



April 15, 2021

Committee on Veterans and Legal Affairs
Maine Legislature
100 State House Station
Augusta, ME 04333

Dear members of the Committee on Veterans and Legal Affairs:

On behalf of the American Distilled Spirits Alliance (ADSA), we respectfully submit the following comments regarding LD 1358, an act to provide the direct shipment of distilled spirits to consumers. ADSA is a group of 27 leading domestic and international companies with common interests in manufacturing, importing, and marketing distilled spirits in the United States. Member companies represent over 60% of all distilled spirits sales in the United States and Maine.

First, allow me to commend your efforts on crafting a focused and well-written Direct to Consumer (DtC) bill. ADSA has been working on this issue for several years and has worked with several states' legislators on similar provisions and few have started with such a quality draft. Regarding DtC, ADSA has four main principles: Consumer Safety and social responsibility, an orderly marketplace, an enforceable regulatory environment, and state revenue protection. In our opinion, as currently drafted, LD 1358 does a commendable job of tackling these core principles. The purpose of our letter today is to offer some tweaks to the language that could offer the state better protections and ensure the DtC system will work as intended and without unintended consequences.

Distiller definition:

While your definition of in-state distiller is clear, we have some thoughts on the use of the generic term "manufacturer" when referencing out of state entities. One simple solution is to define manufacturer. Whether defined or not, ADSA would strongly recommend adding "a person applying as a supplier (manufacturer) also must hold a valid permit under the Federal Alcohol Administration Act and operate as the brand owner or its authorized agent," to the current definition of both distiller and any reference to entities eligible to apply for a license.

In the beverage alcohol space, there are distillers, rectifiers, producers, manufacturers, distributors, and importers – all licensed to create and/or import and sell distilled spirits products. Leaving "manufacturer" undefined and not referencing the federal permit will leave the definition open to interpretation and would likely require regulatory rule or guidance, which is not ideal.



As an example, when working with other states, ADSA has recommended the following language to prevent any confusion:

(a) The [state agency] shall issue a direct shipper license under this Section to a person who holds a valid license, permit, or other authorization in this State or any other state as a wine, beer, or spirits producer or a wine, beer, or spirits supplier. To qualify for a direct shipper license, a person applying as a supplier also must hold a valid permit under the Federal Alcohol Administration Act and operate as the brand owner or its authorized agent.

Fulfillment centers:

ADSA appreciates the strong language controlling who is eligible to participate and how the transactions/shipments can occur. Maine already allows for the shipment of wine, and under that allowance, only wines produced by the permittee may be sold and shipped to consumers. There does not, however, appear to be a restriction on third party logistical fulfillment, and that makes sense because fulfillment shipping is standard practice in the wine industry. Very few wineries process their own shipments, and as DtC of spirits expands, that will be the case for distilleries as well.

ADSA would recommend similar allowance for distilled spirits products. All orders, financial transactions, and consumer contact will occur with the licensed brand owner (distiller/manufacturer), but licensed producers/manufacturers would be allowed to outsource their logistics for order completion, and the fulfillment center would be limited to logistical operations only. This would maintain the 'Direct to Consumer' aspect; the order is placed directly with the producer/manufacturer and the product is then sent directly to the consumer while allowing for professional logistic companies to manage the backend operations, again similar to how wine currently operates in most states across the US.

This is language we have offered other states when referencing the use of fulfillment houses:

- a. *Maine shall allow for use of fulfillment centers / logistical fulfillment operations, so long as the actual seller of the beer, wine, or spirit meets the below definition and the fulfillment operation is simply completing the physical logistics of packaging, shipping, transporting, etc. and are not current holders of either a distribution license or a retail liquor license*
 - i. *The entity offering the beer, wine, or spirit for sale is licensed in Maine to ship, and*
 - ii. *The beer, wine, or spirit being sold is registered with Maine, and*
 - iii. *Proof of brand ownership has been established, or the entity is the authorized agent for the brand that has already been established.*
 - iv. *The fulfillment center does not engage in sales or other financial transactions with the individual consumer.*
- b. *Further, the licensee must notify Maine that they are allowing a fulfillment center to manage the logistical operation on their behalf and provide a registered address for the fulfillment center.*
- c. *Licensees may utilize more than one fulfillment center; however, Maine must be notified of each fulfillment center being used and its registered address.*

Prevailing retail price:



As a control state, Maine has a set retail price for all distilled spirits products sold across the state. While Sec. 2. 28-A MRSA §1382, 9. Sales tax registration and payment required, references the requirement to “*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,*” we believe this section should specifically say “all DtC distilled spirits products entering the state shall sell at the prevailing retail price at the time of sale.” This may be covered by the existing reference, but because Maine is a control state, we feel having this expressly stated in statute will help protect the control system, limit retail pricing games, and prevent any consumer confusion.

Products not for sale in Maine:

We are unsure if, as drafted, this bill addresses the sale of products not currently sold in Maine. If this is addressed, then no change is necessary. If not, we would recommend either expressly allowing products not available in Maine can be sold via DtC or expressly prohibiting any product not for sale in Maine from being sold via DtC. ADSA does not have a firm opinion on which direction the state should take, however we do feel it necessary to identify in statute what the desired intent is.

Notification of non-compliance:

Sec. 2. 28-A MRSA §1382, 13. Violation is a smart approach to tackling violations of this statute by focusing on fines. Fines can easily cross state lines, unlike other punitive measures. ADSA feels the desired outcome from enforcement actions should always be compliance, and to that end, ADSA would recommend adding notification language to the proposed penalties. Some entities may illegally ship into Maine, but some of those illegal shippers may also be eligible to register and were unaware of the requirement to do so. Notifying shippers of illegal shipment as a first step and encouraging those eligible to register will result in better rates of compliance over time. For the entities that ship illegally into Maine and are not eligible to register, the notice would be a cease-and-desist notice with fines assessed for all future violations.

Closing:

We ask the Veterans and Legal Affairs Committee to consider our thoughts on improving LD 1358. If members of the legislature would like to discuss our thoughts on this matter, ADSA and its member companies stand ready to work with anyone who has questions.

We thank you for the opportunity to comment on LD 1358 and look forward to future discussions on this issue. Should you have any questions, please directly contact us at any time.

Respectfully,

Matt Dogali
President, American Distilled Spirits Alliance

Matt Dogali
American Distilled Spirits Alliance

Please see attached letter.