

MAINE STATE LEGISLATURE

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130th MAINE LEGISLATURE

FIRST REGULAR SESSION-2021

Legislative Document

No. 205

S.P. 94

In Senate, January 27, 2021

**An Act To Extend the Ability of Restaurants and Bars To Serve
Alcohol To Go**

(EMERGENCY)

Received by the Secretary of the Senate on January 25, 2021. Referred to the Committee on Veterans and Legal Affairs pursuant to Joint Rule 308.2 and ordered printed.

A handwritten signature in black ink, appearing to read 'D M Grant'.

DAREK M. GRANT
Secretary of the Senate

Presented by Senator LUCHINI of Hancock.
Cosponsored by Speaker FECTEAU of Biddeford.

1 **Emergency preamble.** Whereas, acts and resolves of the Legislature do not
2 become effective until 90 days after adjournment unless enacted as emergencies; and

3 **Whereas,** the spread of the novel coronavirus disease referred to as COVID-19 has
4 created a public health emergency; and

5 **Whereas,** in response to this public health emergency, the Governor issued an
6 executive order on March 18, 2020 requiring all restaurants and bars, including tasting
7 rooms, to close their dine-in facilities but permitting restaurants and bars to offer carry-out,
8 delivery and drive-through food and beverage services, including carry-out, delivery and
9 drive-through liquor sales; and

10 **Whereas,** although restaurants across the State were permitted to reopen June 17,
11 2020, restaurants are required to limit indoor seating capacity to prevent spread of the virus
12 while the reopening of bars and tasting rooms has been postponed until further notice; and

13 **Whereas,** it is impossible to ascertain when the current public health emergency will
14 abate, rendering the economic survival of restaurants, bars and tasting rooms dependent on
15 their continued ability to provide carry-out, delivery and drive-through food and beverage
16 services, including carry-out, delivery and drive-through liquor sales; and

17 **Whereas,** in the judgment of the Legislature, these facts create an emergency within
18 the meaning of the Constitution of Maine and require the following legislation as
19 immediately necessary for the preservation of the public peace, health and safety; now,
20 therefore,

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

22 **Sec. 1. 28-A MRSA §1056** is enacted to read:

23 **§1056. Authorized take-out and delivery sales of liquor by qualified on-premises**
24 **retailers; repeal**

25 **1. Definitions.** As used in this section, unless the context otherwise indicates, the
26 following terms have the following meanings.

27 A. "Approved cocktail" means a beverage prepared by combining liquor with liquors
28 or a nonalcoholic liquid or liquids and that:

29 (1) Is prepared on the day of sale by an employee of a qualified on-premises
30 retailer who is at least 17 years of age;

31 (2) Contains no more than 4 1/2 ounces of spirits; and

32 (3) Is sealed in an approved container.

33 B. "Approved container" means a tamper-evident container that:

34 (1) Does not contain openings or straw holes;

35 (2) Is sealed in a manner prescribed by the bureau by rule that makes opening the
36 container or tampering with the contents of the container easily detectable; and

37 (3) Has an affixed label that identifies the qualified on-premises retailer that
38 prepared and sold the approved cocktail and that meets any additional requirements
39 established by the bureau by rule.

1 C. "Original container" means, with respect to a wine or malt liquor product, the
2 container in which the wine or malt liquor product was sealed when the qualified on-
3 premises retailer obtained the wine or malt liquor product from an in-state
4 manufacturer or a wholesale licensee.

5 D. "Qualified on-premises retailer" means an establishment that has notified the bureau
6 in accordance with subsection 2 of its intention to sell spirits, wine or malt liquor for
7 off-premises consumption and:

8 (1) That possesses a license to sell spirits, wine or malt liquor for on-premises
9 consumption under this chapter if the license is within the category of licenses
10 under which the bureau has authorized, by rule, the sale of liquor for off-premises
11 consumption in accordance with the conditions set forth in this section; or

12 (2) That does not possess a license under this chapter but is licensed as a distillery
13 or small distillery under section 1355-A and serves samples of its products to the
14 public for on-premises consumption or sells its products to the public for off-
15 premises consumption as authorized by section 1355-A, subsection 2.

