700 milliliters and may ship no more than 4 cases, each of which may contain no more than 9 liters or an equivalent volume, case equivalents to any one recipient address in a calendar year.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SUMMARY

The bill allows distilleries located both within and outside of the State to ship their own spirits products directly to recipients located within the State upon receiving a direct shipper license from the Department of Administrative and Financial Services, Bureau of Alcoholic Beverages and Lottery Operations. This amendment, which is the _____ report of the committee, makes the following changes to the bill:

1. It authorizes the bureau also to issue direct shipper licenses to small distilleries and rectifiers for the sale of spirits directly to customers located in the State;
2. It clarifies that an in-State distillery, small distillery or rectifier may ship directly to customers in the State spirits products that it produces and that are currently listed for sale in the State. Each spirits product must be sold at the retail price established by the State Liquor and Lottery Commission.
3. It clarifies that an out-of-state distillery, small distillery or rectifier may ship directly to customers in the State a maximum of 200 case equivalents per calendar year of spirits products that it produces and that are not

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currently listed for sale in the State. Each spirits product must be sold at a price that is the equivalent of the prevailing retail price of the spirits product in the state where the spirits product is manufactured.

4. It authorizes the direct shipment of spirits in containers of at least 700 milliliters in volume, rather than the bill's requirement that spirits containers be at least 750 milliliters in volume.

5. It requires common carriers to retain records of each shipment of spirits that is made directly to a customer in the State for a period of 2 years and to furnish those records to the bureau upon request.

6. It replaces the bill's requirement that direct shippers pay an excise tax of \$11.96 on spirits that are directly shipped to customers in the State with a requirement that, for each spirits product directly shipped to a customer in the State, the direct shipper must pay to the bureau an amount similar to the amount that a small distillery would be required to pay to the bureau under current law if it had produced that spirits product and retained that spirits product for resale directly to customers for on-premises or off-premises consumption.