

A. Fruit Beers

Definition of "malt liquor"— add a new provision to LD 1643 that would repeal and replace 28-A M.R.S. §2(18) (binder p.7) as follows:

18. Malt liquor. "Malt liquor" means liquor:

Compare [27 C.F.R. §25.15\(a\)](#)

A. For which no less than 51% of the total alcohol by volume derives from the fermentation of malt, one or more substitutes for malt or any combination of malt and one or more substitutes of malt. For purposes of this paragraph, "substitute for malt" means rice, grain of any kind, bran, glucose, sugar and molasses and any other substitute for malt approved by the United States Department of the Treasury, Alcohol and Tobacco Tax and Trade Bureau; and

B. For which no more than 49% of the total alcohol by volume derives from the fermentation of flavors and other nonbeverage ingredients, including honey, fruit, fruit juice, fruit concentrate, herbs, spices, honey, maple syrup and other food materials approved for inclusion in malt beverages or beer by the United States Department of the Treasury, Alcohol and Tobacco Tax and Trade Bureau.

"Malt liquor" does not include beverages made with malt liquor to which spirits have been added.

Definition of "wine"— amend section 32 of the bill (bill p.9) as follows:

36. Wine. "Wine" means any liquor other than malt liquor containing not more than 24% alcohol by volume that is produced by the fermentation of fruit or other agricultural products containing sugar or wine to which spirits have been added not to exceed 24% alcohol by volume. "Wine" includes, but is not limited to, hard cider, wine coolers, table wine, still wine, sparkling wine, champagne and fortified wine, ~~provided that the alcohol content is not above~~ do not contain more than 24% alcohol by volume.

B. "Brewery" and "Small brewery" definitions

Notes:

- The Maine Brewers Guild does not want to limit breweries and small breweries by adding the phrase "the person's own" before malt liquor in each definition in the bill, because they are concerned that this will potentially limit existing contract brewing.
- BABLO would prefer to keep this phrase and notes that there is no provision of Title 28-A currently addressing contract brewing. They believe that the lack of statutory language addressing contract brewing and establishing a minimum volume that a small brewery must produce (on-site) is problematic.

As a compromise, the parties (BABLO and Maine Brewers Guild only) agreed to propose:

- Removing "the person's own" from the "brewery" and "small brewery" definitions and

Note: at 2/11/22 WS the Maine Beer & Wine Distributors Assoc. objected to the change above

- ~~Adding unallocated language to the end of LD 1643 directing the bureau to submit a report and recommended legislation to address contract brewing and minimum production issues during the First Regular Session of the 131st Legislature.~~ [correction: this item not agreed]

Definition of "brewery"—amend the definition in section 6 (p.1) of the bill as follows:

5. Brewer Brewery. "Brewer Brewery" means a person who produces malt liquor by fermentation of malt, wholly or partially, or from any substitute for malt, that engages in the activities under either paragraph A or B, or both:

A. Brewing, lagering and kegging, bottling or packaging Producing the person's own malt liquor; or

B. Producing or bottling low-alcohol spirits products consisting of malt liquor to which spirits have been added.

Definition of "small brewery"—amend the definition in section 22 (p.7) of the bill as follows

29. Small brewery. "Small brewery" means a facility that brews, lagers and kegs, bottles or packages its own malt liquor, not to exceed 30,000 barrels per year; person that engages in the activities under either paragraph A or B, or both:

A. Brewing, lagering and kegging, bottling or packaging Producing the person's own malt liquor; or

B. Producing or bottling low-alcohol spirits products consisting of malt liquor to which spirits have been added.

"Small brewery" does not include a person that engages in the activities described in paragraph A or B that produces in total more than 30,000 barrels per year of malt liquor and low-alcohol spirits products consisting of malt liquor to which spirits have been added.

Additional Note:

- The Maine Brewers Guild would also like the committee to consider adding the following language at the end of the definitions of "brewery" and "small brewery"—see copy of email attached at the end of this document for additional explanation of this request.

"A [brewery/small brewery] may engage in any or all activities that are necessary or incidental to the production of malt liquor, low-alcohol spirits products containing malt liquor, or both, in accordance with this Title, which activities include, without limitation, brewing, fermenting, aging, packaging, transporting, and selling malt liquor, low-alcohol spirits products containing malt liquor, or both."

