

# MAINE STATE LEGISLATURE

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# 130th MAINE LEGISLATURE

## SECOND REGULAR SESSION-2022

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Legislative Document

No. 1906

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S.P. 668

In Senate, January 5, 2022

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### **An Act Regarding Rulemaking and Pricing under the Bureau of Alcoholic Beverages and Lottery Operations**

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Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 203.

Reference to the Committee on Veterans and Legal Affairs suggested 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 HICKMAN of Kennebec.  
Cosponsored by Representative HARRINGTON of Sanford and  
Senator: TIMBERLAKE of Androscoggin, Representative: Speaker FECTEAU of Biddeford.

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

2 **Sec. 1. 28-A MRSA §6-A, sub-§4**, as enacted by PL 2019, c. 46, §2, is amended  
3 to read:

4 **4. Rulemaking.** The bureau shall adopt rules, consistent with the regulations  
5 promulgated by the United States Department of the Treasury, Alcohol and Tobacco Tax  
6 and Trade Bureau pursuant to the Federal Alcohol Administration Act, 27 United States  
7 Code, Section 205(e), establishing the requirements for registration of a malt liquor, wine,  
8 hard cider or low-alcohol spirits product label and for changing a label registration. Rules  
9 adopted pursuant to this subsection are major substantive rules as defined in Title 5, chapter  
10 375, subchapter 2-A.

11 **Sec. 2. 28-A MRSA §83-C, sub-§1**, as enacted by PL 2013, c. 476, Pt. A, §9, is  
12 amended to read:

13 **1. Administration and trade marketing supervision.** Manage the administration  
14 and trade marketing of spirits through agency liquor stores and consistent with one or more  
15 contracts awarded under section 90. Rules adopted under this subsection may not prohibit  
16 a certificate of approval holder or other industry member from giving to a retailer one time  
17 per year a refrigerated product display that contains conspicuous and substantial advertising  
18 for a brand owned or distributed by the certificate of approval holder, as long as the display  
19 has a value of less than \$300 and is used to display products for sale;

20 **Sec. 3. 28-A MRSA §83-C, sub-§2**, as enacted by PL 2013, c. 476, Pt. A, §9, is  
21 amended to read:

22 **2. Price regulation.** ~~Establish~~ Make recommendations to the commission regarding  
23 the retail prices of spirits sold in the State and establish the wholesale and retail prices of  
24 spirits sold in this State. The bureau shall adopt rules regarding the wholesale pricing of  
25 spirits and the retail pricing of spirits sold by to agency liquor stores. An entity awarded a  
26 contract under section 90 is granted the privilege to distribute spirits under this Title and is  
27 immune from antitrust action so as long as the entity is in compliance with the bureau's  
28 rules and all other applicable laws and regulations; Rules adopted pursuant to this  
29 subsection are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A.  
30 A rule adopted pursuant to this subsection:

31 A. Must apply equally across product price and bottle size;

32 B. May not use state profits as a factor to determine the pricing of spirits;

33 C. May not implement price markups based on product price or bottle size; and

34 D. May not disproportionately affect products based on product price or bottle size;

35 **Sec. 4. 28-A MRSA §84, sub-§6**, as amended by PL 2019, c. 13, §8, is further  
36 amended to read:

37 **6. Implement a spirits sales data reporting system.** Collect from reselling agents  
38 data on spirits sales made by each reselling agent to establishments licensed to sell spirits  
39 for on-premises consumption. The data must include, but is not limited to, the amount and  
40 date of sale of each product code sold to on-premises licensees by the reselling agent. For  
41 the purposes of this subsection, "product code" has the same meaning as in section 461.  
42 For the purposes of collecting on-premises spirits sales data from reselling agents, the

1 director shall enter into a contract with a trade association representing states that control  
2 and manage the sale of spirits. The contract must require that neither the bureau nor the  
3 trade association may make publicly available any information that would specifically  
4 identify the reselling agent, including, but not limited to, the reseller's name, the name of  
5 the reseller's agency liquor store, the reseller's agency liquor store's address or the address  
6 of any associated storage facility of the reselling agent; ~~and~~

7 **Sec. 5. 28-A MRSA §84, sub-§7, ¶E**, as enacted by PL 2019, c. 13, §9, is amended  
8 to read:

9 E. Any recommendations for changes to this Title-; and

10 **Sec. 6. 28-A MRSA §84, sub-§8** is enacted to read:

11 **8. Report specifications.** In the annual report submitted under subsection 7 or a report  
12 sent to the United States Department of the Treasury, Alcohol and Tobacco Tax and Trade  
13 Bureau, present data relating to the sale of alcoholic beverages in terms of off-premises  
14 retail sales and on-premises retail sales. The director may also present the data in the  
15 aggregate.

16 **Sec. 7. Review of rules.** The joint standing committee of the Legislature having  
17 jurisdiction over the sale of alcoholic beverages matters shall review rules adopted by the  
18 Department of Administrative and Financial Services, Bureau of Alcoholic Beverages and  
19 Lottery Operations pursuant to the Maine Revised Statutes, Title 28-A, section 6-A,  
20 subsection 4 and section 83-C, subsection 2. The committee may report out a bill to the  
21 First Regular Session of the 131st Legislature based on the review of the rules.

## 22 SUMMARY

23 This bill subjects rules adopted by the Department of Administrative and Financial  
24 Services, Bureau of Alcoholic Beverages and Lottery Operations regarding labeling and  
25 pricing to review by the Legislature. It also makes the following changes to the laws  
26 governing the bureau:

27 1. Makes rules adopted by the bureau regarding labeling and pricing of spirits major  
28 substantive rules;

29 2. Sets limits on the ways in which the bureau can set or alter prices of spirits;

30 3. Allows a once-per-year gift from a certificate of approval holder to a retailer of  
31 spirits of a refrigerated display unit; and

32 4. Requires the bureau to present data regarding the sale of spirits in terms of on-  
33 premises retail sales and off-premises retail sales.