

MAINE STATE LEGISLATURE

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L.D. 1826

MINORITY

Date: 6/14/19

(Filing No. S-244)

VETERANS AND LEGAL AFFAIRS

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STATE OF MAINE

SENATE

129TH LEGISLATURE

FIRST REGULAR SESSION

COMMITTEE AMENDMENT "B" to S.P. 616, L.D. 1826, Bill, "An Act To Update the Laws Relating to Liquor Licensing and Enforcement"

Amend the bill by inserting after section 2 the following:

'Sec. 3. 28-A MRSA §83-C, sub-§2-A is enacted to read:

2-A. Special pricing situations. Notwithstanding section 1651, the bureau may, by rule, set retail prices on spirits at different levels than those established by the commission in the following circumstances.

A. The bureau may establish special retail prices on certain listed spirits items to be made available to the consumer at all agency liquor stores.

B. The bureau may reduce the retail price of a listed spirits item that is unlikely to be sold for the retail price set by the commission.

C. The bureau may reduce, at the expense of the manufacturer or supplier, the retail price of those test-market spirits items that fail to meet set minimum gross profit standards after a 3-month period.'

Amend the bill by striking out all of sections 5 to 8 and inserting the following:

'Sec. 5. 28-A MRSA §460, sub-§2, ¶M-1, as amended by PL 2019, c. 79, §1, is further amended to read:

M-1. Spirits served at a taste-testing event must be provided by the agency liquor store or purchased, at the retail list price, by a licensed sales representative participating in the taste-testing event from existing stock available for purchase at the agency liquor store.

Sec. 6. 28-A MRSA §606, sub-§1, as amended by PL 2013, c. 368, Pt. V, §35, is further amended to read:

1. **Purchase of liquor.** Subject to the restrictions provided in subsection 1-A, a person licensed to sell spirits ~~and fortified wine~~ for on-premises consumption must purchase spirits ~~and fortified wine~~ from an agency liquor store licensed as a reselling

COMMITTEE AMENDMENT

1 agent under section 453-C. This subsection does not apply to public service corporations
2 operating interstate.'

3 Amend the bill by striking out all of sections 12 to 14 and inserting the following:

4 **'Sec. 12. 28-A MRSA §606, sub-§4-B,** as enacted by PL 2019, c. 168, §1, is
5 amended to read:

6 **4-B. Discount rate for small distilleries.** Beginning July 1, 2019, the bureau shall
7 set the price of spirits produced by a small distillery licensed under section 1355-A,
8 subsection 5, paragraph B and retained by that small distillery for sale under section
9 1355-A, subsection 5, paragraph G or H at a discount of 22.75% of the ~~list~~ retail price.

10 **Sec. 13. 28-A MRSA §708-C,** as amended by PL 2017, c. 347, §2, is further
11 amended to read:

12 **§708-C. Donations to public broadcasting stations, municipal entities, incorporated**
13 **civic organizations and national organizations**

14 **1. Donations for an auction or award.** A person licensed by the bureau under
15 section 1355-A, a certificate of approval holder, a manufacturer or supplier of ~~distilled~~
16 spirits or a wholesaler may donate a certificate to purchase its product or donate its
17 product to a public broadcasting station, a municipal entity, an incorporated civic
18 organization or a similarly purposed national organization designated by the United
19 States Internal Revenue Service under the United States Internal Revenue Code of 1986,
20 Section 501(c)(3) for the purpose of an auction or to offer as a prize, gift or award in
21 conjunction with efforts to support the purposes of the incorporated civic organization,
22 similarly purposed organization, municipal entity or public broadcasting station. Spirits
23 donated in accordance with this subsection must be listed by the commission for sale in
24 this State, clearly labeled as a donation and purchased from the State's wholesale liquor
25 provider at ~~list~~ the wholesale price. A person authorized to make a donation in
26 accordance with this subsection shall maintain a record of each donation, including the
27 value of the donation and the date on which it was made. A recipient of a donation under
28 this subsection must be 21 years of age or older.

29 **2. Donations for consumption at on-premises events.** A person licensed by the
30 bureau under section 1355-A, a certificate of approval holder, a manufacturer or supplier
31 of spirits or a wholesaler may donate its product or provide malt liquor, wine, spirits or
32 fortified wine at a reduced price to a person licensed by the bureau to serve ~~alcoholic~~
33 beverages liquor for on-premises consumption at an event designed to benefit a municipal
34 entity, an incorporated civic organization or a similarly purposed national organization
35 designated by the United States Internal Revenue Service under the United States Internal
36 Revenue Code of 1986, Section 501(c)(3). ~~Spirits donated in accordance with this~~
37 ~~subsection must have first been sold to the State or the State's contracted wholesaler for~~
38 ~~listing, pricing and distribution in accordance with this Title.~~ Spirits donated in
39 accordance with this subsection must be listed by the commission for sale in this State,
40 clearly labeled as a donation and purchased from the State's wholesale liquor provider at
41 the wholesale price. A person authorized to make a donation or offer its product at a
42 reduced price under this subsection shall maintain a record of the products donated or
43 offered, including the value of each, the reduced price when applicable and the date on
44 which the product was provided. All applicable excise taxes on donated malt liquor,

1 wine, spirits and fortified wine must be remitted as required by this Title. A licensee
2 provided product in accordance with this subsection:

3 A. Shall maintain a record of each product received and the date on which it was
4 received;

5 B. Shall maintain a record of the name of the municipal entity, incorporated civic
6 organization or similarly purposed national organization the event was designed to
7 benefit and for which the product is provided;

8 C. Shall ensure that the product provided is served only at the event designed to
9 benefit the municipal entity, incorporated civic organization or similarly purposed
10 national organization;

11 D. Shall ensure that excess product that was donated for the event is returned to the
12 donor within a reasonable period after the event; and

13 E. Shall ensure that containers holding donated product are returned to the donor for
14 recycling as appropriate and not presented for redemption under Title 32, chapter 28.

15 For purposes of this section, "municipal entity" means a county, city, town or
16 municipal agency or department.

17 **Sec. 14. 28-A MRSA §709, sub-§1, ¶A**, as amended by PL 2013, c. 504, §1, is
18 further amended to read:

19 A. ~~No~~ A licensee ~~or~~ employee of a licensee or agent of a licensee may not:

20 (1) Offer or deliver any free liquor to any person or group of persons;

21 (2) Deliver more than ~~2 drinks containing~~ 4 1/2 ounces of spirits, a carafe
22 containing more than one liter or 33.8 ounces of wine, or any serving or pitcher
23 containing more than one liter or 33.8 ounces of malt liquor; to one person at one
24 time;

25 (3) Sell, offer to sell or deliver to any person or group of persons an unlimited
26 number of drinks for a fixed price, except at private functions not open to the
27 public;

28 (4) Encourage or permit, on the licensed premises, any game or contest that
29 involves drinking or the awarding of drinks as prizes; or

30 (5) Engage in any other practice the specific purpose of which is to encourage
31 customers of the licensee to drink to excess.

32 **Sec. 15. 28-A MRSA §710, sub-§1**, as amended by PL 2013, c. 207, §1, is
33 further amended to read:

34 **1. Advertising outside of licensed premises.** A person, except wholesale licensees
35 and certificate of approval holders, may not advertise or permit to be advertised, by more
36 than 2 5 signs, on the outside of any licensed premises, or on any building, ground or
37 premises under that person's control and contiguous or adjacent to the licensed premises:

38 A. The fact that the licensee has liquor or any brand of liquor for sale;

39 B. The price at which liquor is sold by the licensee; or

1 C. Any other advertisement that indicates any reference to liquor other than the name
2 of the licensed premises, an image accompanying the name of the licensed premises
3 or a brand name or image appearing on a patio umbrella in an outside seating area of
4 the licensed premises.

5 For agency liquor stores, ~~one~~ 2 of the 2 5 signs permitted by this subsection ~~is an~~ are
6 agency liquor store ~~sign~~ signs as described by rule.'

7 Amend the bill by striking out all of section 19 and inserting the following:

8 'Sec. 19. 28-A MRSA §1052-D, sub-§1, as enacted by PL 2013, c. 531, §4, is
9 amended to read:

10 1. **Taste-testing event license.** A person who has been issued a license under
11 section 1355-A, a wholesaler licensed under section 1401 ~~or~~, a person who has been
12 granted a certificate of approval from the bureau, a supplier or foreign manufacturer of
13 spirits or a broker may apply jointly in any combination for a license to participate in a
14 taste-testing event subject to the conditions prescribed by this section. For the purposes
15 of this section, "broker" means a person who represents suppliers or manufacturers of
16 spirits and "foreign manufacturer of spirits" means a person who produces spirits outside
17 of the State.'

