

MAINE STATE LEGISLATURE

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128th MAINE LEGISLATURE

FIRST REGULAR SESSION-2017

Legislative Document

No. 1525

H.P. 1049

House of Representatives, April 25, 2017

An Act To Clarify the Laws Governing Alcohol Manufacturer Licenses

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

A handwritten signature in cursive script that reads "R B. Hunt".

ROBERT B. HUNT
Clerk

Presented by Representative LUCHINI of Ellsworth.
Cosponsored by Senator SAVIELLO of Franklin and
Representatives: Speaker GIDEON of Freeport, GUERIN of Glenburn, HUBBELL of Bar
Harbor, PIERCE of Falmouth, SANBORN of Portland.

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

2 **Sec. 1. 28-A MRSA §1355-A, sub-§2**, as amended by PL 2015, c. 74, §6 and c.
3 166, §3, is further amended to read:

4 **2. Manufacturers.** The following provisions apply to brewery, small brewery,
5 winery, small winery, distillery and small distillery licensees.

6 A. A licensee may permit sampling of the liquor product on the premises:

7 (1) By employees for the purpose of quality control of the product;

8 (2) By wholesalers for the purpose of determining whether to carry the product as
9 a wholesale product if the holder of the license pays the excise tax on the product
10 sampled according to section 1652; and

11 (3) By the public, as provided under paragraph B, if the holder of the license
12 pays the excise tax on the product sampled according to section 1652.

13 B. A licensee under this section may serve to the public ~~complimentary~~ samples of
14 liquor produced by the licensee at the licensed premises ~~where liquor is produced by~~
15 ~~the licensee~~ if the municipality in which the licensed premises is located has
16 authorized the sale of liquor under chapter 5.

17 (1) Samples may be served only at the licensed premises and only during regular
18 business hours.

19 (2) Samples, including complimentary samples, may be served for a charge, as
20 determined by the licensee, subject to the sales tax on liquor under Title 36,
21 section 1811. A licensee shall maintain a record of liquor samples subject to a
22 charge and maintain those records for a period of 2 years.

23 C. A licensee under this section may sell to nonlicensees during ~~regular business the~~
24 hours of legal sale from the licensed premises where liquor is produced by the
25 licensee liquor produced by the bottle or can, by the keg, by the case or in bulk for
26 consumption off the licensed premises. The volume of a keg sold in accordance with
27 this paragraph may not exceed 15.5 gallons. A container sold in accordance with this
28 paragraph must comply with all labeling requirements. Spirits sold by distillers and
29 small distillers in accordance with this paragraph ~~must be first sold to the State,~~
30 ~~subject to the listing, pricing and distribution provisions of this Title~~ are subject to the
31 requirements under subsection 5, paragraph D. Each licensee shall submit a monthly
32 report to its wholesaler detailing sales made directly from the premises. When
33 applicable, the wholesaler shall calculate the fees for any bottle deposit and submit an
34 invoice to the licensee for expenses associated with the requirements prescribed in
35 Title 38, chapter 33, including the retailer handling fee, the state container deposit
36 and a mutually agreed-upon pick-up fee.

37 ~~D. A licensee under this section may sell from the licensed premises where liquor is~~
38 ~~produced by the licensee liquor produced by the licensee for consumption off the~~
39 ~~licensed premises.~~

40 ~~E. A licensee may serve complimentary samples of liquor on Sunday after the hour~~
41 ~~of 5 a.m. and may sell liquor on Sunday after the hour of 5 a.m. if the municipality in~~

1 which the licensed premises is located has authorized the sale of liquor on Sunday for
2 consumption off the premises under chapter 5.

3 ~~F. A licensee may charge for samples or shall otherwise comply with the conditions~~
4 ~~in paragraph E. Each sample poured is subject to a charge in an amount determined~~
5 ~~by the licensee and is subject to the sales tax on liquor under Title 36, section 1811.~~
6 ~~A licensee shall maintain a record of liquor samples subject to a charge and maintain~~
7 ~~those records for a period of 2 years.~~