16 **2. Authorized take-out and delivery sales of liquor for off-premises consumption.**

17 Notwithstanding any provision of law to the contrary, a qualified on-premises retailer may
18 sell liquor for off-premises consumption only under the following conditions.

19 A. Prior to engaging in sales of liquor for off-premises consumption, a qualified on-
20 premises retailer shall notify the bureau of its intention to sell liquor for off-premises
21 consumption on a form prepared and approved by the bureau.

22 B. A qualified on-premises retailer may sell for off-premises consumption only the
23 type or types of liquor that it is authorized to sell for on-premises consumption pursuant
24 to its license issued under this chapter or to its distillery or small distillery license issued
25 under section 1355-A. A qualified on-premises retailer authorized to sell wine may
26 sell wine for off-premises consumption only in an original container. A qualified on-
27 premises retailer authorized to sell malt liquor may sell malt liquor for off-premises
28 consumption only in an original container. A qualified on-premises retailer authorized
29 to sell spirits may sell spirits for off-premises consumption only as an ingredient of an
30 approved cocktail.

31 This paragraph does not prohibit a qualified on-premises retailer that meets the
32 requirements of subsection 1, paragraph D, subparagraph (2) from selling spirits for
33 off-premises consumption pursuant to its authority under section 1355-A, subsection
34 2.

35 C. Liquor sold for off-premises consumption must be accompanied by a food order
36 and a sales receipt with a time stamp that indicates the time of purchase. This paragraph
37 does not apply to liquor sold by a qualified on-premises retailer that meets the
38 requirements of subsection 1, paragraph D, subparagraph (2).

39 D. Liquor sold for off-premises consumption may not be delivered to a minor or to a
40 visibly intoxicated person.

41 E. Liquor sold for off-premises consumption must be delivered with the accompanying
42 food order to a customer on the premises or to a customer at a remote location. Delivery
43 to a customer at a remote location must be made by a person who is at least 21 years
44 of age.

1 **3. Rulemaking.** The bureau shall adopt rules to carry out the purposes of this section,
2 which must include, but are not limited to, rules:

3 A. Identifying the categories of on-premises retailers licensed under this chapter that
4 consistent with the purposes of this section and after consideration of the types of food
5 sold under each category of license, may sell liquor for off-premises consumption
6 under this section;

7 B. Defining the type of food order that must accompany a sale of liquor for off-
8 premises consumption by a qualified on-premises retailer as required by subsection 2,
9 paragraph C; and

10 C. Establishing requirements for the sealing and labeling of approved containers by
11 qualified on-premises retailers.

12 Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5,
13 chapter 375, subchapter 2-A.

14 **4. Repeal.** This section is repealed April 15, 2022.

15 **Emergency clause.** In view of the emergency cited in the preamble, this legislation
16 takes effect when approved.

17 SUMMARY

18 This bill temporarily permits, until April 15, 2022, certain categories of on-premises
19 retailers to sell liquor to customers through take-out and delivery service if the liquor is
20 accompanied by a food order. The bill also temporarily permits licensed Maine distilleries
21 and small distilleries that operate tasting rooms but that do not operate licensed on-premises
22 retail establishments to sell spirits through take-out and delivery service unaccompanied
23 by a food order.

24 Wine and malt liquor may be sold for off-premises consumption only in an original
25 container. Spirits may be sold for off-premises consumption only as an ingredient of an
26 approved cocktail, which must be sealed in a tamper-evident container bearing a label
27 identifying the vendor. A person who delivers wine, malt liquor or approved cocktails to
28 a customer by motor vehicle must be at least 21 years of age.

29 The bill directs the Department of Administrative and Financial Services, Bureau of
30 Alcoholic Beverages and Lottery Operations to adopt rules governing the categories of on-
31 premises retailers that may engage in liquor take-out and delivery services, the type of food
32 order that must accompany a take-out or delivery sale of liquor and the requirements for
33 sealing and labeling the tamper-evident containers in which approved cocktails must be
34 sold.