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Testimony of

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Before the Joint Standing Committee on Veterans and Legal Affairs

LD 1643 - An Act To Correct Errors, Inconsistencies and Conflicts in and To Revise the State's
Liquor Laws

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Senator Luchini, Representative Caiazzo and members of the Joint Standing Committee on Veterans and Legal Affairs, my name is Anya Trundy and I am Chief of Legislative Affairs and Strategic Operations for the Department of Administrative and Financial Services. I am testifying in support of LD 1643; BABLO supported the work of the Title 28-A Recodification subcommittee in 2019 that resulted in this bill. But my primary purpose today is to bring forth an issue that BABLO encountered this fall and that this bill seems a fitting vehicle to address.

While reviewing alcoholic beverage labels for approval, BABLO staff recently raised the question whether based upon the definitions in statute, beers that are produced partially from fermented fruit should be classified as “malt liquor,” “wine,” or “sparkling wine.” The excise tax rates of these three liquors differ substantially—\$.35/gal for malt liquor, \$.60/gal for wine, and \$1.24/gal for sparkling wine. Historically, BABLO has always approved the labels of fruit beers and given their current popularity there were already numerous examples of fruit beers on store shelves.

Maine’s statutory definitions of malt liquor, sparkling wine, and wine are as follows:

28-A M.R.S. § 2

18. Malt liquor. *“Malt liquor” means liquor produced by the fermentation of malt, wholly or partially, or from any malt substitute, which contains ½ of 1% of alcohol or more by volume. “Malt liquor” includes, but is not limited to, ale, beer, porter and stout. “Malt liquor” includes beverages made with malt liquor, but to which no spirits are added.*

30. Sparkling wine. *“Sparkling wine” means carbonated wine.*

36. Wine. *“Wine means any 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% by volume. “Wine” includes, but is not limited*

to, wine coolers, table wine, sparkling wine, champagne and fortified wine, provided that the alcohol content is not above 24% by volume.

After conferring with the Office of the Attorney General, it appeared that a beer or other alcoholic beverage that is produced by the fermentation of both malt and fruit satisfied the definitions of both “malt liquor” and, depending on the carbonation, “wine” or “sparkling wine.” The resulting question was, “How should such a hybrid liquor be treated for purposes of imposing excise taxes pursuant to 28-A M.R.S. § 1652?”

At the point that a brewery submits a label to BABLO for approval, that beer is in its final stages and being prepared for serving or distribution. Rejection of a label could result in product loss and production backups. So as to not cause irreparable harm to Maine’s craft brewing industry by holding-up the label approvals of fruit beers for the four months until the legislature would reconvene, DAFS communicated the following administrative determination to the Brewer’s Guild via a memo from the Commissioner’s Office to BABLO:

With respect to those beers and other malt beverages made partially from fermented fruit, the Department of Administrative and Financial Services (DAFS) recognizes that 1) the brewers had intended them to be “malt liquor,” 2) federal Alcohol and Tobacco Tax and Trade Bureau rulings permit them to be classified as “malt beverages” provided that 51% of the fermentable material used in production consists of malt, and 3) their primary/base ingredient is malt, not fruit as would be the case for wine and sparkling wine. Therefore, for the purposes of taxation under 28-A M.R.S. § 1652, the Bureau of Alcoholic Beverages and Lottery Operations under DAFS shall treat as “malt liquor” any beer or other alcoholic beverage produced by the fermentation of both malt and fruit, so long as malt comprises 51% of the fermentable material used in production and fruit constitutes a secondary ingredient. This interpretation maintains consistency with the traditional practice of approving the labels of beers and other malt beverages containing fruit and taxing them as malt liquor.

We made a commitment to the Brewer’s Guild to bring the matter to the VLA Committee this session and seek to clarify the statute so that the definitions of “malt liquor” and “wine” become mutually exclusive, and identified LD 1643 as a potential vehicle. We hope the Committee will amend this bill to address this issue stemming from statutory definitions codified in the late-80s that didn’t anticipate the innovation in beer that has made Maine a destination for craft brewing enthusiasts and brewing a major industry of the state.

Thank you for allowing me to testify before you today. I am happy to respond to any questions and will be available to you at the work session.