

# MAINE STATE LEGISLATURE

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L.D. 1358

Date: 3/16/22

(Filing No. S-442)

**REPORT B**  
**VETERANS AND LEGAL AFFAIRS**

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**STATE OF MAINE**  
**SENATE**  
**130TH LEGISLATURE**  
**SECOND REGULAR SESSION**

COMMITTEE AMENDMENT "B" to S.P. 444, L.D. 1358, "An Act To Provide for the Direct Shipment of Spirits to Consumers"

Amend the bill by striking out all of section 2 and inserting the following:

'Sec. 2. 28-A MRSA §1382 is enacted to read:

**§1382. Direct shipment of spirits**

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

- A. "Case equivalent" means a volume equivalent to 9 liters.
- B. "Direct shipper" means a distillery, small distillery or rectifier licensed under subsection 2 that holds a current manufacturer license under section 1355-A or, for a distillery, small distillery or rectifier outside the State, a current manufacturer license from that state, territory or possession of the United States.
- C. "Direct shipper discount rate" means the percentage discount off the retail price established in section 606, subsection 4-B for a small distillery licensed under section 1355-A that retains its products for sale to consumers under section 1355-A, subsection 5, paragraph G or H.
- D. "Outside the State" means in any other state or territory or possession of the United States but does not include a foreign country.

**2. Direct shipment of spirits; licensure.** A direct shipper may ship spirits within the State subject to the licensure requirements of this section. A distillery, small distillery or rectifier that holds a federal basic spirits manufacturing permit may obtain an annual spirits direct shipper license by filing with the bureau an application in a form determined by the bureau accompanied by an application fee of not more than \$200 and a copy of the applicant's current federal basic spirits manufacturing permit.

**3. Direct shipper application.** Before sending a shipment to a customer in this State, a direct shipper must file an application for a spirits direct shipper license under subsection

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1 2 with the bureau on a form issued by the bureau along with a true copy of its current  
2 manufacturer license under section 1355-A or issued outside the State and a \$100  
3 registration fee.

4 **4. Direct shipment of spirits; requirements.** A direct shipper licensed under  
5 subsection 2 may ship spirits directly to a customer in the State only under the following  
6 conditions.

7 A. A direct shipper that is licensed under section 1355-A may ship directly to a  
8 customer in the State only a spirits product produced by the direct shipper in  
9 accordance with the direct shipper's federal basic spirits manufacturing permit that is  
10 currently listed for sale in the State under section 81, subsection 3. A spirits product  
11 shipped directly to a customer in the State under this paragraph must be sold at the  
12 retail price established by the commission under section 1651, subsection 1. For each  
13 spirits product shipped directly to a customer in the State under this paragraph, the  
14 direct shipper shall pay to the bureau the difference between the direct shipper's price  
15 charged to the bureau for the spirits product and an amount that is equal to the retail  
16 price of the spirits product multiplied by the direct shipper discount rate.

17 B. A direct shipper that does not have a license under section 1355-A may ship directly  
18 to a customer in the State only a spirits product produced by the direct shipper in  
19 accordance with the direct shipper's federal basic spirits manufacturing permit that is  
20 not currently listed for sale in the State under section 81, subsection 3 and may ship no  
21 more than an aggregate of 200 case equivalents of spirits directly to customers in the  
22 State per calendar year. A spirits product shipped directly to a customer in the State  
23 under this paragraph must be sold at a price that is calculated pursuant to any rules  
24 adopted by the bureau governing the retail price of spirits and any retail pricing formula  
25 employed by the bureau to make recommendations to the commission regarding the  
26 retail prices of spirits in the State. For each spirits product shipped directly to a  
27 customer in the State under this paragraph, the direct shipper shall pay to the bureau  
28 the difference between the average price the direct shipper charges wholesalers that  
29 purchase the spirits product in the state in which the spirits product was produced and  
30 an amount that is equal to the retail price established under this paragraph multiplied  
31 by the direct shipper discount rate.

32 C. A direct shipper may ship spirits to a recipient only for personal use and not for  
33 resale.

34 D. A direct shipper shall label each package to be shipped in accordance with this  
35 section so that it conspicuously reads: "CONTAINS ALCOHOL: SIGNATURE OF A  
36 PERSON 21 YEARS OF AGE OR OLDER IS REQUIRED FOR DELIVERY."