18 Amend the bill by striking out all of section 21 and inserting the following:

19 'Sec. 21. 28-A MRSA §1052-D, sub-§6, as enacted by PL 2013, c. 531, §4, is
20 amended to read:

21 6. **Up to 10 licensed events per year; one event per license.** A certificate of
22 approval holder, a manufacturer licensed under section 1355-A, a supplier or foreign
23 manufacturer of spirits, a broker or a wholesaler licensed under section 1401 may obtain
24 up to 10 licenses under this section per calendar year. Each license permits a taste-testing
25 event lasting up to 4 consecutive days.

26 'Sec. 22. 28-A MRSA §1052-D, sub-§7, ¶I, as enacted by PL 2013, c. 531, §4, is
27 amended to read:

28 I. A licensee under this section who is a manufacturer licensed under section
29 1355-A, is a wholesaler licensed under section 1401 or is a certificate of approval
30 holder may provide for taste testing any malt liquor or wine that the licensee,
31 wholesaler or manufacturer manufactures or distributes that is registered and
32 authorized for distribution and sale under this Title ~~or~~. A licensee under this section
33 who is a manufacturer of spirits licensed under section 1355-A, a supplier or foreign
34 manufacturer of spirits or a broker may provide for taste testing any spirits the
35 licensee or manufacturer manufactures listed for sale by the bureau commission.
36 Excise taxes for malt liquor and wine under section 1652 must be paid before the
37 scheduled date of the taste-testing event.'

38 Amend the bill by striking out all of sections 24 and 25 and inserting the following:

39 'Sec. 24. 28-A MRSA §1355-A, sub-§5, ¶G, as amended by PL 2019, c. 168,
40 §3, is further amended to read:

1 G. Notwithstanding paragraph D, a holder of a small distillery license that sells its
 2 products directly to consumers for off-premises consumption under paragraph B,
 3 subparagraph (3) or subsection 2, paragraph C, D or E may pay the bureau the
 4 difference between the distillery's price charged to the bureau and the discounted ~~list~~
 5 retail price charged by the bureau under section 606, subsection 4-B. A small
 6 distillery is not required to transport spirits that will be sold for off-premises
 7 consumption as described in this paragraph to a warehouse operated by the bureau or
 8 by a wholesaler contracted by the bureau under section 90. A holder of a small
 9 distillery license shall record the quantity of spirits sold for off-premises consumption
 10 that were not transported to a warehouse as described in this paragraph and submit
 11 monthly reports of this information, along with the full amount of state liquor tax due
 12 as prescribed by chapter 65, to the bureau in a manner prescribed by the bureau.

13 **Sec. 25. 28-A MRSA §1355-A, sub-§5, ¶H,** as amended by PL 2019, c. 168, §4,
 14 is further amended to read:

15 H. Notwithstanding paragraph D, a holder of a small distillery license that sells its
 16 products directly to consumers for on-premises consumption under paragraph E or
 17 subsection 2, paragraph B, E or F may pay the bureau the difference between the
 18 distillery's price charged to the bureau and the discounted ~~list~~ retail price charged by
 19 the bureau under section 606, subsection 4-B. A small distillery is not required to
 20 transport spirits that will be sold for on-premises consumption as described in this
 21 paragraph to a warehouse operated by the bureau or by a wholesaler contracted by the
 22 bureau under section 90. A holder of a small distillery license shall record the
 23 quantity of spirits sold for on-premises consumption that were not transported to a
 24 warehouse as described in this paragraph and submit monthly reports of this
 25 information, along with the full amount of state liquor tax due as prescribed by
 26 chapter 65, to the bureau in a manner prescribed by the bureau.'

