

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND TWENTY-EIGHTH LEGISLATURE

SECOND SPECIAL SESSION
June 19, 2018 to September 13, 2018

THE GENERAL EFFECTIVE DATE FOR
SECOND SPECIAL SESSION
NON-EMERGENCY LAWS IS
DECEMBER 13, 2018

ONE HUNDRED AND TWENTY-NINTH LEGISLATURE

FIRST REGULAR SESSION
December 5, 2018 to June 20, 2019

THE GENERAL EFFECTIVE DATE FOR
FIRST REGULAR SESSION
NON-EMERGENCY LAWS IS
SEPTEMBER 19, 2019

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Augusta, Maine
2019

AGRICULTURE,
CONSERVATION AND
FORESTRY,
DEPARTMENT OF

DEPARTMENT TOTALS	2019-20	2020-21
OTHER SPECIAL REVENUE FUNDS	\$84,296	\$108,233
DEPARTMENT TOTAL - ALL FUNDS	\$84,296	\$108,233

See title page for effective date.

CHAPTER 529
S.P. 593 - L.D. 1761

**An Act To Assist Small Beer
Manufacturers and Small
Hard Cider Manufacturers**

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

Sec. 1. 28-A MRSA §2, sub-§2-B is enacted to read:

2-B. Barrel. "Barrel" means 31 United States gallons.

Sec. 2. 28-A MRSA §2, sub-§29, as amended by PL 1993, c. 730, §12, is further amended to read:

29. Small brewery. "Small brewery" means a facility that is ~~brewing, lagering and kegging, bottling or packaging brews, lagers and kegs, bottles or packages its own malt liquor, not to exceed 50,000 gallons 30,000 barrels per year.~~

Sec. 3. 28-A MRSA §2, sub-§29-B, as enacted by PL 2011, c. 629, §5, is amended to read:

29-B. Small winery. "Small winery" means a facility that is ~~fermenting, aging and bottling its own wine, not to exceed 50,000 gallons per year. ferments, ages and bottles:~~

A. Up to 50,000 gallons per year of its own wine that is not hard cider; and

B. Up to 3,000 barrels per year of its own wine that is hard cider.

Sec. 4. 28-A MRSA §1355-A, sub-§1, as enacted by PL 2011, c. 629, §22, is amended to read:

1. Issuance of licenses. The bureau may issue ~~manufacturer licenses to distill, rectify, brew or bottle spirits, wine or malt liquor to distillers, rectifiers, brewers, bottlers and wineries operating licenses under this section to breweries, small breweries, wineries, small wineries, distilleries and small distilleries in the~~

State that operate under federal law and federal supervision.

Sec. 5. 28-A MRSA §1355-A, sub-§3, ¶¶A and B, as enacted by PL 2011, c. 629, §22, are amended to read:

A. A holder of a brewery license may produce more than ~~50,000 gallons~~ 30,000 barrels of malt liquor per year.

B. A holder of a small brewery license may produce ~~not more than 50,000 gallons~~ up to 30,000 barrels of malt liquor per year.

(1) Upon application by a holder of a small brewery license ~~whose brewery that~~ has produced malt liquor in an amount that exceeds ~~50,000 gallons~~ 30,000 barrels in one year, the bureau may renew that holder's small brewery license for only one additional year.

(2) A holder of a small brewery license may sell or deliver its products to licensed retailers or wholesalers. The licensee may sell, on the premises for consumption off the premises, malt liquor produced at the licensed premises by the bottle, by the case or in bulk to licensed retailers, including, but not limited to, off-premises retail licensees, restaurants and clubs. Notwithstanding section 1361, the holder of a small brewery license may sell its products directly to a retail licensee under this paragraph without selling to a wholesale licensee.

