

# MAINE STATE LEGISLATURE

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FIRST REGULAR SESSION

ONE HUNDRED AND NINTH LEGISLATURE

Legislative Document

No. 776

H. P. 608

House of Representatives, February 23, 1979

Referred to the Committee on Legal Affairs. Sent up for concurrence and ordered printed.

EDWIN H. PERT, Clerk

Presented by Mr. Violette of Van Buren.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED  
SEVENTY-NINE

AN ACT to Establish the Beer and Wine Franchising Act.

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

28 MRSA c. 16 is enacted to read:

CHAPTER 16

CERTIFICATE OF APPROVAL HOLDER

AND MAINE WHOLESALE LICENSEE AGREEMENT ACT

§ 665. Definitions

As used in this chapter, unless the context indicates otherwise, the following terms shall have the following meanings:

1. Agreement. "Agreement" shall mean a commercial relationship, not required to be evidenced in writing, of definite or indefinite duration, between a certificate of approval holder and a Maine wholesale licensee, pursuant to which the Maine wholesale licensee has been authorized to distribute one or more of the brewer's or winery's brands of beer, wine or beverages. The performing or accomplishment of any of the following acts shall constitute prima facie evidence of an "agreement" within the meaning of this definition:

**A. The shipment, preparation for shipment or acceptance of any order by any certificate of approval holder or its agents for any beer, wine or beverages to a Maine wholesale licensee within this State; and**

**B. The payment by a Maine wholesale licensee and the acceptance of payment by any certificate of approval holder or its agent or the shipment of an order for beer or beverages intended for sale in Maine.**

**2. Certificate of approval holder. "Certificate of approval holder" shall mean a brewery, winery, vintner, broker, importer or out-of-state wholesaler.**

**3. Commission. "Commission" shall mean the State Liquor Commission.**

**4. Maine wholesale licensee. "Maine wholesale licensee" shall mean any person holding a wholesale beer or wine license within this State, offering beer or wine for sale or resale to retailers without regard to whether the business of the person is conducted under the terms of an agreement with a certificate of approval holder.**

**5. Person. "Person" shall mean a natural person, corporation, partnership, trust agency or other entity as well as the individual officer, directors or persons in active control of the activities of that entity. "Person" also includes heirs, assigns, personal representatives and guardians.**

**6. Territory or sale territory. "Territory" or "sale territory" shall mean the area of primary sales responsibility expressly or impliedly designated by any agreement between a Maine wholesale licensee and a certificate of approval holder for the brand or label of a certificate of approval holder. The brands covered by this agreement shall be specifically identified in writing.**

**§ 666. No inducement or coercion**

**1. Certificate of approval holder. No certificate of approval holder shall:**

**A. Induce or coerce, or attempt to induce or coerce, any Maine wholesale licensee to accept delivery of any alcoholic beverage or any other commodity which shall not have been ordered by the wholesaler;**

**B. Induce or coerce, or attempt to induce or coerce, any Maine wholesale licensee to do any illegal act or thing by threatening to amend, cancel, terminate or refuse to renew any agreement existing between a certificate of approval holder and a wholesaler; or**

**C. Require a wholesaler to assent to any condition, stipulation or provision limiting the wholesaler in his right to sell the product of any other certificate of approval holder anywhere in the State, provided that the acquisition of the product of another certificate of approval holder does not materially impair the quality of service or quantity of sales of the existing brand or brands of the certificate of approval holder seeking to impose the condition, stipulation or provision.**

**§ 667. No dual distributorship**

No certificate of approval holder who designates a sales territory for which any wholesaler shall be primarily responsible shall enter into any agreement with any other wholesaler for the purpose of establishing an additional agreement for its brand or label in the same territory served by a wholesaler with that particular brand.

**§ 668. Cancellation**

1. Good cause. Notwithstanding the terms, provisions or conditions of any agreement, no certificate of approval holder shall amend, cancel, terminate or refuse to continue or renew any agreement, or cause a wholesaler to resign from an agreement, unless good cause can be established or proven for amendment, termination, cancellation, nonrenewal, noncontinuation or causing a resignation. "Good cause" shall not include the sale or purchase of a certificate of approval holder. "Good cause" shall include, but not be limited to, the following:

- A. Revocation of the wholesaler's license to do business in the State;
- B. Bankruptcy or insolvency of the wholesaler;
- C. Assignment for the benefit of creditors or similar disposition of the assets of the wholesaler; and
- D. Failure by the wholesaler to substantially comply, without reasonable excuse or justification, with any reasonable and material requirement imposed upon him by the certificate of approval holder.

**§ 669. Notice of intent to terminate**

1. Written notice. Prior to any termination procedure initiated by the certificate of approval holder, a wholesaler shall be informed in writing of any claimed deficiency existing in his territory and shall be given reasonable time to correct the claimed deficiency or deficiencies. After this reasonable time has elapsed, a certificate of approval holder shall provide a wholesaler at least 90 days prior written notice of any intent to amend, terminate, cancel or not renew any agreement. The notice shall state all the reasons for the intended amendment, termination, cancellation or nonrenewal. The notice provisions of this section shall not apply if the reason for the amendment, termination, cancellation or renewal is:

- A. The bankruptcy or insolvency of the wholesaler;
- B. An assignment for the benefit of creditors or similar disposition of the assets of the business;
- C. Revocation of the wholesaler's license; or
- D. Conviction or a plea of guilty or no contest to a charge of violating a law relating to the business that materially affects the wholesaler's ability to remain in business.

**§ 670. Assignment, transfer or sale of business**

No certificate of approval holder shall unreasonably withhold consent to any assignment, transfer or sale of the wholesaler's business whenever the wholesaler to be substituted meets the material and reasonable qualifications and standards required of its wholesalers.

**§ 671. Compensation**

1. Reasonable compensation. Any certificate of approval holder which amends, cancels, terminates or refuses to continue or renew any agreement, or causes a wholesaler to resign, unless for good cause shown, as defined in section 668, from an agreement or unreasonably withholds consent to any assignment, transfer or sale of a wholesaler's business, shall pay the wholesaler reasonable compensation for the value of the wholesaler's business with relationship to the terminated brand or brands. The value of the wholesaler's business shall include inventory and other tangible assets and its good will, if any.

2. Neutral arbitrator. In the event that the certificate of approval holder and the wholesaler are unable to mutually agree on the reasonable compensation to be paid for the value of the wholesaler's business, as defined herein, the matter shall be submitted to a neutral arbitrator to be selected by the parties, or if they cannot agree, by the Chief Justice of the Supreme Judicial Court. All of the costs of the arbitration shall be paid 1/2 by the wholesaler and 1/2 by the certificate of approval holder or otherwise the arbitration proceeding shall be governed by the Maine Uniform Arbitration Act.

**§ 672. Judicial Remedies**

If a certificate of approval holder engages in conduct prohibited under this chapter a wholesaler may maintain a suit against the certificate of approval holder. The court may grant equitable relief as is necessary to remedy the effects of conduct which it finds to exist and which is prohibited under this chapter, including, but not limited to, declaratory judgment and injunctive relief. The court may, if it finds that the certificate of approval holder has acted in bad faith in invoking the amendment, termination, cancellation or nonrenewal provisions of this chapter or has unreasonably withheld its consent to any assignment, transfer or sale of the wholesaler's agreement, award punitive damages, as well as actual damages, costs and attorneys fees.

**§ 673. Price of product**

No certificate of approval holder, whether by means of a term or condition of an agreement or otherwise, shall fix or maintain the price at which the wholesaler shall sell any product.

**§ 674. Retaliatory action prohibited**

A certificate of approval holder shall not take retaliatory action against a wholesaler who files or manifests an intention to file a complaint of alleged

violation of state or federal law or regulation by the certificate of approval holder with the appropriate state or federal regulatory authority. Retalitory action shall include, but shall not be limited to, refusal without good cause to continue the agreement, or a material reduction in the quality of service or quantity of products available to the wholesaler under the agreement.

**§ 675. Management**

No certificate of approval holder shall require or prohibit any change in management or personnel of any wholesaler unless the current or potential management or personnel fails to meet reasonable qualifications and standards required by the certificate of approval holder.

**§ 676. No waiver**

No certificate of approval holder shall require any wholesaler to waive compliance with any provisions of this chapter. Nothing in this chapter shall be construed to limit or prohibit good faith settlements of disputes voluntarily entered into between the parties.

**§ 677. Sale of certificate of approval holder**

The purchaser of a certificate of approval holder, as defined in this chapter, shall become obligated to all of the terms and conditions of the agreement in effect on the date of purchase. "Purchase," as defined for the purposes of this chapter, shall include, but shall not be limited to, the sale of stock, sale of assets, merger, lease, transfer or consolidation.

**§ 678. Coverage**

The provisions of this chapter shall cover agreements in existence on the effective date of this chapter, as well as agreements entered into after the effective date of this chapter.

**§ 679. Right of free association**

No certificate of approval holder or wholesaler shall restrict or inhibit, directly or indirectly, the right of free association of certificate of approval holders or wholesalers for any lawful purpose.

**STATEMENT OF FACT**

The purpose of this bill is to set forth the law regulating agreements between a certificate of approval holder and a Maine wholesale licensee. The law is necessary because of the unequal bargaining power of the certificate of approval holder as compared to the wholesale licensee.