8 ~~G. A licensee that is a brewery or small brewery may sell on the premises during~~
9 ~~regular business hours and within the hours of legal sale to nonlicensees liquor~~
10 ~~produced at the licensed premises. The volume of the package may not exceed 15.5~~
11 ~~gallons and must be consumed off the premises. The sale of packages described in~~
12 ~~this paragraph must comply with keg tagging requirements provided in section 714.~~
13 ~~Each licensee shall submit a monthly report to its wholesaler detailing sales made~~
14 ~~directly from the premises. The wholesaler shall calculate the fees for any bottle~~
15 ~~deposit and submit an invoice to the licensee for expenses associated with the~~
16 ~~requirements prescribed in Title 38, chapter 33 including the retailer handling fee,~~
17 ~~state container deposit and a mutually agreed upon pick up fee.~~

18 ~~H. A small winery or small brewery licensee shall keep and maintain complete~~
19 ~~records on all sales to a retail licensee.~~

20 ~~I. A licensee may be issued one retail license under chapter 43 per licensed location~~
21 ~~for the sale of liquor to be consumed on the premises at the retail premises.~~

22 ~~(1) The retail license must be held exclusively by the holder of the brewery,~~
23 ~~small brewery, winery, small winery, distillery or small distillery license.~~

24 ~~(2) The retail license authorizes the sale of products of the brewery, small~~
25 ~~brewery, winery, small winery, distillery or small distillery, in addition to other~~
26 ~~liquor permitted to be sold under the retail license, to be consumed on the~~
27 ~~premises.~~

28 ~~(3) All records related to activities under a manufacturer license issued under~~
29 ~~this section must be kept separate from records related to the retail license.~~

30 ~~(4) A distillery or small distillery must meet the requirements of subsection 5,~~
31 ~~paragraph E.~~

32 J. A licensee may display up to 25 bottles of liquor produced by the licensee in a
33 window of the location under paragraph ~~D~~ C where liquor is sold for consumption
34 off the licensed premises. Locations licensed under subsection 4, paragraph B,
35 subparagraph (2) or subsection 5, paragraph B, subparagraph (3) may also display up
36 to 25 bottles of liquor produced by the licensee.

37 **Sec. 2. 28-A MRSA §1355-A, sub-§3, ¶B**, as enacted by PL 2011, c. 629, §22,
38 is amended to read:

39 B. A holder of a small brewery license may produce not more than 50,000 gallons of
40 malt liquor per year.

1 (1) Upon application by a holder of a small brewery license whose brewery has
2 produced malt liquor in an amount that exceeds 50,000 gallons in one year, the
3 bureau may renew that holder's small brewery license for only one additional
4 year.

5 (2) A holder of a small brewery license may sell or deliver its products to
6 licensed retailers or wholesalers. The licensee may sell, on the premises for
7 consumption off the premises, malt liquor produced at the licensed premises by
8 the bottle, by the case or in bulk to licensed retailers, including, but not limited
9 to, off-premises retail licensees, restaurants and clubs. Notwithstanding section
10 1361, the holder of a small brewery license may sell its products directly to a
11 retail licensee under this paragraph without selling to a wholesale licensee. A
12 small brewery licensee shall keep and maintain complete records on all sales to a
13 retail licensee.

14 **Sec. 3. 28-A MRSA §1355-A, sub-§3, ¶C**, as amended by PL 2015, c. 166, §4,
15 is repealed.

16 **Sec. 4. 28-A MRSA §1355-A, sub-§4, ¶B**, as enacted by PL 2011, c. 629, §22,
17 is amended to read:

18 B. A holder of a small winery license may produce not more than 50,000 gallons per
19 year of wines, sparkling wines and fortified wines.

20 (1) A holder of a small winery license may sell or deliver its products to licensed
21 retailers or wholesalers. The licensee may sell, on the premises for consumption
22 off the premises, wine produced at the licensed premises by the bottle, by the
23 case or in bulk to licensed retailers, including, but not limited to, off-premises
24 retail licensees, restaurants and clubs. Notwithstanding section 1361, the licensee
25 may sell its products directly to a retail licensee under this paragraph without
26 selling to a wholesale licensee. A small winery licensee shall keep and maintain
27 complete records on all sales to a retail licensee.

28 (2) A holder of a small winery license, upon application to and approval of the
29 bureau and payment of the license fees, may obtain licenses for off-premises
30 consumption for up to 2 additional locations other than the location of the in-state
31 manufacturer licensed under this section. The holder of the licenses is not
32 required to conduct any bottling or production at the additional licensed locations
33 but may conduct all activities permitted by this section at the additional licensed
34 locations.

35 **Sec. 5. 28-A MRSA §1355-A, sub-§5, ¶E**, as enacted by PL 2011, c. 629, §22,
36 is repealed.