Sec. 6. 28-A MRSA §1355-A, sub-§4, ¶¶A and B, as enacted by PL 2011, c. 629, §22, are amended to read:

A. A holder of a winery license may produce more than 50,000 gallons per year of ~~wines, sparkling wines and fortified wines wine that is not hard cider and may produce more than 3,000 barrels per year of wine that is hard cider.~~

B. A holder of a small winery license may produce ~~not more than up to 50,000 gallons per year of wines, sparkling wines and fortified wines wine that is not hard cider and may produce up to 3,000 barrels per year of wine that is hard cider.~~

(1) A holder of a small winery license may sell or deliver its products to licensed retailers or wholesalers. The licensee may sell, on the premises for consumption off the premises, any wine produced at the licensed premises by the bottle, by the case or in bulk to licensed retailers, including, but not limited to, off-premises retail licensees, restaurants and clubs. Notwithstanding section 1361, the licensee may sell its products directly to a retail licensee under this paragraph without selling to a wholesale licensee.

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

Sec. 7. 28-A MRSA §1361, sub-§4, as amended by PL 2011, c. 629, §23, is further amended to read:

4. No sales of malt liquor or wine to person without wholesale license. No certificate of approval holder, except a licensed small brewery or small winery licensee allowed authorized under section 1355-A to sell its own products directly to retailers, may sell or cause to be transported into the State any malt liquor or wine to any person to whom a Maine wholesale license has not been issued by the bureau. Malt liquor or wine must be delivered to the place of business of the wholesaler as shown in the wholesaler's license, must be unloaded and inventoried at the wholesaler's premises upon the wholesaler's receipt of the shipment and must come to rest before delivery is made to any retailer to enable the bureau to inspect and inventory wholesale warehouses for the purpose of verifying taxes that are required to be paid on malt liquor and wine purchased by importers.

Sec. 8. 28-A MRSA §1455, sub-§1, as enacted by PL 1987, c. 45, Pt. A, §4, is amended to read:

1. Written notice. Before any termination procedure initiated by the certificate of approval holder, the certificate of approval holder shall give the wholesale licensee written notice of any claimed deficiency existing in his the wholesale licensee's territory and the certificate of approval holder shall give the wholesale licensee reasonable time or, if the certificate of approval holder is a small beer manufacturer or a small hard cider manufacturer, at least 30 days to correct the claimed deficiency or deficiencies. After this reasonable time has elapsed, the certificate of approval holder shall provide the wholesale licensee at least 90 days prior with written notice of any the certificate of approval holder's intent to amend, cancel, terminate, cancel or not refuse to continue, refuse to renew any or cause the wholesale licensee to resign from an agreement. The notice must state all the reasons for the at least 90 days prior to the effective date of the intended amendment, cancellation, termination, cancellation refusal to continue, refusal to renew or nonrenewal causing of resignation. The written notice must state all of the reasons for the intended amendment, cancellation, termination, refusal to continue, refusal to renew or causing of resignation. The notice provisions

of this section do not apply if the reason for the intended amendment, cancellation, termination, cancellation refusal to continue, refusal to renew or nonrenewal causing of resignation is:

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

For purposes of this section, "small beer manufacturer" and "small hard cider manufacturer" have the same meanings as in section 1457, subsection 1-A.

Sec. 9. 28-A MRSA §1457, as enacted by PL 1987, c. 45, Pt. A, §4, is amended to read:

§1457. Compensation

1. Reasonable compensation. ~~Any certificate of approval holder which amends, cancels, terminates or refuses to continue or renew any agreement, or causes a wholesale licensee to resign, unless for good cause shown, as defined in section 1454, from an agreement or unreasonably withholds consent to any assignment, transfer or sale of a wholesale licensee's business, shall pay the wholesale licensee reasonable compensation for the value of the wholesale licensee's business related to the terminated brand or brands. The value of the wholesale licensee's business includes inventory and other tangible assets and its good will.~~

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

- A. "Affected brand or brands" means the brand or brands of a certificate of approval holder that will no longer be distributed by a wholesale licensee after the certificate of approval holder makes a triggering change to the agreement between the certificate of approval holder and the wholesale licensee.
- B. "Case equivalent" means a volume equivalent to 24 12-ounce units.
- C. "Good cause" has the same meaning as described in section 1454.
- D. "Small beer manufacturer" means a small brewery or out-of-state brewer that brews, lagers and kegs, bottles or packages its own malt liquor, not to exceed 30,000 barrels per year.

E. "Small hard cider manufacturer" means a small winery or out-of-state winery that ferments, ages or bottles any amount of wine, as long as it ferments, ages or bottles no more than 3,000 barrels per year of wine that is hard cider.