37 **5. Common carrier.** Shipments made in accordance with this section must be made  
38 by a common carrier and must be accompanied by a shipping label that clearly indicates  
39 the name of the direct shipper and the name and address of the recipient. The common  
40 carrier shall obtain the signature of a person 21 years of age or older at the address listed  
41 on the shipping label prior to delivery of the shipment. The common carrier shall request  
42 photographic identification from the person signing for the shipment and verify that the  
43 person is 21 years of age or older. The common carrier shall retain a record of each  
44 shipment made under this section for a period of 2 years and shall furnish those records to  
45 the bureau upon request.

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1 6. **Bottle size and case limit.** A direct shipper may not ship a container of spirits of  
2 less than 700 milliliters and may ship no more than 4 case equivalents to any one recipient  
3 address in a calendar year.

4 7. **Prohibited shipping areas.** A direct shipper may not ship to any address identified  
5 by the bureau as within a prohibited shipping area or a municipality that has voted in any  
6 particular local option election against the sale of all types of liquor.

7 8. **License renewal.** A direct shipper may annually renew its spirits direct shipper  
8 license with the bureau by paying a \$50 renewal fee and providing the bureau with a true  
9 copy of its manufacturer license under section 1355-A or issued outside the State.

10 9. **Sales tax registration and payment required.** As a condition of receiving a  
11 certificate of approval, a direct shipper located outside the State shall comply with the  
12 provisions of Title 36, Part 3, including all requirements relating to registration as a seller  
13 and the collection, reporting and remittance of the sales and use taxes of the State, and shall  
14 agree to be subject to the jurisdiction of the State for purposes of the enforcement of those  
15 obligations. The requirements of this subsection apply notwithstanding any provision of  
16 law of the State to the contrary.

17 10. **Report.** A direct shipper shall submit a report to the bureau annually in a manner  
18 and form prescribed by the bureau that includes the total number of case equivalents of  
19 spirits shipped to recipients in the State and the name and residence address of shipment  
20 recipients in the State, the common carrier used to deliver the shipments and the date,  
21 quantity and purchase price of each shipment.

22 11. **Audit.** The bureau may perform an audit of a direct shipper's records relevant to  
23 compliance with this section. A direct shipper shall provide copies of any records requested  
24 by the bureau within 10 business days of that request.

25 12. **Violation.** A person, including a common carrier, who knowingly causes a direct  
26 shipment in violation of this section is subject to a fine up to \$500 for a first offense and  
27 up to \$1,000 for any subsequent violation of this section. A direct shipper or common  
28 carrier who knowingly delivers spirits to a person under 21 years of age is subject to a fine  
29 up to \$5,000. The bureau may suspend or revoke a spirits direct shipper license for failure  
30 to comply with the shipping limits and reporting requirements required by this section. The  
31 bureau may accept payment of an offer in compromise in lieu of suspension; such payments  
32 must be determined by rules adopted by the bureau.

33 13. **Jurisdiction.** A direct shipper, as a condition of licensure, is subject to the  
34 jurisdiction and enforcement authority of the State for the purposes of enforcement of this  
35 section.

36 14. **Not subject to beverage container law.** Notwithstanding Title 38, chapter 33, a  
37 container of spirits shipped pursuant to this section does not require a refund value for  
38 beverage container control purposes.

39 15. **Rules.** The bureau shall adopt rules to carry out the purposes of this section. Rules  
40 adopted pursuant to this section are routine technical rules as defined in Title 5, chapter  
41 375, subchapter 2-A.'

42 Amend the bill by inserting after section 8 the following:

# COMMITTEE AMENDMENT

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**Sec. 9. Appropriations and allocations.** The following appropriations and allocations are made.

**ADMINISTRATIVE AND FINANCIAL SERVICES, DEPARTMENT OF Alcoholic Beverages - General Operation 0015**

Initiative: Provides funding for programming costs to incorporate direct shipping of spirits to customers.

<b>GENERAL FUND</b>	<b>2021-22</b>	<b>2022-23</b>
All Other	\$0	\$131,630
<b>GENERAL FUND TOTAL</b>	<b>\$0</b>	<b>\$131,630</b>

**Alcoholic Beverages - General Operation 0015**

Initiative: Provides funding for one Liquor Tax Auditor position, one Office Associate II position, one Liquor Licensing Inspector position and associated All Other costs.