27 Amend the bill by inserting after section 26 the following:

28 '**Sec. 27. 28-A MRSA §1651, sub-§1,** as amended by PL 2015, c. 166, §6, is
 29 further amended to read:

30 1. **State spirits tax.** Except as provided in section 83-C, subsection 2 ~~2-A~~, the
 31 commission shall determine and set the ~~list~~ retail price at which to sell all spirits to
 32 agency liquor stores that will produce an ~~aggregate state liquor tax~~ sufficient revenue to
 33 pay all ~~liquor-related~~ spirits-related expenses of the ~~Bureau of Alcoholic Beverages and~~
 34 ~~Lottery Operations~~ bureau and to return to the Liquor Operation Revenue Fund
 35 established in Title 30-A, section 6054 and the General Fund an amount substantially
 36 equal to the amount of state ~~liquor~~ spirits tax collected in the previous fiscal year.

37 C. The ~~commission~~ bureau shall ~~add any cost to the State related to handling~~
 38 ~~containers returned for~~ charge agency liquor stores the refund value pursuant to Title
 39 38, section 3103 ~~to the established price without markup~~ in addition to the wholesale
 40 price for each product purchased.

41 **Sec. 28. 28-A MRSA §1651, sub-§2,** as amended by PL 2013, c. 368, Pt. V,
 42 §§48 and 61, is repealed.'

1 Amend the bill by relettering or renumbering any nonconsecutive Part letter or
2 section number to read consecutively.

3 **SUMMARY**

4 This amendment, which is the minority report of the committee, makes the following
5 changes to the bill.

6 1. It makes technical changes to reflect the emergency enactment of Public Law
7 2019, chapter 79 and Public Law 2019, chapter 168.

8 2. It moves provisions of current law that authorize the Department of
9 Administrative and Financial Services, Bureau of Alcoholic Beverages and Lottery
10 Operations to, in special circumstances, set prices on spirits at different levels than those
11 established by the State Liquor and Lottery Commission from a section of the Maine
12 Revised Statutes, Title 28-A related to the state tax on spirits to a section of Title 28-A
13 related to the administration of the spirits business by the bureau.

14 3. It clarifies that an on-premises retail licensee must purchase spirits from an agency
15 liquor store that is licensed as a reselling agent.

16 4. It removes the provision of the bill authorizing the bureau to offer instant
17 redeemable coupons to spirits customers through a publicly accessible website or digital
18 media platform.

19 5. It expands the list of entities that may benefit from a donation of liquor to be
20 auctioned or offered as a prize for fund-raising purposes or sold by a licensed
21 on-premises retailer during a fund-raising event to include a county, city, town or
22 municipal agency or department.

23 6. It allows a licensed on-premises retailer to deliver a serving or drinks containing
24 up to 4 1/2 ounces of spirits to a person at one time.

25 7. It clarifies the section of the bill that prohibits placing more than 5 signs
26 advertising the sale of liquor on the outside of any licensed retail premises. Under the
27 amendment, neither a sign in which the only reference to liquor is the name of the
28 licensed premises or an image accompanying the name of the licensed premises nor a
29 patio umbrella that bears the brand name or image of a liquor product and that is located
30 in the outside seating area of a licensed premises counts as one of the 5 permitted signs.

31 8. The bill authorizes a broker of spirits, which is defined as a person who represents
32 suppliers and manufacturers of spirits, to conduct up to 10 spirits taste-testing events per
33 year. The amendment further authorizes a supplier of spirits or a foreign manufacturer of
34 spirits, which is defined as a person who produces spirits outside of the State, to obtain a
35 license to conduct up to 10 taste-testing events per year.

36 9. It clarifies that revenue from the state tax on spirits must be transferred to the
37 Liquor Operation Revenue Fund established in Title 30-A, section 6054 and to the
38 General Fund.

39 **FISCAL NOTE REQUIRED**
40 (See attached)



129th MAINE LEGISLATURE

LD 1826

LR 2379(03)

An Act To Update the Laws Relating to Liquor Licensing and Enforcement

Fiscal Note for Bill as Amended by Committee Amendment "B" (S-294)
Committee: Veterans and Legal Affairs
Fiscal Note Required: Yes

Fiscal Note

Minor cost increase - General Fund

Fiscal Detail and Notes

Any additional costs to the Bureau of Alcoholic Beverages and Lottery Operations as a result of this legislation are anticipated to be minor and can be absorbed within existing budgeted resources.