F. "Triggering change" means an amendment, cancellation in whole or in part, termination, refusal to continue or refusal to renew an agreement by a certificate of approval holder or the resignation of a wholesale licensee from an agreement if the resignation is caused by the certificate of approval holder, unless good cause can be established or proven for the amendment, cancellation, termination, refusal to continue, refusal to renew or caused resignation. "Triggering change" includes the unreasonable withholding of consent by a certificate of approval holder to any assignment, transfer or sale of a wholesale licensee's business.

1-B. Reasonable compensation; general rule.

Except as otherwise provided in subsections 1-C and 1-D, if a certificate of approval holder makes a triggering change to an agreement, the certificate of approval holder shall pay the wholesale licensee reasonable compensation for the fair market value of the wholesale licensee's business related to the affected brand or brands. The fair market value of the wholesale licensee's business related to the affected brand or brands includes inventory and other tangible assets and the wholesale licensee's good will.

1-C. Exception; small beer manufacturer or small hard cider manufacturer. Notwithstanding subsection 1-B, a small beer manufacturer or small hard cider manufacturer must pay a wholesale licensee reasonable compensation in accordance with subsection 1-D if:

A. The small beer manufacturer makes a triggering change to an agreement that prevents the wholesale licensee from continuing to distribute a brand or brands of malt liquor or the small hard cider manufacturer makes a triggering change to an agreement that prevents the wholesale licensee from continuing to distribute a brand or brands of hard cider; and

B. During the 12-month period immediately preceding the date on which the small beer manufacturer or the small hard cider manufacturer provides the wholesale licensee with the first written notice of the triggering change, if notice is required under section 1455, or the date on which the small beer manufacturer or small hard cider manufacturer unreasonably withholds its consent to any assignment, transfer or sale of the wholesale licensee's business, the total number of case equivalents of the affected brand or brands of malt liquor or hard cider distributed by the wholesale licensee was less than 10,000 and represented no

more than 3% of the total number of case equivalents of all brands of liquor for all certificate of approval holders that were distributed by the wholesale licensee.

1-D. Reasonable compensation; alternative calculation. Notwithstanding subsection 1-B, if a small beer manufacturer or small hard cider manufacturer makes a triggering change to an agreement that meets the requirements of subsection 1-C, the small beer manufacturer or small hard cider manufacturer shall pay the wholesale licensee reasonable compensation for the fair market value of the wholesale licensee's business related to the affected brand or brands of malt liquor or hard cider in accordance with this subsection.

A. If the wholesale licensee's total gross profits with respect to the affected brand or brands during the 12-month period described in subsection 1-C were equal to or less than the wholesale licensee's total gross profits with respect to the affected brand or brands during the next preceding 12-month period, the small beer manufacturer or small hard cider manufacturer shall pay as reasonable compensation an amount equal to the wholesale licensee's total gross profits with respect to the affected brand or brands during the 12-month period described in subsection 1-C.

B. If the wholesale licensee's total gross profits with respect to the affected brand or brands during the 12-month period described in subsection 1-C were greater than the wholesale licensee's total gross profits with respect to the affected brand or brands during the next preceding 12-month period, the small beer manufacturer or small hard cider manufacturer shall pay as reasonable compensation an amount equal to twice the wholesale licensee's total gross profits with respect to the affected brand or brands during the 12-month period described in subsection 1-C.

This subsection does not govern the reasonable compensation that a small hard cider manufacturer is required to pay a wholesale licensee for the fair market value of the wholesale licensee's business related to an affected brand or brands of wine that is not hard cider.

1-E. Waiver. Notwithstanding section 1462, nothing in this chapter prevents a wholesale licensee from limiting or waiving its right to receive reasonable compensation under subsection 1-B or 1-D from a small beer manufacturer or a small hard cider manufacturer in an agreement between the wholesale licensee and the small beer manufacturer or the small hard cider manufacturer.