<b>GENERAL FUND</b>	<b>2021-22</b>	<b>2022-23</b>
POSITIONS - LEGISLATIVE COUNT	0.000	3.000
Personal Services	\$0	\$227,431
All Other	\$0	\$47,717
<b>GENERAL FUND TOTAL</b>	<b>\$0</b>	<b>\$275,148</b>

**ADMINISTRATIVE AND FINANCIAL SERVICES, DEPARTMENT OF DEPARTMENT TOTALS**

<b>GENERAL FUND</b>	<b>2021-22</b>	<b>2022-23</b>
<b>DEPARTMENT TOTAL - ALL FUNDS</b>	<b>\$0</b>	<b>\$406,778</b>

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

**SUMMARY**

The bill allows in-state and out-of-state distilleries to ship their own spirits products directly to recipients located within the State upon receiving a direct shipper license from the Department of Administrative and Financial Services, Bureau of Alcoholic Beverages and Lottery Operations. This amendment, which is a minority report of the committee, makes the following changes to the bill:

1. It allows the bureau to issue direct shipper licenses also to in-state and out-of-state small distilleries and rectifiers for the sale of spirits directly to customers located in the State;
2. It clarifies that an in-state distillery, small distillery or rectifier may ship directly to customers in the State spirits products that it produces and that are currently listed for sale

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in the State. Each spirits product must be sold at the retail price established by the State Liquor and Lottery Commission;

3. It clarifies that an out-of-state distillery, small distillery or rectifier may ship directly to customers in the State a maximum of 200 case equivalents per calendar year of spirits products that it produces and that are not currently listed for sale in the State. Each spirits product must be sold at a price that is calculated pursuant to any rules adopted by the bureau governing the retail price of spirits and any retail pricing formula employed by the bureau to make recommendations to the commission regarding the retail prices of spirits in the State;

4. It authorizes the direct shipment of spirits in containers of at least 700 milliliters in volume. The bill requires that spirits containers for direct shipment be at least 750 milliliters in volume;

5. It requires common carriers to retain records of each shipment of spirits that is made directly to a customer in the State for a period of 2 years and to furnish those records to the bureau upon request; and

6. It replaces the bill's requirement that direct shippers pay an excise tax of \$11.96 per gallon on spirits that are directly shipped to customers in the State with a requirement that, for each spirits product directly shipped to a customer in the State, the direct shipper must pay to the bureau an amount similar to the amount that a small distillery would be required to pay to the bureau under current law if it had produced that spirits product and retained that spirits product for resale directly to customers for on-premises or off-premises consumption.

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

**COMMITTEE AMENDMENT**



# 130th MAINE LEGISLATURE

LD 1358

LR 1546(03)

## An Act To Provide for the Direct Shipment of Spirits to Consumers

Fiscal Note for Bill as Amended by Committee Amendment "B" (S-442)  
Committee: Veterans and Legal Affairs  
Fiscal Note Required: Yes

### Fiscal Note

Current biennium revenue increase - General Fund  
Current biennium revenue increase - State Alcoholic Beverage Fund

	FY 2021-22	FY 2022-23	Projections FY 2023-24	Projections FY 2024-25
<b>Net Cost (Savings)</b>				
General Fund	\$0	\$406,778	\$286,429	\$298,
<b>Appropriations/Allocations</b>				
General Fund	\$0	\$406,778	\$286,429	\$298,460

### Correctional and Judicial Impact Statements

This bill may increase the number of civil suits filed in the court system. The additional workload associated with the minimal number of new cases filed in the court system does not require additional funding at this time. The collection of additional filing fees may increase General Fund revenue by minor amounts.

### Fiscal Detail and Notes

This bill allows in-state and out-of-state distilleries and rectifiers to ship their own spirits directly to customers in the state after obtaining a direct shipper license from the Bureau of Alcoholic Beverages and Lottery Operations (BABLO) within the Department of Administrative and Financial Services and by meeting certain reporting criteria. BABLO has indicated that the additional reporting requirements to incorporate direct shipments would require additional staffing and resources. The bill includes ongoing appropriations of \$275,148 for one Liquor Tax Auditor position, one Office Associate II position, one Liquor Licensing Inspector position and associated All Other costs beginning in fiscal year 2022-23. The bill also includes a one-time appropriation of \$131,630 in fiscal year 2022-23 for the programming costs to incorporate the additional reporting and certification requirements for the direct shipper licenses.

The bill creates a new direct shipper license with an annual fee of \$200. In-state and out-of-state distilleries, small distilleries and rectifiers who also hold a federal basic spirits manufacturing permit are eligible to obtain the new license. These entities must keep specific records regarding the products they ship to customers and are required to pay BABLO the difference between what the direct shipper would have charged to the bureau for the spirits product if the product was sold in the state and an amount that is equal to the retail price of the spirits product multiplied by the direct shipper discount rate.

The direct shipper license will result in additional revenue to the General Fund and the price differential payments will generate additional Other Special Revenue Funds revenue in the State Alcoholic Beverage Fund. The amount of these revenues will be dependant on the number of licenses issued and shipments made.