To clarify that a brewery, winery, small brewery, small winery, tenant brewery and tenant winery may, in addition to producing their own products, also "bottle" (as a verb) these products into packages and containers, the following amendments would be made to §1355-A, the Maine manufacturer statute:

Amend §1355-A(3)(A) and (B) on bill page 68, lines 19-24 as follows:

3. Breweries; small breweries. Except as otherwise provided in this section, the following provisions apply to breweries and small breweries.

A. A holder of a brewery license may produce and bottle more than 30,000 barrels of malt liquor per year.

B. A holder of a small brewery license may produce and bottle up to 30,000 barrels of malt liquor per year.

Amend §1355-A(4)(A) and (B) on bill page 70, lines 9-16 as follows:

4. Wineries; small wineries. Except as otherwise provided in this section, the following provisions apply to wineries and small wineries.

A. A holder of a winery license may produce and bottle more than 50,000 gallons per year of wine that is not hard cider and may produce more than 3,000 barrels per year of wine that is hard cider.

B. A holder of a small winery license may produce and bottle up to 50,000 gallons per year of wine that is not hard cider and may produce up to 3,000 barrels per year of wine that is hard cider.

Amend §1355-A(6) on bill page 72, lines 38-42 to read:

6. Tenant brewer brewery. Except as otherwise provided, the following provisions apply to a tenant ~~brewer~~ brewery license under which the holder of a tenant ~~brewer~~ brewery license may produce and bottle malt liquor at the manufacturing facility of another ~~brewer~~ brewery, referred to in this subsection as "~~the a~~ host brewery," licensed by the bureau under subsection 3.

Amend §1355-A(7) on bill page 73, lines 33-37 to read:

7. Tenant winery. Except as otherwise provided, the following provisions apply to a tenant winery license under which the holder of a tenant winery license may produce and bottle wine at the manufacturing facility of another winery, referred to in this subsection as "~~the a~~ host winery," licensed by the bureau under subsection 4. This subsection applies to hard cider produced by a manufacturer licensed as a winery or small winery under subsection 4.

In addition, to eliminate any potential confusion regarding the use of the word "bottle" as a verb--and eliminate any suggestion that only actual bottles (as a noun) can be used and not cans or kegs, the following definition could be added to Title 28-A:

Add a new provision to LD 1643 as follows: [compare definition of "bottler" on bill p.1]

Sec. 4. 28-A MRSA §2, sub-§3-A is enacted to read:

3-A. Bottle. "Bottle," when used as a verb, means to package spirits, wine or malt liquor for sale in containers.

Stocco, Janet

From: John J. Moran <jmoran@bernsteinshur.com>
Sent: Thursday, February 10, 2022 5:09 PM
To: Stocco, Janet
Cc: Sanborn, Laurence D; Poulin, Tim; Kate Knox; Chris Feeney; Daughtry, Matthea; Matthea Daughtry
Subject: RE: Fruit beer and brewery definition issues - meet?

Follow Up Flag: Follow up
Flag Status: Flagged

This message originates from outside the Maine Legislature.

Good afternoon, everyone –

Thanks again for taking the time this morning to discuss the topics below.

I do not believe that we had time to discuss the proposed, follow-on sentence to the definitions of “brewery” and “small brewery” – both of them provide that a brewery or small brewery may “engage in any or all activities that are necessary or incidental to the production of malt liquor, low-alcohol spirits products containing malt liquor, or both, in accordance with this Title, which activities include, without limitation, brewing, fermenting, aging, packaging, transporting, and selling malt liquor, low-alcohol spirits products containing malt liquor, or both.”

I believe that this follow-on sentence or some variation of it is important to include in the statutory definitions or elsewhere in Title 28-A to confirm that a brewery or small brewery can conduct day-to-day brewery operations without having to rely upon a specific, statutory privilege, but otherwise subject to Title 28-A, which is why “in accordance with this Title” is important to include as a modifier. A person would still need to produce malt liquor in some quantity to receive a brewery license or a small brewery license – and the intent of this follow-on sentence is not to allow a person that only transports or only packages beer to be able to receive a brewery license or a small brewery license. Section 1355-A lists a patchwork of statutory privileges for manufacturers that are quite specific, which is why I believe that this type of follow-on sentence would add substantial business certainty for the industry as a whole.

I welcome your comments, and I apologize for the delay in sending this follow-up e-mail to you. Kate, Chris, and/or Mattie may have additional comments on this topic as well. Thanks again.

Best,

John

John J. Moran

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