

MAINE STATE LEGISLATURE

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126th MAINE LEGISLATURE

FIRST REGULAR SESSION-2013

Legislative Document

No. 1258

H.P. 892

House of Representatives, March 27, 2013

**An Act To Amend the Laws Governing the Relationship between
Alcoholic Beverage Wholesalers and Certificate of Approval
Holders**

Reference to the Committee on Veterans and Legal Affairs suggested and ordered printed.

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

Presented by Representative CAREY of Lewiston.
Cosponsored by Senator MASON of Androscoggin and
Representatives: BEAULIEU of Auburn, CLARK of Easton, RUSSELL of Portland,
SAUCIER of Presque Isle, WILLETTE of Mapleton, Senators: CLEVELAND of
Androscoggin, PATRICK of Oxford, TUTTLE of York.

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

2 **Sec. 1. 28-A MRSA §1452**, as enacted by PL 1987, c. 45, Pt. A, §4, is amended to
3 read:

4 **§1452. No inducement or coercion**

5 **1. Certificate of approval holder.** ~~No~~ A certificate of approval holder may not:

6 A. Induce or coerce, or attempt to induce or coerce, any wholesale licensee to accept
7 delivery of any liquor or any other commodity ~~which~~ that has not been ordered by the
8 wholesale licensee;

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

13 C. Require a wholesale licensee to assent to any condition, stipulation or provision
14 limiting the wholesale licensee in ~~his~~ the licensee's right to sell the product of any
15 other certificate of approval holder anywhere in the State if the acquisition of the
16 product of another certificate of approval holder does not materially impair the
17 quality of service or quantity of sales of the existing brand or brands of the certificate
18 of approval holder seeking to impose the condition, stipulation or provision;

19 D. Require that any dispute arising out of any agreement with a wholesale licensee
20 be determined by the application of the laws of another jurisdiction or a federal court
21 sitting in another state; or

22 E. Require that the wholesale licensee waive or otherwise agree to not enforce any
23 provision in this chapter.

24 **Sec. 2. 28-A MRSA §1454, sub-§1**, as enacted by PL 1987, c. 45, Pt. A, §4, is
25 amended to read:

26 **1. Good cause.** Notwithstanding the terms, provisions or conditions of any
27 agreement, ~~no~~ a certificate of approval holder may not amend, cancel, terminate or refuse
28 to continue or renew any agreement, or cause a wholesale licensee to resign from an
29 agreement, unless good cause can be established or proven for amendment, termination,
30 cancellation, nonrenewal, noncontinuation or causing a resignation. "Good cause" does
31 not include the sale or purchase of a certificate of approval holder. "Good cause"
32 includes, but is not limited to, the following:

33 A. Revocation of the wholesale licensee's license to do business in the State;

34 B. Bankruptcy or insolvency of the wholesale licensee;

35 C. Assignment for the benefit of creditors or similar disposition of the assets of the
36 wholesale licensee; and

37 D. Failure by the wholesale licensee to substantially comply, without reasonable
38 excuse or justification, with any reasonable and material requirement imposed upon
39 ~~him~~ the licensee by the certificate of approval holder.

1 The burden is on the certificate of approval holder to establish good cause under this
2 subsection.

3 **Sec. 3. 28-A MRSA §1455, sub-§1**, as enacted by PL 1987, c. 45, Pt. A, §4, is
4 amended to read:

5 **1. Written notice.** Before any termination procedure initiated by the certificate of
6 approval holder, the certificate of approval holder shall give the wholesale licensee
7 written notice of any claimed deficiency existing in ~~his~~ the licensee's territory and shall
8 give the wholesale licensee reasonable time to correct the claimed deficiency or
9 deficiencies. If a claimed deficiency subject to a notice under this section is corrected
10 within the reasonable period of time given by the notice to the wholesale licensee, the
11 certificate of approval holder may not terminate an agreement with the wholesale licensee
12 based upon that deficiency. After this reasonable time has elapsed and the deficiency has
13 not been corrected, the certificate of approval holder shall provide the wholesale licensee
14 at least 90 days prior written notice of any intent to amend, terminate, cancel or not renew
15 any agreement. The notice must state all the reasons for the intended amendment,
16 termination, cancellation or nonrenewal. The notice provisions of this section do not
17 apply if the reason for the amendment, termination, cancellation or nonrenewal is:

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

25 **Sec. 4. 28-A MRSA §1456**, as enacted by PL 1987, c. 45, Pt. A, §4, is amended to
26 read:

27 **§1456. Assignment, transfer, merger or sale of business**

28 ~~No~~ A certificate of approval holder may not unreasonably withhold consent to or
29 interfere with any assignment, transfer, merger or sale of the wholesale licensee's
30 business ~~whenever~~ if the wholesale licensee to be substituted meets the material and
31 reasonable qualifications and standards required of ~~its~~ the certificate of approval holder's
32 wholesale licensees.

33 **Sec. 5. 28-A MRSA §1457**, as enacted by PL 1987, c. 45, Pt. A, §4, is amended to
34 read:

35 **§1457. Compensation**

36 **1. Reasonable compensation.** ~~Any~~ A certificate of approval holder ~~which~~ that
37 amends, cancels, terminates or refuses to continue or renew any agreement, or causes a
38 wholesale licensee to resign, unless for good cause shown, as defined in section 1454,
39 from an agreement or unreasonably withholds consent to any assignment, transfer,

1 merger or sale of a wholesale licensee's business, shall pay the wholesale licensee
2 reasonable compensation for damages to the value of the wholesale licensee's business
3 related to the terminated, including a diminishment in the overall business, as a result of
4 the termination of a brand or brands under this subsection, including damages resulting
5 from the certificate of approval holder's notice or publication of intent to assign, transfer
6 or sell a brand. The value of the wholesale licensee's business includes inventory and
7 other tangible assets and its good will.

8 **2. Neutral arbitrator.** If the certificate of approval holder and the wholesale
9 licensee are unable to agree on the reasonable compensation to be paid for the value of
10 the wholesale licensee's business, as defined in subsection 1, they shall submit the matter
11 to a neutral arbitrator selected by the parties, or, if they cannot agree, by the Chief Justice
12 of the Supreme Judicial Court. The costs of the arbitration ~~shall~~ **must** be paid 1/2 by the
13 wholesale licensee and 1/2 by the certificate of approval holder or otherwise the
14 arbitration proceeding ~~shall be~~ **is** governed by the ~~Maine~~ Uniform Arbitration Act.

15 **3. Compensation must be agreed upon.** Unless both parties consent, a certificate
16 of approval holder may not amend, cancel, terminate or refuse to continue or renew any
17 agreement, or cause a wholesale licensee to resign, until all issues of compensation under
18 this section have been determined and the affected wholesale licensee is compensated.

19 **4. Wholesale licensee to serve territory.** Unless both parties consent, a wholesale
20 licensee shall continue to serve a territory exclusively subject to an agreement in dispute
21 under this section until the dispute is finally resolved under this section or section 1458.

22 **5. Discontinuation of brand from territory.** The provisions of this section do not
23 preclude a certificate of approval holder from discontinuing a brand from a territory if
24 that brand is not sold in the territory for a period of at least 5 years after the brand is
25 discontinued.

26 **Sec. 6. 28-A MRS §1458, sub-§2,** as enacted by PL 1987, c. 45, Pt. A, §4, is
27 amended to read:

28 **2. Equitable relief.** The court may grant equitable relief necessary to remedy the
29 effects of conduct ~~which it~~ that the court finds to exist and ~~which~~ is prohibited under this
30 chapter, including, but not limited to, declaratory judgment and injunctive relief. An
31 injunction under this subsection concerning section 1457 may not be issued if a brand that
32 is subject to the dispute represents 5% or less of the distributor's gross revenue.

33 SUMMARY

34 This bill amends the liquor laws as they pertain to agreements between certificate of
35 approval holders and wholesale licensees by adding prohibited coercive actions by
36 certificate of approval holders and amending the laws surrounding the sale of a wholesale
37 licensee's business, the termination of an agreement by a certificate of approval holder,
38 compensation to a wholesale licensee for damages from an unlawful action by a
39 certificate of approval holder and the injunctive relief provisions.