37 **Sec. 6. 28-A MRSA §1355-A, sub-§5, ¶H**, as enacted by PL 2015, c. 440, §2, is
38 amended to read:

39 H. Notwithstanding paragraph D, a holder of a small distillery license licensed under
40 ~~paragraph E subsection 5-A~~ to operate a location licensed under chapter 43 for
41 on-premises consumption may pay the bureau the difference between the distillery's
42 price charged to the bureau and the discounted list price charged by the bureau when

1 a distillery purchases its own spirits to be sold at its on-premises location. A small
2 distillery is not required to transport spirits that will be sold for on-premises
3 consumption under ~~paragraph E~~ subsection 5-A to a warehouse operated by the
4 bureau or by a wholesaler contracted by the bureau under section 90 for distribution
5 to the location where the small distillery is authorized to sell spirits produced by the
6 small distillery for on-premises consumption. A holder of a small distillery license
7 shall record the quantity of spirits sold for on-premises consumption that were not
8 transported to a warehouse as described in this paragraph and submit monthly reports
9 of this information, along with the full amount of state liquor tax due as prescribed by
10 chapter 65, to the bureau in a manner prescribed by the bureau.

11 **Sec. 7. 28-A MRSA §1355-A, sub-§5-A** is enacted to read:

12 **5-A. One on-premises retail license per licensed location.** A brewery, small
13 brewery, winery or small winery licensed under this section may be issued one retail
14 license under chapter 43 per licensed location for the sale of liquor to be consumed on the
15 premises at the retail premises. A holder of a distillery or small distillery license may be
16 issued one license under chapter 43 per distillery location for a connected establishment
17 for the sale of liquor to be consumed on the premises at the distillery. For the purposes of
18 this paragraph, "connected establishment" as it applies to distilleries and small distilleries
19 means a Class A restaurant or a Class A restaurant/lounge.

20 A. The retail license must be held exclusively by the holder of the brewery, small
21 brewery, winery, small winery, distillery or small distillery license.

22 B. The retail license authorizes the sale of products of the brewery, small brewery,
23 winery, small winery, distillery or small distillery, in addition to other liquor
24 permitted to be sold under the retail license, to be consumed on the premises.

25 C. All records related to activities under a manufacturer license issued under this
26 section must be kept separate from records related to the retail license.

27 D. Notwithstanding any other provision of this Title, a brewery or small brewery
28 licensed in accordance with this section may sell from the establishment at the site of
29 the brewery licensed for the sale of alcoholic beverages to be consumed on the
30 premises malt liquor to be consumed off the premises under the conditions specified
31 in this paragraph.

32 (1) Only malt liquor brewed at the brewery where the establishment licensed for
33 on-premises consumption is licensed may be sold at that establishment.

34 (2) Malt liquor must be dispensed in bottles provided by and with labels unique
35 to the brewery of 32 to 64 ounces in volume.

36 (3) No more than 6 bottles may be prefilled at any one time.

37 (4) A deposit may be charged per bottle. Bottles sold under this paragraph are
38 not subject to Title 38, chapter 33.

39 (5) The bottle in which the malt liquor is dispensed must be sealed by the
40 licensee with a seal that is tamper-evident.

1 (6) Malt liquor dispensed in accordance with this paragraph must be consumed
2 off the premises.

3 (7) A sale of malt liquor for off-premises consumption from the establishment
4 licensed for on-premises consumption must be accompanied by a sales receipt
5 with a time stamp that indicates time of purchase.

6 (8) A sale of malt liquor for off-premises consumption from the establishment
7 licensed for on-premises consumption may not be made after 10:00 p.m.

8 The bureau may adopt rules to enforce this paragraph. Rules adopted in accordance with
9 this paragraph are routine technical rules in accordance with Title 5, chapter 375,
10 subchapter 2-A.

11 **SUMMARY**

12 This bill removes duplicative language regarding samples provided to the public by
13 manufacturers licensed to produce wine, malt liquor and spirits in the State. The bill
14 consolidates into one paragraph the provisions that govern the sale of a manufacturer's
15 product for off-premises consumption to nonlicensees from the licensed manufacturer's
16 facility. It also repeals and replaces in a separate subsection the provisions governing the
17 authorization of a licensed manufacturer in the State to have a retail establishment
18 licensed for the sale of liquor to be consumed on the premises, issued in accordance with
19 the Maine Revised Statutes, Title 28-A, chapter 43.