2. Neutral arbitrator. If the certificate of approval holder and the wholesale licensee are unable to agree on the amount of reasonable compensation to be paid for the fair market value of the wholesale licen-

see's business, as defined in subsection 1 related to the affected brand or brands of the certificate of approval holder, they shall submit the matter to a neutral arbitrator selected by the parties, or, if they cannot agree, by the Chief Justice of the Supreme Judicial Court. The costs of the arbitration shall must be paid 1/2 by the wholesale licensee and 1/2 by the certificate of approval holder or otherwise the arbitration proceeding shall must be governed by the Maine Uniform Arbitration Act. The arbitrator shall issue a written decision on the matter no later than 45 days after the date of the commencement of the arbitration proceeding.

3. Distribution during arbitration. Notwithstanding any provision of this Title to the contrary or the terms, conditions or other provisions of any agreement, when a small beer manufacturer or a small hard cider manufacturer makes a triggering change to an agreement, the small beer manufacturer or the small hard cider manufacturer may immediately:

A. If the small beer manufacturer is a small brewery, sell the affected brand or brands of malt liquor directly to retail licensees in the wholesale licensee's territory in accordance with section 1355-A, subsection 3, paragraph B, subparagraph (2);

B. If the small hard cider manufacturer is a small winery, sell the affected brand or brands of hard cider directly to retail licensees in the wholesale licensee's territory in accordance with section 1355-A, subsection 4, paragraph B, subparagraph (1);

C. Appoint one or more new wholesale licensees to sell the affected brand or brands of malt liquor or hard cider in all or any portion of the territory of the wholesale licensee subject to the triggering change; or

D. Engage in any combination of actions described in paragraphs A, B and C, if applicable.

See title page for effective date.

**CHAPTER 530
H.P. 758 - L.D. 1028**

An Act To Prevent and Reduce Tobacco Use with Adequate Funding and by Equalizing the Taxes on Tobacco Products and To Improve Public Health

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

PART A

Sec. A-1. 36 MRSA §4401, sub-§§2-A, 2-B and 7-A are enacted to read:

2-A. Electronic smoking device. "Electronic smoking device" means a device used to deliver nicotine or any other substance intended for human consumption that may be used by a person to simulate smoking through inhalation of vapor or aerosol from the device, including, without limitation, a device manufactured, distributed, marketed or sold as an electronic cigarette, electronic cigar, electronic pipe, electronic hookah or so-called vape pen.

2-B. Hookah. "Hookah" means a device used for smoking tobacco that consists of a tube connected to a container where the smoke is cooled by passing through water.

7-A. Smoking. "Smoking" includes carrying or having in one's possession a lighted or heated cigarette, cigar or pipe or a lighted or heated tobacco or plant product intended for human consumption through inhalation whether natural or synthetic in any manner or in any form. "Smoking" includes the use of an electronic smoking device.

Sec. A-2. 36 MRSA §4401, sub-§9, as amended by PL 2005, c. 627, §4, is further amended to read:

9. Tobacco products. "Tobacco products" means cigars; cheroots; stogies; electronic smoking devices and liquids used in electronic smoking devices whether or not they contain nicotine; periques, granulated, plug cut, crimp cut, ready rubbed; and other smoking tobacco; snuff; snuff flour; snus; cavendish; plug and twist tobacco; finecut and other chewing tobaccos; shorts; refuse scraps, clippings, cuttings and sweepings of tobacco; and other kinds and forms of tobacco, prepared in such manner as to be suitable for chewing or smoking in a pipe or otherwise, or both for chewing and smoking; but does not include tobacco products that are subject to the tax provided by chapter 703 intended for human consumption or is likely to be consumed, whether smoked, heated, chewed, absorbed, dissolved, inhaled or ingested by any other means. "Tobacco products" does not include:

A. Products that are subject to the tax provided by chapter 703;

B. Drugs, devices or combination products authorized for sale by the United States Department of Health and Human Services, Food and Drug Administration, as those terms are defined in the Federal Food, Drug, and Cosmetic Act;

C. Any product that contains adult use marijuana subject to tax under Title 28-B, section 1001; or

D. Any product that contains marijuana or marijuana products subject to control under Title 22, chapter 558-C.

Sec. A-3. 36 MRSA §4403, sub-§1, as repealed and replaced by PL 2009, c. 213, Pt. H, §1 and affected by §3, is amended to read: