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State of Maine
129th Legislature

Analysis of Title 28-A of the Maine Revised Statutes Pursuant to Resolve 2019, Chapter 15

January 2020

Office of Policy and Legal Analysis

M E M O R A N D U M

Date: January 8, 2020
To: Veterans and Legal Affairs Committee
From: Janet Stocco, Legislative Analyst, Office of Policy and Legal Analysis
RE: **Analysis of Title 28-A pursuant to Resolve 2019, chapter 15**

Resolve 2019, chapter 15 (attached) directed the Office of Policy and Legal Analysis to “prepare an analysis regarding inconsistencies, duplications and ambiguities contained within the text of the Maine Revised Statutes, Title 28-A” and to present that analysis to the Joint Standing Committee on Veterans and Legal Affairs on or before January 1, 2020.

Attached please find, as directed by the resolve, a section-by-section analysis of Title 28-A, which identifies inconsistencies, conflicts, errors, terminology issues and ambiguities in the text of each statutory section of the Title. In addition, please find attached to the section-by-section analysis the following appendices.

- Appendix A: Certificate of Approval Questions
- Appendix B: “Low-alcohol Spirits Products” Current Regulatory Scheme and Suggested Areas for Clarification and “Hard Cider” Current Regulatory Scheme and Suggested Areas for Clarification
- Appendix C: A chart comparing the statutes governing: Local Approval of Bottle Clubs and On-Premises Retail Licensees
- Appendix D: A diagram summarizing the statutes governing: Three-Tier System: Prohibited Financial Interests
- Appendix E: Two charts comparing the statutes governing: Taste-Testing Provisions and Product-Sampling Provisions
- Appendix F: A chart summarizing: Qualified Catering Services – Required Food Sales
- Appendix G: A chart summarizing the various provisions for: Licensed Maine Manufacturers & Off-Premises Sales
- Appendix H: Importation and Transportation Questions

- Appendix I: A chart comparing the statutes governing: Furnishing Alcohol to a Minor vs. Endangering the Welfare of a Child
- Appendix J: An analysis raising questions regarding the: “Wholesale Licensee” Definition

A copy of this report will be posted on the VLA Committee’s website and sent electronically to individuals who have subscribed to the VLA Committee’s interested parties list.

Resolve 2019, chapter 15 further authorizes the Joint Standing Committee on Veterans and Legal Affairs to “report out legislation to the Second Regular Session of the 129th Legislature proposing revisions” to Title 28-A in response to the attached analysis.

As you may know, a subcommittee of the Veterans and Legal Affairs Committee — Senator Luchini, Senator Cyrway, Representative Schneck, Representative Strom and Representative Hickman — held six public meetings over the interim to review portions of a draft version of the attached analysis of Title 28-A. Representatives from the Bureau of Alcoholic Beverages and Lottery Operations attended each of these meetings, as did several stakeholders. After deliberation, the Subcommittee has prepared several draft bills for consideration by the Veterans and Legal Affairs Committee this session.

Please do not hesitate to contact me if you have any questions.

APPROVED

APRIL 26, 2019

BY GOVERNOR

CHAPTER

15

RESOLVES

STATE OF MAINE

IN THE YEAR OF OUR LORD

TWO THOUSAND NINETEEN

S.P. 458 - L.D. 1495

Resolve, Regarding the Revision of Title 28-A of the Maine Revised Statutes

Sec. 1. Resolve 2017, c. 18, repealed. Resolved: That Resolve 2017, c. 18 is repealed.

Sec. 2. Office of Policy and Legal Analysis to prepare and submit analysis. Resolved: That the Office of Policy and Legal Analysis shall prepare an analysis regarding inconsistencies, duplications and ambiguities contained within the text of the Maine Revised Statutes, Title 28-A and, on or before January 1, 2020, submit that analysis to the Joint Standing Committee on Veterans and Legal Affairs.

Sec. 3. Authority for legislation. Resolved: That the Joint Standing Committee on Veterans and Legal Affairs may report out legislation to the Second Regular Session of the 129th Legislature proposing revisions to the Maine Revised Statutes, Title 28-A in response to the analysis submitted by the Office of Policy and Legal Analysis staff pursuant to section 2.

Analysis of Title 28-A pursuant to Resolve 2019, chapter 15 (Jan. 2020)

Current Section: Title 28-A	Notes and Questions
PART 1: GENERAL PROVISIONS	
Chapter 1: General Provisions	
§1. Compliance required; penalty	<ul style="list-style-type: none"> • CONFLICT: Under this section, if a person's purchase, importation, transportation, manufacture, possession or sale of alcohol violates "law" (not limited to Title 28-A or even State law), it is a <i>Class E crime</i>. This conflicts with statutes in other Titles. For example, 29-A MRSA §2112-A makes it a <i>traffic infraction</i> if either the operator or a passenger in a vehicle on a public way possesses an open alcoholic beverage container. • CONFLICT: The default Class E crime in this section conflicts with other, specific crimes. For example, §2081(1)(A) makes it a <i>Class D crime</i> to sell liquor to a minor. <ul style="list-style-type: none"> ◦ <i>Suggestion</i> (to resolve both conflicts): Add "Unless otherwise provided by law" to the beginning of Section 1. • CLARITY: Is this default Class E crime intended to apply to licensees? Or, are they only subject to administrative discipline unless a specific criminal penalty is specified?
§1-A. License required	
§2. Definitions	<ul style="list-style-type: none"> • TERMINOLOGY: Sub-§§5 & 11: should "brewery" and "distillery" be defined rather than "brewer" and "distiller," because these are terms used in §1355-A? <i>Compare:</i> sub-§29 ("small brewery"); sub-§29-A ("small distillery"); sub-§29-B ("small winery"); sub-§37 ("winery"). <ul style="list-style-type: none"> ◦ If change to brewer to brewery, should probably change terms "tenant brewer" and "host brewer" to "tenant brewery" and "host brewery" in §1355-A(6) and the term "brewers" to "breweries" in §752(2)(B). ◦ If change "distiller" to "distillery", should make conforming changes in remainder of Title 28-A (examples: §1051(6), §1451(3), §1551(3)(A) and §1505(5)). If retain the "distiller" definition, should change terminology in §1355-A from "distillery" to "distiller" and consider changing the term "small distillery" to "small distiller." • INCONSISTENCY: Sub-§§5 & 29: should "brewery" definition mirror definition of "small brewery"—<i>i.e.</i>, by discussing kegging, bottling etc.? • CLARITY: Sub-§8: "certificate of approval holder means an in-state manufacturer, out-of-state manufacturer or out-of-state wholesaler licensed by the bureau" <ul style="list-style-type: none"> ◦ <i>Issue 1 (wording):</i> Although in-state manufacturers are "licensed" by BABLO, out-of-state manufactures and out-of-state wholesalers receive "certificate[s] of approval" under §1361. Probably should rewrite definition to say: "an out-of-state manufacturer with or out-of-state wholesaler with a certificate of approval or a licensed in-state manufacturer." ◦ <i>Issue 2 (scope):</i> Are out-of-state spirits manufacturers included? See Appendix A: Certificate of approval questions. • CLARITY: Sub-§15, ¶H: why does the "hotel" definition state hotels "may" serve meals and then define when a hotel is "considered to be serving meals"? See questions under §1002 ("hotels which do not serve food"—not meals—eligible for a specific type of license) and §1061(3) (requiring hotels to have 10% income from <i>food</i>—not meals). • TERMINOLOGY: Sub-§15, ¶E & ¶V: Should "railroad corporations" and either "vessel corporations" or "vessel companies" be listed as types of licensed establishments instead of or in addition to "dining and passenger cars" and "vessels"? <ul style="list-style-type: none"> ◦ <i>Compare</i> sub-§15, ¶A ("airline" is a licensed establishment, not aircraft); §1077 (licenses issued to public service corporations, including licenses to "vessel companies operating boats" and to "railroad corporation[s] operating dining cars or passenger cars"); §652(6) (public service corporation's license is sufficient for <i>all</i> of its "steamboats, cars, railroads or aircraft"). ◦ If keep "dining and passenger cars" as a defined type of licensed establishment, should "cars" in the definition be replaced with "railroad cars" for clarity? • CLARITY: Sub-§16-A: "low-alcohol spirits product". The regulation of these products is a bit unclear. See Appendix B: Low-alcohol spirits product questions. • CLARITY: sub-§18: "malt liquor." Is the third and final sentence of this definition

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	<ul style="list-style-type: none"> • CLARITY: Sub-§16-A: “low-alcohol spirits product”. The regulation of these products is a bit unclear. See Appendix B: Low-alcohol spirits product questions. • CLARITY: sub-§18: “malt liquor.” Is the third and final sentence of this definition intended to be permissive (malt liquor also <i>includes</i> products that don’t contain spirits) or restrictive (malt liquor <i>excludes</i> products that contain spirits)? If the latter (which seems likely), perhaps rewrite the sentence to state this clearly. • TERMINOLOGY: Sub-§23 (“pool hall”) and sub-§19-A (“minibar”) – both probably should be moved to the list of licensed establishments in sub-§15. • CLARITY: Sub-§§12-A: “hard cider.” The regulation of these products is a bit unclear. See Appendix B: Hard cider questions. • CLARITY: Sub-§27: the terms “retailer” and “retail licensee” are used interchangeably in Title 28-A. Probably should apply this definition to both. <ul style="list-style-type: none"> ○ The terms “off-premise retail licensee” and “on-premise retail licensee” should use the word “premises” not “premise” (OPLA / Revisor’s Office request). • CLARITY: Sub-§34: “wholesale licensee” is defined as a person “licensed” by the bureau as a wholesaler. Is this term intended to include both: <ul style="list-style-type: none"> ○ in-state wholesalers of malt liquor and wine who are licensed under §1401 and ○ out-of-state wholesalers of malt liquor, wine and/or spirits who receive a certificate of approval under §1361 to sell alcohol to Maine? See Appendix J: Wholesale Licensee Definition question • TERMINOLOGY: Sub-§35: the term “wholesaler” is defined to include those who purchase and resell “malt or brewed beverages or wines” – should that say “malt liquor or wine” to match the defined terms?
§3-B. Payments submitted to the bureau	<ul style="list-style-type: none"> • CLEANUP: Remove portion of §3-B(1)(A) that refers to fortified wine, as it is no longer relevant after June 30, 2014?
§4. Business days and hours	
§5. Prevailing time	
§6. Form of advertising restricted	<ul style="list-style-type: none"> • OMISSION? What is the penalty for a non-licensee who violates sub-§§1 or 3? <ul style="list-style-type: none"> ○ <i>Explanation:</i> Non-licensees are ineligible for Ch. 33 penalties and this offense does not fall within rubric of the general Class E crime in §1.
§7. Action not maintainable upon promise to pay for liquor	
§8. Entrances from premises	<ul style="list-style-type: none"> • CLARITY: What does this section mean – can we clarify the language? <ul style="list-style-type: none"> ○ Does it mean that, if a licensee wants to add a new door to the premises that is not listed on or <i>described in the original license application</i>, BABLO must first approve that change in writing? Does VLA agree with this interpretation? If so, rewrite.
§10. Class A restaurant and off-premise retail licensee on same premises	<ul style="list-style-type: none"> •
§11. Retailer on same premises as other businesses	<ul style="list-style-type: none"> • CLARITY: What does sub-2 mean when it states “any persons <i>taking a drink of liquor to another</i>” and “<i>offering a drink of liquor to another</i>”? Is the prohibition on physically transporting liquor from one premises to <i>another</i> premises (as first use of “another” suggests) or sharing of liquor from one person to <i>another</i> person (as second use of “another” suggests)? Can this language be clarified? • CLARITY: Sub-§2 also appears intended to prohibit a person from consuming liquor in a business or place that is under “the common roof” of an off-premises retail licensee, but that language could be rewritten a bit to add clarity. • INCONSISTENCY: Sub-§2 states a person who consumes liquor “in a an off-premises retail licensee under the common roof” violates 17 MRSA §2003-A (Class E crime of public drinking).

Analysis of Title 28-A pursuant to Resolve 2019, chapter 15 (Jan. 2020)

Current Section: Title 28-A	Notes and Questions
	<ul style="list-style-type: none"> But, the exceptions for taste testing events and sampling (see list in §1206) should be listed here – these are permitted in off-premises retail licensees even if under a common roof with an on-premises retail licensee. CLARITY: the heading of 17 MRSA §2003-A – “Definitions” – likely should be changed to “public drinking” or something similar.
§12. Inspection of premises	<ul style="list-style-type: none"> CLARITY: Is inspection really “at any time” or only any time during business hours?
§13. Low-alcohol spirits product sold by wine licensees	<ul style="list-style-type: none"> See Appendix B: Low-alcohol spirits questions. CLARITY: The second sentence states that Title 28-A’s provisions regarding wine -- except for Chapters 65 & 67 -- “apply to low-alcohol spirits products <i>when sold by persons licensed to sell wine for consumption on or off the premises</i>”. Should the reference to Chapter 67 be removed because nothing in that chapter affects wine? (Chapter 67 has only one section, §1703, which was amended in 2013 to no longer affect wine.) Also, should the reference to Chapter 65 be removed because that chapter involves excise taxes that are paid by manufacturers and wholesalers—not by retail licensees? <i>Suggestion:</i> remove parenthetical phrase involving Chapters 65 and 67 from the second sentence of §13 so that it mirrors the second sentence of §14.
§14. Hard cider sold by malt liquor licensees	<ul style="list-style-type: none"> See Appendix B: Hard cider questions.
§15. Display of signs	<ul style="list-style-type: none"> CLARITY: This section requires a “licensee” to post signs, but the civil violation applies to “a person” who violates the section. Does this mean that this section is not enforceable administratively against the licensee and only in court against a person (licensee or agent or employee) who fails to post the sign? Or, is it really enforceable administratively and this section is intended merely to specify the appropriate fine?
Chapter 3-A: Administration and Organization	
§81. State Liquor and Lottery Commission	<ul style="list-style-type: none"> CLARITY: Sub-§§3 & 4: does the commission only decide what <i>spirits</i> items may be sold in the State, rather than all liquor items? If so, should that be clarified?
§82-A. Enforcement of licensing	
§83-B. Enforcement and licensing activities of the bureau	<ul style="list-style-type: none"> CLARITY: Sub-§3 lists three sections regarding license revocations/suspensions by a District Court at the recommendation of the bureau. At least one section of T. 28-A should probably be added to this list – <i>see</i> §1403(3) (establishing a ground for revocation of a wholesale license). Should §1403(3) be added to the list in in §83-B(3) or, should the 3 existing cross-references be removed to prevent accidental omission of a relevant existing or future section of law? TERMINOLOGY: Sub-§8: “fortified wine” should probably be removed because, as defined in §2(36), “wine” includes fortified wine. TERMINOLOGY: Sub-§8: Is the phrase “wholesale licensee” intended to include only Maine wholesalers or also out-of-state wholesalers with certificates of approval? (See Appendix J: Wholesale licensee definition)
§83-C. Administration of the spirits business by the bureau; rules	<ul style="list-style-type: none"> CONFLICT: §83-C(2) provides that the bureau establishes both the wholesale and <i>the retail</i> prices of spirits, but §1651(1) appears to require the commission to set the retail price (although the wording should be reexamined, see below) and §606(8) requires agency liquor stores to sell spirits “at the retail price established by the commission.”
§84. Director of Bureau of Alcoholic Beverages and Lottery Operations	<ul style="list-style-type: none"> TERMINOLOGY: Sub-§§2 & 4: change “Commissioner of Administrative and Financial Services” to “Commissioner” ? (<i>See</i> definition in §2(9-A).)
§85. Inventory and working capital	<ul style="list-style-type: none"> TERMINOLOGY: Should “liquor suppliers” be “spirits suppliers” or something else?
§86. Conflict of interest	<ul style="list-style-type: none"> REDUNDANCY? Not necessary to include the phrase “wholesale licensee” in the prohibition because the more general term “wholesaler” is already included. Unless the phrase “wholesale licensee” does not include out-of-state wholesalers with COAs.

Analysis of Title 28-A pursuant to Resolve 2019, chapter 15 (Jan. 2020)

Current Section: Title 28-A	Notes and Questions
§87. Eligibility of employees	<ul style="list-style-type: none"> • CLARITY: Sub-§1: the word “interest” appears misplaced in this section. Should it modify only “official” and “professional”? Or, should the word be “interested”?
§90. Contract for operations of wholesale liquor activities	<ul style="list-style-type: none"> • TERMINOLOGY: Sub-§2: definition of “the commissioner” is unnecessary. <i>See</i> definition in §2(9-A) (defining “commissioner” the same way). • TERMINOLOGY: This section involves wholesalers of “spirits”, not wholesalers of “liquor” (defined to include wine and malt liquor). Proposed changes: <ul style="list-style-type: none"> ○ Headnote: change “wholesale liquor activities” to “wholesale spirits activities” ○ Sub-§4(A)(2): change “distribution of liquor” to “distribution of spirits” ○ Sub-§4(A)(3): change “bailment rates for liquor . . . to be charged to liquor suppliers” to “bailment rates for spirits . . . to be charged to spirits suppliers” ○ Sub-§4(A)(5): change “wholesale liquor business” to “wholesale spirits business” [note: use of broader term “liquor” may be intentional here] ○ Sub-§4(A)(9): change “liquor suppliers” to “spirits suppliers” ○ Sub-§7: change “prices of all liquor” to “prices of all spirits” [<i>see</i> §83-C(2).] • CONFLICT: §90(7) provides that the bureau regulates both the wholesale and <i>the</i> retail prices of spirits, but §1651(1) appears to require the commission to set the retail price (although the wording should be reexamined, see below) and §606(8) requires agency liquor stores to sell spirits “at the retail price established by the commission.” • INCONSISTENCY: Sub-§2 prohibits the Commissioner from contracting with a bidder who holds “a license in this State or another state to distill, bottle or manufacture <i>spirits</i>” but Sub-§3 requires bidders to affirm that they, <i>and their principle officers</i>, do not hold <i>or have a direct financial interest in</i>, a license in this State or any other state for distilling, bottling or manufacturing <i>alcoholic beverages</i> (broader than spirits). In addition, §502 prohibits one of the 2 contracts—the wholesale liquor provider contract—from being awarded to an entity with an agency liquor store license. Which of these prohibitions apply to which of the §90 contracts? All three?
Chapter 5: Local Option	
§121. Local option election in a municipality	
§122. Unincorporated places	<ul style="list-style-type: none"> • CLARITY: As currently written, the authority granted to county commissioners in sub-§§2 & 3 is not clearly limited to unincorporated places. <ul style="list-style-type: none"> ○ <i>Suggestion:</i> rewrite opening phrase of sub-§§2 and 3 to state: “The county commissioners of the county in which an unincorporated place is located may.” May also need clarifying language in sub-§2(A) & (B). • CLARITY: Sub-§3 establishes a ground for county commissioners to refuse “a liquor license” – but, there is no process in the agency liquor store licensing statute, §453-A, for county commissioners to deny an application (unlike municipal officials, they are not even entitled to notice of applications in unorganized territories under §453-A(4)). Should this distinction be clarified? • INCONSISTENCY (?): Sub-§3 authorizes county commissioners to deny “a liquor license” because it is “not warranted for any substantial public convenience, necessity or demand.” This reason is not also listed in §653(2) as grounds for denial of an applicant for on-premises licenses although it may be implied by §654(1)(B) (stating that the location of the business is an “additional consideration” for licensure). Should this ground for denying a license be added to the list in §653(2) and, if so, is that a ground municipal officers also may use to deny an on-premises license?
§123. Local option questions	<ul style="list-style-type: none"> • CONFLICT: “wine” is defined in §15(36) to include fortified wine, but “spirits” is defined in §2(31) not to include fortified wine. Thus, the headnotes of §§2 & 4 are incorrect to state that they involve fortified wine. (Instead, the local option questions in sub-§§2-A & 4-A involve fortified wine because they involve wine.) <ul style="list-style-type: none"> ○ <i>Suggestion:</i> Remove “fortified wine” from sub-§§2 & 4 headnotes. Not necessary to add “fortified wine” to sub-§§2-A & 4-A headnotes, however.

Analysis of Title 28-A pursuant to Resolve 2019, chapter 15 (Jan. 2020)

Current Section: Title 28-A	Notes and Questions
	<ul style="list-style-type: none"> • CONFLICT: The local option question in sub-§4 appears to be rendered completely ineffective by the second sentences of §353 and §353-A (see below). Delete sub-§4?
§124. Results of vote	<ul style="list-style-type: none"> • CROSS-REFERENCE ERROR: Sub-§§1, 4: why is §122 cross-referenced—§122 involves unincorporated places, but this provision is about municipalities—should the cross-reference be §123 instead?
Chapter 7: Bottle Clubs	
§161. Bottle clubs	<ul style="list-style-type: none"> • OMISSION: What is the penalty for violating sub-§3-B (employing minors without appropriate supervisor present)? Bottle clubs are not “licensees”, so they are ineligible for Ch. 33’s administrative penalties; this offense is also not covered in §1. <ul style="list-style-type: none"> ○ <i>Suggestion:</i> Could impose the same civil violation penalties applicable to sub-§3-A (minors on the premises improperly); sub-§4 (minors or intoxicated persons consuming or possessing on premises); sub-§5 (allowing any state law violation to occur); and sub-§7 (denying law enforcement access to premises). [<i>Compare</i> the structure of B.Y.O.B. offenses in §163(9), which might be useful here.] ○ <i>Other option:</i> The only other penalties specifically provided for bottle clubs are in sub-§1 (failure to register is a Class E crime) and sub-§1-C (operating after registration denial is a Class D crime). • CLARITY: Chapter 33 imposes discipline on liquor licensees as well as their agents or employees for violations of Title 28-A’s provisions and implementing rules. Section 161 only provides penalties for a “bottle club” that violates its provisions, not also agents and employees. <i>Is this distinction intentional?</i> • INCONSISTENCY: Section 2(3)(A) defines “bottle club premises” and this phrase is consistently used in §161(3-A), (4) and (5). However, §161(7) refers only to “premises” and not “bottle club premises.” The word “premises” is defined in §2(24) only with respect to licensees, and thus not for bottle clubs, which receive a permit. Should the term “premises” be changed to “bottle club premises” in sub-§7?
§161-B. Local approval of bottle clubs	<ul style="list-style-type: none"> • Observation: The process established in this section is similar, but not identical, to local approval of on-premises retail licensees in §653. (See Appendix C: Local approval comparison chart) This is not problematic provided it is intentional.
§162. Local authority for operation of bottle clubs	
§163. B.Y.O.B. function permit	
Chapter 11: Entertainment Districts	
§221. Entertainment districts	
PART 2: AGENCY LIQUOR STORES	
Chapter 15: Agency Liquor Stores	
§351. Proximity to churches and schools	<ul style="list-style-type: none"> • INCONSISTENCY: Should “school dormitory” be added to the list of entities in sub-§1 that can’t be within 300 feet of an agency liquor store? Compare sub-§(2). • CLARITY: would it be better to restructure this section to: (1) absolutely prohibit an agency liquor store within 300 feet of any public or private elementary or secondary school and (2) only allow an agency liquor store within 300 feet of a postsecondary school, church, chapel or parish house if the bureau first holds a public hearing near the proposed location? [This same question applies to §701] • CLARITY: Should the statute specify the grounds or factors for the bureau to consider when issuing or denying an agency liquor store license after the hearing contemplated in sub-§1(A)? [This same question applies to §701]
§352-A. Purchase of spirits from agency liquor stores; purchase from reselling agents	<ul style="list-style-type: none"> • DUPLICATE: Second sentence of §352-A is duplicated in §705(1), although §705(1) is broader in scope. <i>Suggestion:</i> merge § 705 and § 352-A.
§353. Business hours	<ul style="list-style-type: none"> • TERMINOLGY: Probably should remove “fortified wine” because it a type of “wine,” not spirits. Agency liquor stores are defined as sellers of “spirits.”

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Current Section: Title 28-A	Notes and Questions
	<ul style="list-style-type: none"> • CLARITY: Should both sentences read “1 a.m. <i>the next day</i>”? (Cf. §353-A) • CONFLICT: the second sentence, which notwithstanding any local option decision not to allow agency liquor stores to operate on Sundays, renders §123(4) (allowing local votes on this question) completely ineffective. Should §123(4) be deleted?
§353-A. Business hours	<ul style="list-style-type: none"> • DUPLICATE: §§ 353 and 353-A are duplicative <ul style="list-style-type: none"> ◦ <i>Suggestion:</i> Retain §353-A & delete §353 (alleviates the first 2 problems above). • CONFLICT: the second sentence, which notwithstanding any local option decision not to allow agency liquor stores to operate on Sundays, renders §123(4) (allowing local votes on this question) completely ineffective. Should §123(4) be deleted?
§354. Sales to minors or intoxicated persons	<ul style="list-style-type: none"> • Might be helpful to merge this section with §705 (see below).
§356. Flexible hours for certain agency liquor stores	<ul style="list-style-type: none"> • CLARITY: Nothing in Title 28-A requires an agency liquor store to be open certain hours. The only mandate from Title 28-A is that agency liquor stores be closed at certain times of day, <i>see</i> §§353, 353-A. Thus, the “flexibility in setting seasonal hours” granted in §356 suggests that agency stores may be open during certain seasons even when they are otherwise required to be closed by §353 / §353-A. This was not the intent when the statute was written, however. Should this be cleared up in some way?
Chapter 19: Agency Liquor Stores	
§451. Agency liquor stores	<ul style="list-style-type: none"> • TERMINOLOGY(?): Should “selling liquor” be changed to “selling spirits”? <ul style="list-style-type: none"> ◦ INCONSISTENCY: The definition of “agency liquor store” in §2(1) states that an agency liquor store is licensed to sell “spirits” for off-premises consumption. But, agency liquor stores are only listed as eligible to receive class VIII licenses, in §1010-A, which authorizes the sale of all types of liquor. Are agency liquor stores able to obtain spirits-only licenses? Or spirits/wine or spirits/malt liquor licenses? Or, must agency liquor stores be licensed to sell all three types of liquor?
§452. Rules governing agency liquor stores	<ul style="list-style-type: none"> • TERMINOLOGY(?): Should “liquor” in sub-§§2, 3, 5 and/or 6 be “spirits”?
§453. Location of agency stores	<ul style="list-style-type: none"> • TERMINOLOGY: Sub-§1, ¶A: change “state liquor stores” to “agency liquor stores”? (The phrase used in Title 28-A, including in §123 on local option Qs.) • CLARITY: How many agency liquor stores are permitted in unincorporated places? (Under the definitions in §2(22) (municipality) and §2(33) (unincorporated place)), an unincorporated place is not a municipality. Thus, store numbers outlined in §453(1-A) do not apply in unincorporated places. Is an unlimited number of stores allowed? <ul style="list-style-type: none"> ◦ What \$ amount of spirits must the applicant be able to stock to obtain an agency liquor store license in an unincorporated place? §453(2-C)(B) establishes stock requirements for “municipalit[ies]” of various sizes, not unincorporated places.
§453-A. Issuance of agency liquor store license	<ul style="list-style-type: none"> • CONFLICT: Sub-§5 provides that the bureau “shall issue” an agency liquor store to one or more applicants, but §453(2) provides that the bureau “may” issue up to the specified number of licenses in each type of municipality. <i>Compare also</i> §453-A(2) (requiring notice that an agency liquor store “<i>may</i> be established”).
§453-B. License fees	
§453-C. Reselling agents	<ul style="list-style-type: none"> • TERMINOLOGY: Change “agent” in sub-§1 to “agency liquor store”? • CLARITY: Should the first sentence of sub-§1 be restated as a <i>prohibition</i> on agency liquor stores selling spirits to retailers for on-premises consumption <i>unless</i> the licensed agency liquor store <i>also has</i> a reselling agent license?
§453-D. Change of location	<ul style="list-style-type: none"> • OMISSION? May an agency liquor store in an unincorporated place relocate?
§455. Liquor for agency liquor stores	<ul style="list-style-type: none"> • CONFLICT: Sub-§1 requires agency stores to buy liquor <i>only from the bureau</i>, but §606(8) states agency liquor stores buy spirits from <i>either</i> the bureau <i>or</i> through the section 90 contractor. <i>Compare</i> §3-B(2) (agency liquor store purchases spirits from the bureau buy may submit payment to section 90 contractor) <i>and</i> §83-C(3) (section 90 contractor does not take title to spirits) <i>with</i> §453-C(1) (reselling agents purchase from

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	<p>the bureau <i>or</i> through the section 90 contractor) and §503 (“wholesale liquor provider” sells spirits to agency liquor stores—no mention of bureau). Which is the correct?</p> <ul style="list-style-type: none"> • TERMINOLOGY: Is sub-§1 intended to require agency stores to buy “spirits” from the bureau, not all “liquor” (latter includes wine and malt liquor)? If so, change both the text and the section headnote. • ERROR? Sub-§2: why is the second sentence located in this subsection? The sentence seems unnecessary, but if it is retained, should it be moved to §451?
§457. Transfer of agency liquor store license	<ul style="list-style-type: none"> • CLARITY: What is the proper procedure when an agency liquor store has been sold to someone not authorized to be a licensee or if the physical premises has been changed? <i>Compare</i> §458(3) (process for selecting different licensee when a license renewal application is denied); §458(5) (appeal process).
§458. Renewal of agency liquor store license; selection of alternate licensee	<ul style="list-style-type: none"> • TERMINOLOGY: Sub-§2, ¶A and sub-¶2-A: should “liquor” be replaced with “spirits” in these provisions? (It is possible “liquor” is intended in either or both provisions, but agency liquor store licenses specifically authorize the sale of spirits. An agency liquor store must have additional licenses to sell other forms of liquor).
§459. Delivery of liquor by agency liquor stores	<ul style="list-style-type: none"> • TERMINOLOGY/CONFLICT: Is the authority to deliver to on-premises retailers intended to be limited to reselling agents (the only entities that sell spirits to on-premises retailers see §453-C & 606(1-D)), not all agency liquor stores? • TERMINOLOGY: Should this section be limited to delivery of “spirits” rather than delivery of all “liquor” (latter includes wine and malt liquor)?
§460. Agency liquor store taste testing of distilled spirits	<ul style="list-style-type: none"> • DUPLICATION/CLARITY: The final sentence of sub-§1 duplicates §1206. In addition, it is unclear if this sentence and §1206 are intended to impose a <i>duty on the agency liquor store</i> (or other off-premises retailer for purposes of §1206) not to permit consumption of alcoholic beverages on the premises, other than at a taste-testing event? Or, is the duty on the <i>imbiber</i>? <ul style="list-style-type: none"> ○ If the former, need to clarify this intent. <i>Compare</i> §1201(3) (off-premises retailer cannot <i>sell</i> liquor for on-premises consumption). ○ If the latter, what is the penalty? There is no penalty specified for this offense in either §460 or 1206. <i>Compare</i> §11(2) (Class E crime to imbibe liquor at a place under “the common roof” of an off-premises licensee). • CLARITY: Sub-§2-A(D): the language of this paragraph raises the question that if a licensed sales representative is not pouring the taste-testing samples, who can be pouring them? Are only certain folks (<i>e.g.</i>, agency store owner, agent or employee) authorized? If so, should the list of authorized folks be stated in sub-§2?
§461. Minimum stock requirement	<ul style="list-style-type: none"> • OMISSION? How many product codes must be stocked by an agency liquor store located in an unincorporated place?
Chapter 21: Wholesale Liquor Provider	
§501. Wholesale liquor provider; definition	<ul style="list-style-type: none"> • TERMINOLOGY: should this term be changed to “wholesale <i>spirits</i> provider”? • CLARITY: Should this definition be moved to 28-A MRSA §2 because the phrase “wholesale liquor provider” is used outside chapter 21 in §1051(6) & §1054(3)? Is the definition sufficient or can it be clarified? • TERMINOLOGY: Several other different phrases are used to describe the “wholesale liquor provider” in Title 28-A. Should these all be changed to use the same, defined term to describe this one entity? <i>See, for example:</i> <ul style="list-style-type: none"> ○ The phrase “entity awarded a contract under section 90” is used in §2(31-A) (definition of “spirits administration”); §3-B(2) (agency liquor store payment for spirits); §83-C(1, 2, 3 & 5) (bureau’s spirits administration duties); §453-C(1) (reselling agent purchase of spirits); §606(8) (agency liquor store purchase of spirits); §2229(2) (section 90 contractor restocking spirits in agency liquor stores). ○ The phrase “State’s contracted wholesaler” is used in §1055(1)(G) (spirits samples given at restaurants).

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	<ul style="list-style-type: none"> ○ The phrase “wholesaler contracted by the bureau under section 90” is used in §1355-A(5)(G) and (H) (describing small distillery self-distribution).
<p>§502. Wholesale liquor provider prohibited from holding an agency liquor store license</p>	<ul style="list-style-type: none"> • INCONSISTENCY: The section headnote states the wholesale liquor provider may not hold an agency liquor store license, but the section’s text states that the wholesale liquor provider may not hold a “retail license to sell <i>liquor</i> for off-premises consumption”, which matches the fact that agency liquor stores are only listed as eligible to receive class VIII licenses, in §1010-A, which authorizes the sale of all types of liquor. Yet, these provisions conflict with the definition of “agency liquor store” in §2(1), which states that an agency liquor store is licensed to sell “spirits” for off-premises consumption. <ul style="list-style-type: none"> ○ <i>Question:</i> Are agency liquor stores able to obtain spirits-only licenses? Or, must agency liquor stores be licensed to sell all three types of liquor? • INCONSISTENCY: See question under §90(1) & (2) regarding the inconsistent provisions of law regarding the types of licenses (and financial interests?) a wholesale liquor provider (and its principle officers?) is prohibited from having.
<p>§503. Sale to on-premises licensees prohibited</p>	<ul style="list-style-type: none"> • TERMINOLOGY: Should 1st sentence be rewritten to state: “A wholesale liquor provider shall sell spirits to establishments licensed by the State to sell liquor for off-premises consumption <u>agency liquor stores</u>” ? <ul style="list-style-type: none"> ○ <i>Explanation:</i> The only “establishments licensed . . . to sell [spirits] for off premises consumption” are agency liquor stores, so replacing that phrase adds clarity and prevents this statute from authorizing the wholesale liquor provider to sell spirits to Class VI or Class VII licensees, who are not themselves allowed to sell spirits.
<p>PART 3: LICENSES FOR SALE OF LIQUOR</p>	<ul style="list-style-type: none"> • CONFLICT: Part 3 is entitled “licenses” for the sale of liquor, but it includes Chapter 51’s provisions for “certificates of approval” (which are not included in the definition of “license”). Should the heading of Part 3 be amended to correct this inconsistency?
<p>Subpart 1: General Provisions</p>	<ul style="list-style-type: none"> • CLARITY: Which portions of Subpart 1—if any—apply to certificates of approval? As drafted, these sections usually apply only to “licenses” (a term that is not defined in a way that includes “certificates of approval”, although the term “licensee” is defined to include “certificates of approval”). <ul style="list-style-type: none"> ○ The following sections do not now apply to COAs but seem applicable – if so, they should be amended to make that clear: §601 (eligibility); §651 (applications); §653 (hearings; bureau review; appeal); §654 (additional considerations for licensure). ○ The following sections use the words “licensee” and “license” – making it difficult to discern if COAs are included. Should they be? §602 (notification of license expiration); §604 (production of licenses); §652 (application procedure – also need to fix chapter cross-reference if add COAs) ○ <i>Compare</i> §607 already applies to COAs because it uses the word “licensee” and §605 specifically doesn’t apply to COAs given subsection (8)
<p>Chapter 25: General Provisions</p>	
<p>§601. Eligibility</p>	<ul style="list-style-type: none"> • CLARITY: §457 suggests §601 applies to agency liquor stores ... but it may be best to clearly state so here given that agency liquor stores are set forth in Part 2 and all other retail licenses are here in Part 3. Probably should also discuss applicability of §601 requirements in §453-A, regarding the processing of agency liquor store applications. • CLARITY: Does this section apply to certificate of approval applicants? (Note: a person with a COA is a “licensee” but a COA is not a “license.” This section does not use the word “licensee”, suggesting COAs are not included, but that seems incorrect.)
<p>§602. Notification of license expiration</p>	<ul style="list-style-type: none"> • INCONSISTENCY: Headnote of sub-§3 does not match text (text only addresses illegal sales after proper notification, not after expired grace period). • CLARITY: Does this section apply to certificate of approval applicants? (Note: a person with a COA is a “licensee” but a COA is not a “license.” This section does not consistently use the word “licensee”, making it unclear if COAs are included.)

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§604. Production of licenses	<ul style="list-style-type: none"> • CLARITY: Does this section apply to certificate of approval applicants? (Note: a person with a COA is a “licensee” but a COA is not a “license.” This section does not consistently use the word “licensee”, making it unclear if COAs are included.)
§605. Transfer of licenses; death; bankruptcy; receivership; guardianship; corporations	<ul style="list-style-type: none"> • CLARITY: Although agency liquor stores have their own transfer-after-sale provision in §457, does all or a portion of §605 also apply to agency liquor stores? Note: the text of §605 does not clearly exclude agency liquor stores. • CONFLICT: Sub-§8 states this section “does not apply to certificate of approval holders.” The definition of “certificate of approval holders” in §2(8) includes in-state manufacturers licensed by the bureau. Thus, sub-§8 renders this section inapplicable to all in-state manufacturers licensed under §1355-A. But, the lead-in paragraph to §605 discusses how this section applies to two types of in-state manufacturers licensed under §1355-A (tenant brewers and tenant wineries). <ul style="list-style-type: none"> ◦ <i>Key question:</i> Does §605 apply to in-state manufacturers licensed via §1355-A?
§606. Liquor bought from bureau; sale to government agencies	<ul style="list-style-type: none"> • TERMINOLOGY: The following uses of the word “liquor” should probably be changed to “spirits”: Section headnote; Sub-§1 headnote; & Sub-§3 text and headnote. • CLARITY: Sub-§1-A: should there be a cross reference to the penalties set forth in §2074-A for violations of this subsection? • TERMINOLOGY: Should sub-§1-A lead-in language and ¶B’s references to “agency liquor store” each be changed to “reselling agent”? • DUPLICATE: Sub-§1-D is redundant to sub-§1. (If delete sub-§1 and retain sub-§1-D, need to fix the cross-reference that appears in §1201-A.) • CLARITY: Does sub-§3 (advance orders in anticipation of license) apply <i>both</i> to agency liquor stores <i>and</i> on-premises licensees? The text could be more explicit. • OUTDATED LANGUAGE: Sub-§4-A, remove “Beginning July 1, 2014”? • CLARITY: Sub-§4-A: perhaps rewrite the first sentence as follows: “. . . the bureau shall set the price of that an agency liquor store must pay to purchase spirits at a minimum discount of 12% of the retail price.” Or clarify this is the <u>wholesale</u> price? • CONFLICT (maybe): Sub-§8: see discussion under §455(1) above – do agency liquor stores purchase only from the bureau or also the section 90 contractor? • CONFLICT: Sub-§8 requires agency liquor stores to sell spirits at the price “established by the commission” but §83-C(2) provides that the bureau, not the commission, establishes the wholesale and retail prices of spirits. See §83-C above.
§607. Licensees closed in case of riots, hurricanes or floods	
§608. Licensees with professional sporting events; revenues from the sale of liquor	
Chapter 27: Application Procedure	
§651. Applications	<ul style="list-style-type: none"> • CLARITY: Does this section apply to certificate of approval applicants? (Note: a person with a COA is a “licensee” but a COA is not a “license.” This section does not use the word “licensee”, suggesting this section doesn’t apply to COA applications.)
§652. Application procedure	<ul style="list-style-type: none"> • CLARITY: Does this section apply to certificate of approval applicants? (Note: a person with a COA is a “licensee” but a COA is not a “license.” This section does not consistently use the word “licensee”, making it unclear if COAs are included.) • OMISSION? Sub-§1 requires license applicants to enclose the fee prescribed by Chapter 41 (retail license fees) with their application and sub-§5 requires the inclusion of a \$10 filing fee. What about non-retail license applicants and agency liquor store applicants; must they include the license fee and filing fee with their applications? <ul style="list-style-type: none"> ◦ Overall, does this section apply to agency liquor store license applicants? • DUPLICATE: sub-§6 duplicates §1077(5); suggest delete sub-§6 & keep §1077(5)

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	<ul style="list-style-type: none"> ○ TERMINOLOGY: But, if retain sub-§6, should probably change “public service” license to “public service corporation” license (the defined term). Should also probably change “steamboats” to “vessels” (the defined term); and replace “railroads” and “cars” with “dining cars and passenger cars” (the defined terms).
§653. Hearings; bureau review; appeal	<ul style="list-style-type: none"> • CLARITY: Does this section apply to certificate of approval applicants? (Note: a person with a COA is a “licensee” but a COA is not a “license.” This section does not use the word “licensee”, suggesting COA applicants may not have such hearings.) • OMISSION? What is the process for approval or denial and what are the grounds for denial of applications for an <i>off-premises</i> license to sell malt liquor and/or wine? <ul style="list-style-type: none"> ○ Note: §653 applies only to <i>on-premises</i> licenses and §453-A applies to agency liquor store licenses, but there is no statutory process for other off-premises licenses. • CLEANUP: Remove 3rd sentence of sub-§1(C), involving applicability and effective date of this provision, as no longer necessary? • CLARITY: The final 2 sentences of sub-§1(C) are confusing (How can this “paragraph” apply to renewals, given conflict between the first and last sentences?). <ul style="list-style-type: none"> ○ <i>Suggestion:</i> rewrite to state that, unlike the 60-day time period for initial licenses, a renewal application is deemed approved and ready for action by the bureau if the county/municipality takes no action within 120 days. • CLARITY: The second ¶ of sub-§5 implies but doesn’t expressly state that a licensee may continue operating during a court appeal of the bureau’s decision denying a renewal (because a pro-rated portion of the renewal fee is returned if the appeal is denied). Is this the desired process: allow continued operation during appeal? If so, suggest making that explicit. <i>Cf.</i> §805(2) (stay of District Court license suspension or revocation pending appeal to Superior Court). <ul style="list-style-type: none"> ○ Note that under the APA, 5 MRSA §10002, the license remains in effect until the agency decision on a renewal application – but not through an appeal of the agency decision. Similarly, under 5 MRSA §11004, the appeal does not automatically stay the denial of the renewal application. • CONFLICT: §653(5) and 5 MRSA §10051(2) provide for appeals of bureau decisions to deny a license (or refusals to renew or transfer the license) to District Court but §805(1) provides for appeals of the bureau’s “refusal to issue <i>any</i> license applied for” to Superior Court. <i>See suggested fix below under §805(1).</i> • CLARITY: Where are appeals from the District Court’s decision on an on-premises retail license intended to lie? <i>Cf.</i> §805(5) (appeals of District Court license revocations are first to Superior Court and then to the Law Court). <ul style="list-style-type: none"> ○ <i>Explanation:</i> §653 is silent on the issue. Under the APA, 5 MRSA §10051(3) & §11008, the appeal would lie in the Law Court. If this is intended, is it worth cross-referencing the APA for clarity here to emphasize difference from the appeal of District Court license revocation decisions?
§654. Additional considerations for licensure	<ul style="list-style-type: none"> • CLARITY: Does this section apply to certificate of approval applicants? (Note: a person with a COA is a “licensee” but a COA is not a “license.” This section does not use the word “licensee”, suggesting the bureau may not consider these factors in evaluating applications for a certificate of approval.) • CLARITY: Sub-§1: What may the bureau/municipality do if it considers any of the factors in sub-§1 negatively for a particular application? The statute does not authorize license denial on these grounds. <i>Compare</i> sub-§2, sub-§3 and §653(2 & 2-A).
Chapter 29: License Restrictions	
§701. Proximity to schools; exception	<ul style="list-style-type: none"> • CLARITY: would it be better to restructure this section to: (1) absolutely prohibit an on-premises license within 300 feet of any public or private elementary or secondary school and (2) only allow an on-premises license within 300 feet of a postsecondary school, church, chapel or parish house if the bureau first holds a public hearing near the proposed location? [This same question applies to §351]

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	<ul style="list-style-type: none"> • CLARITY: Should the statute specify the grounds or factors for the bureau to consider when issuing or denying an on-premises license after the hearing contemplated in sub-§1(B)? [This same question applies to §351]
§703. Employment of violators prohibited	<ul style="list-style-type: none"> • CLARITY: This section prohibits employment of someone <i>ineligible for licensure</i> due to a conviction for a “violation of any liquor laws within the last 5 years.” That specific license ineligibility standard is stated with more detail in §601(2)(C), (D) & (E). <ul style="list-style-type: none"> ○ <i>Suggestion:</i> Add a cross-reference to §601(2)(C), (D) & (E) or rewrite §703 to prohibit employing someone convicted of violating “any law of the State or the United States” involving “manufacture, transportation, importation, possession or sale of liquor on Sunday.”
§703-A. Prohibition of employment of violators as retail employees	
§704. Employment of minors	<ul style="list-style-type: none"> • INCONSISTENCY: Should the cross references to penalties in §803 (2x) be removed? Violations of many provisions of this Title by licensees or their employees result in §803 penalties, yet most (if not all) of those sections don’t explicitly mention §803. Inconsistency might lead a court to ask why...
§705. Sales for cash; sales to certain persons restricted	<ul style="list-style-type: none"> • CLARITY: Section headnote and sub-§1 headnote are too narrow, maybe replace with “Acceptable forms of payment”? • CLARITY: Are the restrictions on “wholesale licensee[s]” intended to apply only to Maine, not out-of-state, wholesalers? (See Appendix J: Wholesale Licensee Definition) • CLARITY: Sub-§1 refers to the employee of a wholesale licensee but not the employee of a reselling agent, suggesting that the latter types of employees are not included in the prohibition. Should that be changed? • DUPLICATE (in part): sub-§1 duplicates – but is also more expansive than – 2nd sentence of §352-A, the latter of which only applies to sales by reselling agents. (Suggestion from above: merge §352-A & §705.) • ERROR? Sub-§1 refers to sub-§1-B as an exception to its rule, but the two sub-sections regulate different entities: sub-§1 limits the payment methods that wholesalers and reselling agents may accept, while sub-§1-B allows hotels, clubs, Class A restaurants and on-premises licenses – not wholesalers or reselling agents – to accept a different payment method in certain situations. Thus, should “except as provided in subsection 1-B” be removed from sub-§1? • OMISSION? Sub-§§1-B implies that a <i>retail licensee</i> may not sell liquor for credit, but where is that prohibition stated? Does the prohibition include credit cards? <ul style="list-style-type: none"> ○ <i>Compare:</i> The first sentence of §352-A prohibits an agency liquor store from making retail sales to customers other than by cash, check, credit or debit card. But, that section does not apply to other retail licensees. • INCONSISTENCY: Sub-§2 prohibits all off-premises licensees from selling, giving, or delivering <i>imitation liquor, malt liquor or wine</i>—but not spirits—to a minor for off-premises consumption. By contrast, ¶E states that an off-premises licensee who receives payment for “liquor” from a minor violates this paragraph (should that be subsection?). Yet, unless sub-§2 is amended to include spirits, payments by minors for spirits—which is a type of liquor—are not prohibited in the lead-in text of sub-§2. <ul style="list-style-type: none"> ○ Note that §354 prohibits sales by agency liquor stores of “liquor” (including spirits) to minors—thus prohibiting most of the relevant sales. But, §1355-A(5)(G) authorizes in-state small distilleries to sell their products directly to consumers for off-premises consumption. §1355-A(5)(G) does not prohibit small distilleries from selling these spirits to minors, however. <p>If this is a gap the Legislature wants to fill:</p> <ul style="list-style-type: none"> ○ <i>Option 1:</i> Amend §705(2) to include a prohibition on spirits ○ <i>Option 2:</i> merge §354 and §705 to be clear that <u>all</u> licensees, of any type, cannot sell/furnish/give etc. any type of liquor to minors or visibly intoxicated folks.

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	<ul style="list-style-type: none"> • OMISSION? Sub-§2-A prohibits all off-premises licensees from selling, giving or delivering <i>malt liquor or wine</i>—but not spirits—to a visibly intoxicated person. <ul style="list-style-type: none"> ○ Note that §354 prohibits sales of “liquor” by agency liquor stores to visibly intoxicated persons—thus prohibiting most of the relevant sales. But, small distilleries may sell their products for off-premises consumption via §1355-A(5)(G). That provision does not prohibit sales to visibly intoxicated folks. ○ <i>Suggestions:</i> Option 1 or 2 above (add spirits to sub-§2-A or rewrite §354) • CONFLICT (potentially): Sub-§3-A prohibits licensees from selling, furnishing, giving, serving or permitting service of liquor to a visibly intoxicated person if the liquor is “to be consumed on the premises <i>where sold</i>.” The “where sold” may render ineffective the non-sale prohibitions on “furnishing, giving, serving or permitting service of liquor” to visibly intoxicated persons because, if no sale occurs, then the liquor can’t be consumed on the premises <i>where it was sold</i>. <ul style="list-style-type: none"> ○ <i>Suggestion:</i> change “premises where sold” to “licensee’s premises”
§706. Identification cards	
<p>§707. Licensee not to be indebted, obligated or involved</p> <p>See Appendix D diagram of the three-tier system – financial interest prohibitions.</p> <p>Note on terminology</p> <p>“Certificates of approval” required for:</p> <p>A. Out-of-state manufacturers of malt liquor or wine (§1361)*</p> <p>B. Out-of-state wholesalers of malt liquor or wine (§1361)</p> <p>*unclear: if out-of-state spirits mfgs. or wholesalers are included</p> <p>“Licenses” required for:</p> <p>C. Maine manufacturers (§1355-A)</p> <p>D. Maine wholesalers of malt liquor or wine (§1401)*</p> <p>*NOTE: the Maine wholesaler of spirits has a contract under §90 (not a license)</p> <p>“Certificate of approval holder”: is defined in §2(8) to include A, B, and C above</p> <p>“Licensee” is defined in §2(14) as any entity with either a license or a certificate of approval (A-D above).</p> <p>“Wholesale licensee” is defined in §2(34) in a way that definitely includes licensed Maine wholesalers of malt liquor or wine but does not</p>	<ul style="list-style-type: none"> • INCONSISTENCY: Sub-§§3 & 4 state “except as authorized in section 1355-A”, but §707-A also is an exception – should it also be mentioned? • OMISSION? Sub-§5(A) prevents wholesalers from having a financial interest in out-of-state manufacturers or wholesalers of <i>malt liquor only</i> – what about wine (or spirits)? • INCONSISTENCY? Are out-of-state spirits manufacturers included or excluded from §707’s separation of financial interests among the three tiers? <ul style="list-style-type: none"> ○ <i>Question 1:</i> Sub-§3(B) prevents retail licensee from having financial interests in out-of-state manufacturers or wholesalers of <i>malt liquor or wine</i>. What about an out-of-state manufacturer or wholesaler of <i>spirits</i>? <ul style="list-style-type: none"> ▪ But see sub-§2: licensees may not have various financial ties, including to any person “engaged . . . in the manufacture . . . of liquor.” [includes spirits] ○ <i>Question 2:</i> Sub-§4: it is unclear whether out-of-state spirits manufacturers are required to have a certificate of approval. (See Appendix A: Certificate of approval questions.) If they are not required to have certificates of approval, then sub-§4 prohibits only out-of-state <i>malt liquor and wine</i> manufacturers—not out-of-state <i>spirits</i> manufacturers—from having financial interests in Maine wholesale and retail licensees. By contrast, in-state spirits manufacturers are prohibited from having financial interests in Maine wholesale and retail licensees by sub-§4 . ○ <i>Question 3:</i> Sub-§5(A) If out-of-state spirits manufacturers are not required to have certificates of approval (see above), wholesale licensees are not prohibited from having a financial interest in out-of-state <i>spirits</i> manufacturers. Is that ok? <ul style="list-style-type: none"> ▪ But see sub-§2: licensees may not have various financial ties, including to any person “engaged . . . in the manufacture . . . of liquor.” [includes spirits] • CLARITY/REORGANIZATION: Section 707 does not itself prohibit (a) an out-of-state wine or malt liquor manufacturer with a certificate of approval from having a \$ interest in a licensed out-of-state wholesaler or (b) a licensed Maine manufacturer from having a \$ interest in an out-of-state wholesaler. <ul style="list-style-type: none"> ○ However, §1363(1) appears intended to prohibit both of the missing relationships identified above (although §1363’s language is unclear and perhaps ineffective). Should those prohibitions be rewritten to be effective and moved to §707? • TERMINOLOGY: For purposes of analyzing this section, We’ve assumed “wholesale licensee” (as used in sub-§5 and sub-§7) includes an out-of-state wholesaler with a certificate of approval. Need to confirm this is intended. (See Appendix J: Wholesale licensee definition.) • TERMINOLOGY: the phrase “certificate of approval holder” is defined in §2(8) to include the following entities <i>with certificates of approval</i>: (a) out-of-state wholesalers and (b) out-of-state manufacturers <u>as well as</u> (c) <i>licensed</i> in-state manufacturers. See explanation to left. As a result of this definition:

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clearly include out-of-state wholesalers of malt liquor or wine that have certificates of approval (See Appendix J).	<ul style="list-style-type: none"> ○ DUPLICATE: Headnote and lead-in text of sub-§4 is redundant to state “certificate of approval holder or in-state manufacturer” ○ CLARITY: Sub-§4 technically prevents not only manufacturers but also licensed out-of-state wholesalers from having a financial interest in Maine wholesalers and retailers. But, someone reading this provision quickly might not realize that out-of-state wholesalers are included (I didn’t for a long time!) ○ <i>Suggestion:</i> avoid the phrase “certificate of approval holder” in §707(4) & (5). Be clear which entities are prohibited from having an interest in which other entities.
§707-A. Exceptions to indebtedness or operations limitations	<ul style="list-style-type: none"> • TERMINOLOGY: Should the phrase “certificate of <i>compliance</i> holder” in §707-A(2)(B) and (D) be changed to “certificate of <i>approval</i> holder”?
§708. Prohibited discounts and rebates	<ul style="list-style-type: none"> • TERMINOLOGY: Is the phrase “wholesale licensee” as used in sub-§2 intended to include only Maine wholesalers of malt liquor or wine or also out-of-state wholesalers that have certificates of approval? (See Appendix J: Wholesale licensee definition) • CLARITY: Sub-§5: does the Commission approve only the <i>spirits</i> that the agency liquor store chooses to put in a combination package (see §81(3)), or also the <i>combination packages</i>? If the latter, clarify by adding “upon approval of the commission” after the notwithstanding phrase. • OMISSION? Sub-§§6 & 7: If out-of-state spirits manufacturers and wholesalers are <u>not</u> required to obtain certificates of approval and are therefore not subject to Chapter 33’s licensing penalties (See Appendix A: Certificate of approval questions), what is the penalty for such an entity if it violates these subsections? • TERMINOLOGY: Sub-§7 (1st paragraph): change “agency store” to “agency liquor store”? (2nd paragraph): change “beer” to “malt liquor”?
§708-A. In-pack sweepstakes, contests and games	<ul style="list-style-type: none"> • TERMINOLOGY: Is the phrase “wholesale licensee” intended to include only Maine wholesalers or also out-of-state wholesalers with certificates of approval? (See Appendix J: Wholesale licensee definition)
§708-C. Donations to public broadcasting stations, incorporated civic organizations and national organizations	<ul style="list-style-type: none"> • REDUNDANCY: Sub-§§1&2: state that both certificate of approval holder[s]” and “person[s] licensed . . . under section 1355-A” may make donations. But, “certificate of approval holder” is defined in §2(8) to include “an instate manufacturer . . . licensed by the bureau.” Thus, do not need to separately list §1355-A licensees, which are in-state manufacturers licensed by the bureau. [It is not a problem to keep the text as written, but technically it is duplicative.] • OMISSION? Sub-§1: If out-of-state spirits manufacturers or wholesalers (or suppliers) are <u>not</u> required to obtain certificates of approval and are therefore not subject to Chapter 33’s licensing penalties (See Appendix A: Certificate of approval questions), what is the penalty for such an entity if it makes an improper donation? • CROSS-REFERENCE: Sub-§2(E) contains an incorrect cross-reference to Title 32, chapter 28; the redemption statutes are now in Title 38, chapter 33.
§709. Prohibition of certain practices	<ul style="list-style-type: none"> • CONFLICT: Sub-§1(A)(1) prohibits licensees from offering free liquor to any person. Sub-§2(L) creates an exception for “complimentary samples of <i>wine</i> under section 1055” – but §1055 allows licensed restaurants to offer complimentary samples of <i>malt liquor, spirits or wine</i>. <ul style="list-style-type: none"> ○ <i>Legislative history note:</i> The original bill that led to enactment of §709(2)(L) and §1055 only allowed restaurants to offer complimentary wine samples. An amendment was adopted that expanded §1055 to include all types of liquor samples, without a conforming expansion of §709(2)(L). ○ <i>Suggestion:</i> Delete ¶L and add §1055 cross-reference to ¶J, the list of all other free sample provisions, which is written in a way that is not limited to wine. • CONFLICT: Sub-§2, ¶¶ I and J are inconsistent with the statutory text of the listed cross references regarding “taste testing” and “providing samples.” Probably should remove cross-reference to §1355-A (a sampling provision) from ¶I (it is already in ¶J) and move §1402 (a taste-testing provision) from ¶J to ¶I. <ul style="list-style-type: none"> ○ <i>Related:</i> Add cross-reference to §1368 (farmers’ market taste-testing events) to ¶I?

Analysis of Title 28-A pursuant to Resolve 2019, chapter 15 (Jan. 2020)

Current Section: Title 28-A	Notes and Questions
§710. Advertising signs	<ul style="list-style-type: none"> • CLARITY: As written, sub-§1 prohibits “a person” – who might not be a licensee – from posting an improper number of signs on/near licensed premises. Is that intended? If so, what is the penalty for non-licensee violators? <ul style="list-style-type: none"> ◦ <i>Explanation:</i> Non-licensees are ineligible for Ch. 33 penalties and this offense does not fall within rubric of the general criminal penalty in §1.
§712. Advertising or sale of malt liquor or wine by trade name	<ul style="list-style-type: none"> • INCONSISTENCY: Are spirits intended to be covered by sub-§2? Overall §712 headnote suggests only malt liquor or wine is affected, but sub-§2 applies to all “liquor”, not just malt liquor and wine. Fix either §712 headnote or sub-§2 text.
§713. Selling malt liquor or wine from truck	<ul style="list-style-type: none"> • INCONSISTENCY: Change overall §713 headnote and headnotes of sub-§§1&3 from “truck” to “any vehicle” to match text of these provisions? • TERMINOLOGY: Is the phrase “wholesale licensee” in sub-§§2 & 3 intended to include out-of-state wholesalers? (See Appendix J: Wholesale licensee definition) • CLARITY: Sub-§4 is worded extremely broadly: sales/deliveries – <i>of what? by what person or entity?</i> – must be made only to licensees. Also, is this prohibition limited to sales and deliveries <i>made by vehicle</i> as the section headnote suggests? Rewrite!
§714. Malt liquor sales in kegs	<ul style="list-style-type: none"> • TERMINOLOGY (maybe): Sub-§3: is the “original numbered band” in ¶E equivalent to the “tag” mentioned in ¶A and sub-§5? (If so, use that same wording.) • INCONSISTENCY: Sub-§4 makes possession of an unlabeled keg a civil violation, but there are exceptions to the labeling requirement in §6-A. Should probably rewrite §714(4) to exclude possession of an unlabeled keg that is not required to be labeled.
Chapter 31: Records	
§751. Retail licensee to keep records	<ul style="list-style-type: none"> • CLARITY: Should sub-§1, ¶¶A&B be more specific—<i>i.e.</i>, require retail licensee to keep records of all <i>liquor</i> purchases and all prices paid for <i>liquor</i>? (<i>Cf.</i> sub-§2) • INCONSISTENCY: Sub-§1(C) requires records to show licensee purchased liquor with cash or a check, but §352-A (2nd sentence) & §705(1) authorize licensees to purchase liquor via cash, check <i>or electronic funds transfer</i>.
§752. Wholesale licensee to keep records	<ul style="list-style-type: none"> • TERMINOLOGY: Is “wholesale licensee” intended to include out-of-state wholesalers with certificates of approval here? (See Appendix J: wholesale licensee Qs) • CLARITY: Should sub-§1, ¶A be more explicit—<i>i.e.</i>, require wholesale licensees to keep records of all <i>liquor</i> sales and purchases? • INCONSISTENCY: Sub-§1(A) requires records to show wholesalers only made cash or a check sales, but §352-A (2nd sentence) & §705(1) authorize wholesalers to accept cash, check <i>or electronic funds transfer</i> when licensees purchase liquor.
§753. Certificate of approval holder to keep records	[Note: use of “liquor” here is correct because these specific certificates of approval can be issued to spirits manufacturers. <i>See</i> §1371.]
§754. Records open for inspection	
§755. Records confidential	
Chapter 33: Revocation and Suspension	
§801. Jurisdiction of District Court Judge	<ul style="list-style-type: none"> • TERMINOLOGY: Sub-§§1&2 should refer to “District Court” not “District Court Judge” (the word is a remnant from the days of Administrative Court Judges).
§802. Causes for revocation and suspension of licenses	<ul style="list-style-type: none"> • TERMINOLOGY: throughout: change “District Court Judge” to “District Court”? • CLARITY: Under sub-§1, may the court revoke or suspend a license based on the actions of the licensee’s agent or employee in violating a federal or state liquor law or rule? Or, is the power of the court related to violations committed by licensees’ agents and employees—<i>see, e.g.</i>, §801(2)—limited to imposing fines and civil forfeitures directly on the agent/employee? If an employee or agent’s violation can lead to revocation or suspension of the employer’s license, it may be best to state that clearly. • CLARITY: Would it be clearer to rewrite sub-§1, ¶A by removing the phrase “hold licensees . . . liable administratively” and instead state that the Judge is not required to revoke or suspend a license (see lead-in sentence) on this basis?

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Current Section: Title 28-A	Notes and Questions
§803. Revocation or suspension procedure	<ul style="list-style-type: none"> • TERMINOLOGY: throughout: change “District Court Judge” to “District Court”? Note that several references to “District Court Judge” were changed to “District Court” in §803(2) when that subsection was amended by P.L. 2009, ch. 199. • INCONSISTENCY? (perhaps intentional) Under §802(1) only a “<i>substantial</i> infraction” of a bureau rule may lead to license suspension or revocation, but under §803(1) BABLO may file a complaint or issue a warning for “an infraction” of a rule. Does this mean <i>insubstantial</i> rule infractions may only result in warnings or fines? (By contrast, violations of federal or state law or federal regulations are not required to be substantial to lead to revocation or suspension under the language of §802(1).) • CONFLICT: As written, §803(3) suggests that the court may, after hearing, <i>only</i> either suspend a penalty or place a case on file in lieu of a penalty. But the court also may—as provided in sub-§§ 4, 5, 8 & 9—suspend or revoke a license; impose a fine; or accept an offer in compromise. (But warnings are not imposed after hearing. Sub-§6) • OMISSION? Sub-§9 states offers in compromise are only available after a license has been suspended by the District Court (i.e., after the hearing). But, from past experience, I believe these offers in compromise often arise by agreement of the licensee and bureau prior to a court hearing. If so, should that be clarified in sub-§9?
§804. Record of proceedings and transcript	<ul style="list-style-type: none"> • TERMINOLOGY: throughout: change “District Court Judge” to “District Court”?
§805. Appeal from decision of District Court Judge or bureau	<ul style="list-style-type: none"> • TERMINOLOGY: sub-§§ 1, 4: change “District Court Judge” to “District Court”? • CONFLICT: §653(5) and 5 MRSA §10051(2) provide for appeals of bureau decisions <i>not to issue new on-premises retail licenses</i> (or appeals from bureau refusals to renew or to transfer on-premises licenses) to District Court. By contrast, §805(1) provides for appeals of the bureau’s “<i>refusal to issue any license applied for</i>” to Superior Court. <ul style="list-style-type: none"> ○ <i>Suggestion:</i> If different processes are intended for on-premises licenses vs. other licenses, explicitly limit scope of §805(1) to “any license other than an on-premises retail license” or “all license applications not covered by §653.” • CLARITY: Sub-§1 authorizes appeals from District Court decisions suspending or revoking licenses. May a licensee appeal from imposition of a fine? Does it matter whether the fine is imposed in lieu of a suspension or revocation (sub-§8)? • OMISSION? Sub-§4: Should this be rewritten to state the Superior Court “may affirm, modify or reverse the decision of the District Court Judge <i>or the bureau</i>”? <ul style="list-style-type: none"> ○ <i>Why?</i> Some appeals under this section are from bureau decisions denying licenses. • CLARITY: What is the intent of the Legislature when the bureau denies renewal of a license – can the licensee operate during the appeal? <ul style="list-style-type: none"> ○ Sub-§2 provides that <i>suspension/revocation</i> decisions are stayed pending appeal <i>from District Court to Superior Court</i>. But, sub-§2 is silent on whether <i>non-renewal</i> decisions are stayed pending appeal <i>from the bureau to the District Court</i>. <ul style="list-style-type: none"> ▪ By contrast, §653(5) implies (but does not expressly state) that an on-premises licensee whose renewal application is denied by the bureau may continue to operate pending appeal to the District Court. ○ Note: under the APA, 5 MRSA §10002, a license remains in effect until the agency (i.e., the bureau) decision on a renewal application—but not pending an appeal of the agency’s decision denying the renewal application. Similarly, under 5 MRSA §11004, an appeal does not automatically stay the denial pending the court appeal.
§806. Records	
Subpart 2: Retail Licenses	
Chapter 41: Fees and Eligible Premises	
§1001. Class I licenses	<ul style="list-style-type: none"> • TERMINOLOGY: change “dining cars and passenger cars” to “railroad corporations” and “vessels” to “vessel corporations” (or “vessel companies,” see §1077(2)) because the public service corporation, not the individual vessel or car, is what is licensed? §652(6); §1077(5). [Same question for §§1003-1005 below.]

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Current Section: Title 28-A	Notes and Questions
	<ul style="list-style-type: none"> • CLARITY: are only hotels <i>that sell food</i> eligible for Class I licenses to sell spirits, wine and malt liquor for on-premises consumption? Compare §1002 (“hotels which do not serve food” are eligible for Class I-A licenses to sell spirits, wine and malt liquor for on-premises consumption, and imposing a higher fee than for Class I-A licenses than the Class I fee) with §1061(3) (requiring 10% of hotel income to be from food).
§1002. Class I-A licenses	<ul style="list-style-type: none"> • CONFLICT (?): this section authorizes the bureau to issue licenses to “hotels which do not serve food”, but §1061(3) requires hotels to have 10% of their income from food. Compare §2(15)(H) (defining “hotel” as an establishment that “may” serve “meals” and defining when a hotel is “considered to be serving meals”, but not stating whether food service is generally required, even if that food is not considered a meal). <ul style="list-style-type: none"> ◦ <i>Question:</i> Perhaps all hotels must serve food, but Class I-A licenses are for hotels that serve food but are not considered to serve meals? (See BABLO application)
§1003. Class II licenses	<ul style="list-style-type: none"> • TERMINOLOGY: change “dining cars and passenger cars” to “railroad corporations” and “vessels” to “vessel corporations” (or “vessel companies,” see §1077(2)) because the public service corporation, not the individual vessel or car, is what is licensed. §652(6); §1077(5)? [Same question for §1001, §1004 and § 1005.] • CLARITY: are only hotels <i>that sell food</i> eligible for Class II licenses? [See §1001 above]
§1004. Class III licenses	<ul style="list-style-type: none"> • TERMINOLOGY: change “dining cars and passenger cars” to “railroad corporations” and “vessels” to “vessel corporations” (or “vessel companies,” see §1077(2)) because the public service corporation, not the individual vessel or car, is what is licensed. §652(6); §1077(5)? [Same question for §1001, §1003 and § 1005.] • CLARITY: are only hotels <i>that sell food</i> eligible for Class II licenses? [See §1001 above]
§1005. Class IV licenses	<ul style="list-style-type: none"> • TERMINOLOGY: change “dining cars and passenger cars” to “railroad corporations” and “vessels” to “vessel corporations” (or “vessel companies,” see §1077(2)) because the public service corporation, not the individual vessel or car, is what is licensed. §652(6); §1077(5)? [Same question for §1001, §1003 and § 1004.]
§1006. Class V licenses	
§1007. Class VI licenses	<ul style="list-style-type: none"> • Add cross-reference to §1201(6)&(7): qualifying groceries/compatible merchandise?
§1008. Class VI-A licenses	<ul style="list-style-type: none"> • Add cross-reference to §1201(6)&(7): qualifying groceries/compatible merchandise?
§1009. Class VII licenses	<ul style="list-style-type: none"> • Add cross-reference to §1201(6)&(7): qualifying groceries/compatible merchandise?
§1010. Class VII-A licenses	<ul style="list-style-type: none"> • Add cross-reference to §1201(6)&(7): qualifying groceries/compatible merchandise?
§1010-A. Class VIII licenses	<ul style="list-style-type: none"> • Add cross-reference to §1201(6)&(7): qualifying groceries/compatible merchandise? • CLARITY: By only providing for one “class” of agency liquor store license to sell all types of liquor, this section creates an inference that it is not possible for an agency liquor store to obtain a licenses for the sale of <u>spirits only</u>. Should there be a license “class” for spirits only? (Are the fees in §453-B for spirits-only licenses.) <ul style="list-style-type: none"> ◦ Note: BABLO only has forms online for Class VIII agency liquor stores, which authorize the sale of spirits, wine and malt liquor. Is this the only possibility? • CLARITY: Similarly, by only providing for this one “class” of agency liquor store license, this section suggests all agency liquor stores are required to stock groceries and/or compatible merchandise. Is that true? (If so clarify in Chapter 15 or 19.) <ul style="list-style-type: none"> ◦ Note: §458(2)(B) lists past sales and inventory of groceries / related items as a renewal consideration, but not a renewal <i>requirement</i> or initial license requirement. • CLARITY: Should we clarify that the \$700 is both an initial fee <u>and</u> a yearly renewal fee, especially given sub-§2(B)’s statement that the §453-B renewal fee (which is presumable for spirits only) is inapplicable to this class of licenses?
§1011. Class X licenses	
§1011-A. Class XI licenses	<ul style="list-style-type: none"> • TERMINOLOGY: Should “malt” in sub-§1 be “malt liquor”?

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Current Section: Title 28-A	Notes and Questions
§1012. Other retail licenses	<ul style="list-style-type: none"> • CLARITY: Sub-§§1 & 2: should the phrase “as provided in section 1071” be added at the end of sub-§1 and the phrase “as provided in section 1075” be added to sub-§2 to match format of sub-§3 and to signal additional license requirements? • CONFLICT: Sub-§2 and §1075(1) differ in the list of licensed premises eligible for auxiliary licenses. §1012(2) lists Class A restaurants; Class I hotels at ski areas, golf courses or disc golf courses; Class I golf clubs; and Class I or V clubs located at golf courses or disc golf courses. But, §1075(1) <i>additionally</i> authorizes Class A restaurants/lounges to obtain auxiliary licenses. • CONFLICT: Sub-§3 and §1052(1) differ in the list of licensed premises eligible for additional off-premises catering licenses. §1012(3) lists Class A restaurants; hotels; bed and breakfasts; and clubs. But, §1052(1) <i>additionally</i> authorizes Class A lounges and Class A restaurant/lounges to obtain off-premises catering licenses. • CLARITY: Sub-§3: is the phrase “licensed to sell spirits, wine and malt liquor,” which is also found in §1052(1), intended to modify only “clubs” or all the types of premises that may obtain an off-premises catering license? [same question for §1052(1)] <ul style="list-style-type: none"> ○ <i>Explanation:</i> As written, it is unclear whether hotels, bed and breakfasts, and Class A restaurants that only have a Class III wine or Class IV malt liquor license may apply for off-premises catering licenses or whether these types of entities are eligible for off-premises catering licenses <i>only</i> if their existing licenses authorize sale of <i>all</i> types of liquor. • CONFLICT: Sub-§4 and §1075-A(1) differ in the list of licensed premises eligible for mobile service bar licenses. §1012(4) lists owners of golf courses and disc golf courses. But, §1075-A(2) <i>additionally</i> authorizes Class A restaurants, Class A restaurant/lounges and Class I hotels located at golf courses or disc golf courses to obtain mobile service bar licenses. (Also, must each of these additional entities be located at a golf course or disc golf course, or only Class I hotels? The former seems true, but could clarify.) • TERMINOLOGY: Sub-§6: should “beer” be changed to “malt liquor” (the defined term) in ¶C and ¶D (if not changed, minibars may be stocked with beer, not other malt liquor)? • TERMINOLOGY: Sub-§6(D): Is the wholesale licensee” from whom alcohol must be purchased for minibars intended to include only Maine wholesalers or also out-of-state wholesalers with certificates of approval? (See Appendix J: wholesale licensees) • OMISSION? Sub-§6, ¶I: What is the civil or criminal penalty for an occupant of a hotel room with a minibar when a minor occupying or entering the room violates liquor laws? Or, does “liable” instead refer to civil lawsuit liability?
Chapter 43: Licenses for the sale of Liquor To Be Consumed on the Licensed Premises	
Subchapter 1: General Conditions	
§1051. Licenses generally	<ul style="list-style-type: none"> • TERMINOLOGY: suggested changes/questions: <ul style="list-style-type: none"> ○ Sub-§§4 & 5: change “table wine” to “wine” (or, if “table wine” only applies to a subset of all wine, then the term “table wine” should be defined) ○ Sub-§6 lead-in, ¶A & ¶D: If “wholesale liquor provider” is changed to “wholesale spirits provider” in §501, make the same change here as well. ○ Sub-§8 lead-in & ¶¶L, P, Q & R: do the “wholesale licensees” discussed in these paragraphs include out-of-state wholesalers with certificates of approval? (See Appendix J: wholesale licensee definition) ○ Sub-§8, ¶I: change “agency liquor store” be “reselling agent”? • HEADNOTE: Sub-§§6, 8: clarify these are taste-testing events for public on <u>on-premises</u> retail licensees premises? (To distinguish from §§460, 1205 & 1207 events) • OMISSION? Sub-§6: Other taste-testing event statutory provisions (ex: sub-§8) prohibit serving minors or intoxicated persons. Does the Legislature intend similar prohibitions to apply to the spirits taste testing events in sub-§6 (where the only people

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Current Section: Title 28-A	Notes and Questions
	<p>being served are retail licensees or their agents)? Perhaps the retail licensees and agents are all over age 21 so minors are not an issue? <i>But compare</i> §1504(6) requiring a retail licensee receiving a similar product sample to be ≥ 21 years old.</p> <ul style="list-style-type: none"> ○ See Appendix E: Taste-testing and product sampling. • DUPLICATE: sub-§8 lead-in requires a taste-testing event held under this provision to “be conducted during hours that are authorized by the bureau for the sale of liquor on the licensed premises.” Sub-§8, ¶G states the same requirement.
<p>§1052. Off-premise catering at planned events or gatherings</p>	<ul style="list-style-type: none"> • CONFLICT: see discussion above with respect to §1012(3), which has a different list of establishments eligible for these licenses. • TERMINOLOGY: Should it be “off-premise catering” as in section and sub-§1 headnotes and sub-§2 or “off-premises catering” as in sub-§1 & sub-§4 text? • CLARITY: Sub-§1: is the phrase “licensed to sell spirits, wine and malt liquor,” which is also found in §1012(3), intended to modify only “clubs” or all the types of premises that may obtain an off-premises catering license? [see same question for §1012(3)] • DUPLICATE: The fee listed in sub-§2 is also listed in §1012(3). <ul style="list-style-type: none"> ○ <i>Suggestion:</i> keep in §1012(3) not here as most license fees appear in Chapter 41. • CLARITY: What types of liquor may licensed off-premises caterers sell at catered events? All three types: spirits, wine and malt liquor? Or, only the type of liquor that the entity may sell pursuant to its underlying license?
<p>§1052-D. Taste-testing event license</p> <p>Who may be licensed? See sub-§1:</p> <ul style="list-style-type: none"> • §1355-A licensee* • Wholesaler with §1401 license • Entity with certificate of approval* • Supplier of spirits • Foreign manufacturer of spirits* • Broker (of spirits) <p>* these entities may sponsor another manufacturer pursuant to sub-§2</p>	<ul style="list-style-type: none"> • TERMINOLOGY: What is a spirits “supplier”? Is it the equivalent, for spirits, to an out-of-state wholesaler of malt liquor or wine? There is no definition in T.28-A; it may be wise to add a definition in §2 because the term “supplier” is used, in relation to spirits, also in: §81(3), §83-C(3), §708(7), §708-C(1), §1504 and §1651(2)(G). • INCONSISTENCY: Sub-§§1, 6 & 7(I) allow a supplier of spirits be licensed for an event, but sub-§4 & sub-§7(K) do not list suppliers as possible event licensees. Sub-§4 also fails to mention a foreign manufacturer of spirits as a possible licensed entity. • INCONSISTENCY: Sub-§7(L) (1st sentence) fails to list supplier in the first clause and broker in the second clause. Both supplier and broker belong in both clauses. • CONFLICT? Sub-§7, ¶¶ A and B appear to conflict. ¶B states that the on-premises license (if any) for a taste-testing venue is surrendered during the taste-testing event. Why, then, does the 2nd sentence of ¶A state that a fee may be charged for liquor sold for on-premises consumption under auspices of a separate on-premises retail license?
<p>§1054. Permit for music, dancing or entertainment</p>	<ul style="list-style-type: none"> • CLARITY: If a municipality requires such a permit and the on-premises licensee fails to obtain a permit, is this intended to result in Chapter 33 penalties or only penalties imposed by the municipality for failure to obtain the required permit? • CLARITY: Sub-§8: move “if the municipality has such a board of appeals” from the second sentence of the subsection to the first sentence of the subsection. • INCONSISTENCY: Sub-§§11&12 suggest <i>all</i> municipalities and counties must require entertainment permits and have ordinances/regulations regarding the permits as does the headnote of sub-§2, but the text of sub-§2 gives municipalities the option whether to require this type of permit (“A municipality, or . . . county commissioners <i>may</i> require a licensee. . . to obtain a permit . . .”). <ul style="list-style-type: none"> ○ If discretion exists, change the headnote of sub-§2 and add prefatory language to sub-§11--“If a municipality requires permits under subsection 2 . . .” and rewrite sub-§12. But, if permits must be required, change “may” to “shall” in sub-§2.
<p>§1055. Liquor samples at restaurants</p>	<ul style="list-style-type: none"> • TERMINOLOGY: Is the wholesale licensee” from whom samples must be purchased under sub-§1, ¶F intended to include only Maine wholesalers or also out-of-state wholesalers with certificates of approval? (See Appendix J: wholesale licensees) • TERMINOLOGY: Sub-§1, ¶G: change “state’s contracted wholesaler” to “wholesale liquor provider” (as that term is defined in §501 – which definition probably should be made applicable to all of Title 28-A as is suggested above)?

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Current Section: Title 28-A	Notes and Questions
Subchapter 2: Specific License Requirements	
§1061. Hotels	<ul style="list-style-type: none"> • CONFLICT: Sub-§3's requirement that "each hotel" derive "at least 10% of [its] gross annual income" from food conflicts with §1002, which allows Class I-A licenses to be issued to hotels that do not serve food. The definition in §2(15)(H) adds to the confusion, by defining "hotel" as an establishment that "may" serve "meals" and defining when a hotel is "considered to be serving meals", but not stating whether food service is generally required, even if the food served is not considered a meal. <ul style="list-style-type: none"> ○ <i>Suggestion:</i> clarify which license classes are subject to 10% food sales requirement • CLARITY: Sub-§2: in calculating the "gross annual income" to determine whether 10% is from the sale of food is income from renting rooms included? <i>Compare</i> §1073(2) (requiring "10% of the gross annual income" for a bowling alley to be from food, but excluding "income from the bowling business" from this calculation). • OMISSIONS? The statutes for most other types of establishments with food-sale income requirements explicitly state: <ul style="list-style-type: none"> ○ An initial-license application may be granted by the bureau if it believes the applicant "would probably meet" the food-sale-income requirements. <i>See</i> §1062(4) (restaurant); §1063(3) (Class A restaurant & Class A restaurant/lounge); §1076(4) (qualified catering service). Should a similar provision appear for hotels? ○ A license-renewal applicant must provide proof that the previous year's business met the food-sale income requirement. <i>See</i> §1062(3)(A) (restaurant); §1063(4) (Class A restaurant & Class A restaurant/lounge); §1076(5) (qualified catering service). Is it intended that a similar requirement be imposed on hotels?
§1061-A. Bed and breakfasts	
§1062. Restaurant requirements	<ul style="list-style-type: none"> • DUPLICATE: Sub-§3(B)—requiring income from the bowling alley business not to be included in the food-income requirement—duplicates the second sentence of §1073(2). (Sub-§3(B) also uses the undefined term "bowling alley" rather than the defined term "bowling center.") Should probably repeal §1062(3)(B) because it is in a section applicable to restaurants, while §1073 is a section applicable to bowling centers.
§1063. Class A restaurants	<ul style="list-style-type: none"> • HEADNOTE: Expand section heading to include Class A restaurants/lounges? • TERMINOLOGY: Change "restaurants" to "Class A restaurants" in sub-§1? • CLARITY: Sub-§3: should this be rewritten to state that the bureau determines "that the applicant would probably <u>qualify meet the requirements of subsection 2</u>"? (This would match the format of §1062(4).) • CORRECTION? Sub-§4: "subsection" (used 2x) should probably be "section." • CLARITY: Sub-§4: the final sentence may fit better if located in sub-§2.
§1063-B. Pool halls	
§1064. Establishment located at fairgrounds	
§1065. Licenses for Class A lounges	<ul style="list-style-type: none"> • HEADNOTE: change to "Class A lounges" to match other headnotes? • CLARITY: Sub-§4: clarify that minors may not remain "on the premises <u>of a licensed Class A lounge</u>"?
§1066-A. Taverns	<ul style="list-style-type: none"> • CLARITY: Sub-§2: clarify that minors may not remain "on the premises <u>of a licensed tavern</u>"?
§1068. Performing arts centers	
§1069-A. Auditoriums	
§1070. Civic auditoriums	
§1071. Incorporated civic organizations	<ul style="list-style-type: none"> • REDUNDANCY: Sub-§6 states "a manufacturer licensed . . . under section 1355-A [or] a certificate of approval holder" but the definition of "certificate of approval holder" in §2(8) includes all §1355-A licensed Maine manufacturers.

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Current Section: Title 28-A	Notes and Questions
§1072. Clubs	<ul style="list-style-type: none"> • HEADNOTE: Sub-§6 change to: “Sales in <u>original</u> containers forbidden”?
§1073. Indoor racquet clubs; ice skating clubs; golf courses; curling clubs; and bowling centers	<ul style="list-style-type: none"> • CONFLICT: Sub-§1 states curling clubs may be licensed to sell all three types of liquor, yet they are only listed as eligible for Class III licenses (wine only) but not Class I (all liquor), Class II (spirits only), or Class IV (malt liquor only) licenses. • OMISSION? Should this section apply to disc golf courses? (Otherwise, the general authority for the bureau to license disc golf courses is not in Ch. 43.) • INCONSISTENCY: Sub-§2 requires all of the types of establishments listed in this section to offer food for sale at all times liquor is for sale, but only the definition of “golf course” in §2(15)(G) requires that food be offered for sale. It might make sense to amend the definitions of racquet clubs, ice skating clubs, curling clubs, bowling clubs and disc golf courses to be consistent. • OMISSIONS? The statutes for most other types of establishments with food-sale income requirements explicitly state: <ul style="list-style-type: none"> ○ An initial-license application may be granted by the bureau if it believes the applicant “would probably meet” the food-sale-income requirements. <i>See</i> §1062(4) (restaurant); §1063(3) (Class A restaurant & Class A restaurant/lounge); §1076(4) (qualified catering service). Should a similar provision appear for these entities? ○ A license-renewal applicant must provide proof that the previous year’s business met the food-sale income requirement. <i>See</i> §1062(3)(A) (restaurant); §1063(4) (Class A restaurant & Class A restaurant/lounge); §1076(5) (qualified catering service). Is it intended that a similar requirement be imposed on these entities?
§1074. Outdoor stadiums	<ul style="list-style-type: none"> • TERMINOLOGY: Sub-§3: should the word “liquor” (at least in the 2nd sentence) be changed to “malt liquor and wine” (because spirits may not be sold in these stadiums)?
§1075. Auxiliary licenses at ski areas, golf courses and disc golf courses	<ul style="list-style-type: none"> • HEADNOTE: Lists some but not all of the entities that may obtain an auxiliary license; perhaps change the headnote simply to “Auxiliary licenses”? • CONFLICT: §1012(2) and §1075(1) differ in the list of licensed premises eligible for auxiliary licenses. (See discussion above under §1012(2).) • CONFLICT: Sub-§1 lists eligible underlying licensed premises as: Class A restaurant, Class A restaurant/lounge, Class I hotel, or various classes of clubs. But, Sub-(1)(A) also lists a “lounge” as a potential underlying licensee. Which is correct? Also, should “lounge” be “Class A lounge”? • INCONSISTENCY: this section requires the auxiliary premises to be licensed by DHHS, but there is no requirement for the underlying premises to be licensed by DHHS. Similarly, no provision of Title 28-A requires licensed restaurants to have DHHS licenses. The only other DHHS-license requirements in Title 28-A appear in §2(15)(P) (definition of qualified catering service), §1065 (Class A lounges) and §1080 (common consumption areas). Should it be clarified throughout the Title which entities must have a DHHS license (allows imposition of Ch. 33 penalties)?
§1075-A. Golf course and disc golf course mobile service bar	<ul style="list-style-type: none"> • CONFLICT: §1012(4) and §1075-A(1) differ in the list of licensed premises eligible for mobile service bar licenses. (See discussion above under §1012(4).) • HEADNOTE: The headnote of sub-§3 incorrectly suggests it is a general penalty for the section. Perhaps rewrite as: “Bringing liquor to golf course or disc golf course prohibited; penalty.” • CLARITY: Sub-§4 is confusing: Is the Legislature’s intent to state that <i>both</i> the mobile service bar license <i>and the underlying other liquor license</i> are subject to penalties under Chapter 33 for violations <i>occurring at the mobile service bar</i>? • CLARITY: Sub-§5: as written, this subsection cross-references the definition of public way in 29-A MRSA §2112-A(1)(D) – but leaves the penalty unstated, making it unclear whether the intent of sub-§5 is to make this activity a Class E “transport[ing]” crime under §1 of the Title. Is the intent instead only to signal to golf cart drivers that

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	they are subject to the penalties in 29-A MRSA §2112-A (traffic infraction) if they transport an open container of liquor across the public way?
§1076. Qualified catering services	<ul style="list-style-type: none"> • CLARITY: Sub-§2: is the intent that the licensee's principal place of business and the location where catering occurs may only be "in municipalities" that vote in favor of local option questions related to on-premises sales <u>or</u> may catering businesses and events also be located in unincorporated places where county commissioners vote in favor of on-premises sales under §122 (which is also located in Chapter 5 of this Title)? • OMISSION? Sub-§3(C): what is the min. dollar amount of food sales for a part-time catering service if it operates no more than 3 months in a year in a municipality with 20,001 to 30,000 persons? See Appendix F: <u>Qualified catering service sale requirements</u> • CLARITY: Sub-§4: should this be rewritten to clarify that the bureau determines "that the applicant for a new license would probably <u>qualify meet the requirements of subsection 3</u>" – i.e., food sales requirements. (Would match the format of §1062(4).)
§1077. Public service corporations: Vessel, railroad and airline corporations	<ul style="list-style-type: none"> • TERMINOLOGY: <ul style="list-style-type: none"> ○ Sub-§1 & 2(B)1: suggest changing "boat(s)" (4x) to "vessel(s)" (the defined term) ○ Sub-§5: suggest changing "passenger cars" to "dining cars or passenger cars" to match sub-§3 and definition in §2(15)(E) (if that definition is retained). • CLARITY: Sub-§2: this section confusingly refers to "licenses for vessels" and "a vessel licensed to sell liquor." But, pursuant to sub-§5, it is not the vessels that are licensed but rather the public service corp. that operates the vessels. The corp. may then serve liquor on all of its qualifying vessels. Should probably rewrite as "vessel corporations". (Also should change subsection headnote.) • CONFLICT: Sub-§2(B)(1) requires vessel corporations to obtain approval "<i>from the bureau under . . . section 653</i>" for a vessel to sell liquor for on-board consumption while in port or docked. But, under §653 provides <i>municipalities (or county commissioners)</i> approve applications for on-premises sales, followed by bureau approval.
§1079. International air terminals	<ul style="list-style-type: none"> • OMISSION: What is the fee for an international air terminal license? (They are not listed as eligible for any of the license classes listed in chapter 41 – is that a mistake?)
§1080. Common consumption area	
Chapter 45: Licenses for the Sale of Liquor To Be Consumed off the Licensed Premises	
§1201. Issuance of licenses; stock of merchandise	<ul style="list-style-type: none"> • TERMINOLOGY: Sub-§1 headnote: change "table wine" to "wine"? • CLARITY: Due to word order, sub-§1 could be read to mean that the bureau is issuing wholesale and/or distributor licenses under this section. Would be helpful to rewrite as: "The bureau may issue licenses under this section for the sale and distribution of malt liquor or wine to off-premise retail licensees, as defined in section 2, subsection 27, paragraph A, <u>for the sale of malt liquor or wine.</u>" • CROSS-REFERENCE Sub-§3 improperly lists §1207 as an exception to the rule that an off-premises licensee may not give liquor to a customer for on-premises consumption. This exception was created in P.L. 2009, Ch. 438, which also created a dual-liquor license in §1207. The dual liquor license statute was reallocated to §1208 via P.L. 2009, ch. 501, without also correcting the cross-reference in §1201(3). [The same error in §1051(3) was fixed through P.L. 2019, ch. 281 last session.] • CLARITY: Sub-§3 prohibits sales for on-premises consumption <i>by licensees</i> yet sub-§3-A prohibits sales to other retailers by <i>licensees, agents or employees</i>. Is this distinction intended, or should sub-§3's text be changed to mirror sub-§3-A? • CLARITY: The headnote of sub-§3-A suggests that the prohibition on §1201 licensees selling their products to other retailers applies not only when the purchaser is an off-premises retailer (ex: grocery store) but also when the purchaser is an on-premises retailer (ex: restaurant). If the latter is true, should remove the second use of the phrase "licensed under this section" from sub-§3-A.

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	<ul style="list-style-type: none"> • CLARITY: Sub-§4: it may be helpful to add a cross-reference to §122, which states a ground for county commissioners to deny these off-premises retail licenses. • INCONSISTENCY: Sub-§4: The parenthetical phrase “where no local option vote is taken under chapter 5” is confusing, because it suggests some unincorporated places have local option elections while others do not. But, under §122(1), “no local option election may be held in unincorporated places.” Should the parenthetical phrase be removed from §1201(4)? • CLARITY: sub-§5 and sub-§7: should these qualification requirements be limited to licenses “under this section” (both for clarity and to match sub-§§3, 3-A & 6)? • CLARITY (3 issues): Sub-§6 categorically states “all off-premises retail licensees must” stock groceries and/or compatible merchandise: <ul style="list-style-type: none"> ○ §1204 exempts ship chandlers from this requirement. Should the phrase “except as otherwise provided in §1204” be added? ○ Given sub-§1, one could infer the intent of this section is just to addresses off-premises retailers of malt liquor and wine. But, given the broad language of sub-§6, all off-premises retailers, including all agency liquor stores (off-premises retailers of spirits), are included. Is this intended or, are agency liquor stores only required to stock groceries/other merchandise if they also sell malt liquor and wine? Should clarify. (<i>See related questions under §1010-A</i>) ○ Sub-§6, ¶B refers to “merchandise <i>reasonably</i> compatible with a stock of malt liquor or wine” yet the definition in sub-§7 is only for “compatible merchandise.” To remove any potential ambiguity about the difference between compatible and reasonably compatible merchandise, “reasonably” should be removed.
§1201-A. Transfer of spirits among certain licensees	<ul style="list-style-type: none"> • CLARITY: This section involves transfer of spirits between agency liquor stores. But, this chapter primarily regulates off-premises retailers of <i>malt liquor and wine</i>. Should this section be moved next to §606?
§1202. Payment for sales in off-premise retailers	<ul style="list-style-type: none"> • HEADNOTE: it might add clarity to change headnote to: “Employment of minors”
§1204. Ship chandlers	<ul style="list-style-type: none"> • TERMINOLOGY: Sub-§1: should we change “table wine” to “wine”? Or, are ship chandlers only authorized to sell a subset of all wines called “table wine” (definition)? • CONFLICT: Are ship chandlers allowed to maintain and sell a stock of compatible groceries/merchandise? Sub-§3 provides that ship chandlers are “not required” to maintain a stock of groceries and compatible merchandise, suggesting that they are allowed to have groceries and compatible merchandise. But, the only two classes of license that mention ship chandlers—Class VI-A licenses in §1008 and Class VII-A licenses in §1010—each state that “ship chandlers <i>without</i> a qualifying stock of groceries...” are eligible for these classes of license. This suggests retail licenses may only be issued to ship chandlers that do not have groceries/merchandise.
§1205. Taste testing of wine	<ul style="list-style-type: none"> • CLARITY: The final sentence of sub-§1 duplicates §1206. In addition, it is unclear if this sentence and §1206 are intended to impose a <i>duty on the retail licensee</i> not to permit consumption of alcoholic beverages on the premises, other than at a taste testing event? Or, is the duty on the <i>imbiber</i>? <ul style="list-style-type: none"> ○ If the former, need to clarify this intent. <i>Compare</i> §1201(3) (off-premises retailer cannot <i>sell</i> liquor for on-premises consumption). ○ If the latter, what is the penalty? There is no penalty specified for this offense in either this section or 1206. <i>Compare</i> §11(2) (Class E crime to imbibe liquor at a place under “the common roof” of an off-premises licensee). • TERMINOLOGY: Is the wholesale licensee” from whom the wine must be purchased under sub-§2, ¶K intended to include only Maine wholesalers or also out-of-state wholesalers with certificates of approval? (<i>See Appendix J: wholesale licensees</i>) • CLARITY: Sub-§2-A(D): the language of this paragraph raises the question that if a licensed sales representative is not pouring the taste-testing samples, who can be pouring them? Are only certain folks (<i>e.g.</i>, retail licensee owner, agent or employee) authorized? If so, should the list of authorized folks be stated in sub-§2?

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Current Section: Title 28-A	Notes and Questions
§1206. Consumption prohibited on off-premises retail premises	<ul style="list-style-type: none"> • CLARITY: Is the intent of §1206 to subject an off-premises licensee to Ch. 33 administrative penalties for permitting consumption on the premises? (The text does not appear to accomplish this goal, if it is the goal.) Or, is the purpose to make it an offense for the imbiber to consume alcohol on the premises of an off-premises licensee. If the latter, what is the penalty for the offense? <i>Compare</i> §11(2) (Class E crime to imbibe liquor at a place under “the common roof” of an off-premises licensee).
§1207. Taste testing of malt liquor	<ul style="list-style-type: none"> • CLARITY: Is the final sentence of sub-§1 intended to impose a <i>duty on the off-premises licensee</i> to prevent consumption of alcoholic beverages on the premises, other than at a taste testing event, or is the <i>duty on the imbiber</i>? [See same question for §1205(1).] • TERMINOLOGY: Is the wholesale licensee” from whom the malt liquor must be purchased under sub-§2, ¶K intended to include only Maine wholesalers or also out-of-state wholesalers with certificates of approval? (See Appendix J: wholesale licensees) • CLARITY: Sub-§2-A(D): the language of this paragraph raises the question that if a licensed sales representative is not pouring the taste-testing samples, who can be pouring them? Are only certain folks (e.g., retail licensee owner, agent or employee) authorized? If so, should the list of authorized folks be stated in sub-§2?
§1208. Dual liquor license	<ul style="list-style-type: none"> • INCONSISTENCY: Per sub-§1, dual liquor licenses permit off-premises <i>wine</i> retail licensees also to obtain on-premises wine retail licenses. But, sub-§3 indicates that the fee is \$600 annually “in addition to the license to sell <i>malt liquor or wine</i> for consumption off the premises.” Should that be changed to “the license to sell <i>wine</i> for consumption off the premises” or “the off-premises retail license”?
§1209. Sale of privately held wine by auction	<ul style="list-style-type: none"> • CROSS-REFERENCE: Sub-§1(A) (“auction permittee” definition) & sub-§3: The cross-reference to 32 MRSA §285 is not really correct. That section requires persons who conduct auctions to be licensed, but it does not provide for their licensure. Probably better to write “an auctioneer licensed under Title 32, chapter 5-B.” <ul style="list-style-type: none"> ◦ Relatedly, 32 MRSA §299-A (wine auction permits), also currently states: “A person licensed under section 285 . . .” It probably should be similarly rewritten to state: “An auctioneer licensed under this chapter . . .” • CLARITY: Sub-§4, ¶A: should substance of the final sentence of this paragraph be merged with the definition in sub-§1, ¶B? (so the definition is not split up) • CONFLICT: Sub-§5 requires an auction permittee to comply with the provisions of Chapter 65. But, Chapter 65 only requires a “Maine manufacturer or importing wholesale licensee” to “pay an excise tax of 60¢ per gallon on all wine . . . <i>manufactured in or imported into</i> the State . . .” See §1652(2) (Note that the first sentence of §1652(2) states that an excise tax is imposed for “selling wine” in the State, but the second sentence, which sets forth the tax rate, does not apply to sales, only to importing or manufacturing wine.) <i>Compare</i> §1652(1) (imposing “an excise tax of 35¢ per gallon on all malt liquor <i>sold</i> in the State”). • CROSS REFERENCE: Sub-§6: The beverage container law is no longer located in Title 32, chapter 28; it is now in Title 38, chapter 33. Should fix cross-reference. • OMISSION? If a licensed auctioneer auctions privately held wine without a permit from BABLO, the auctioneer is subject to administrative discipline by the Board of Licensing of Auctioneers for violating 32 MRSA §299-A. In addition, if an auction permittee fails to pay required taxes, BABLO may refuse to issue that person a subsequent auction permit under sub-§5. <i>Question:</i> What is the penalty for an auction permittee who violates any of the other requirements of this section (e.g., selling privately held wine without a label or to a minor)? <ul style="list-style-type: none"> ◦ Is the intent that each violation is a Class E crime via §1 (because it is a sale of alcohol in violation of law)? But what about an auction permittee who fails to notify BABLO of each sale as required by sub-§2(E) or who stores wine on the same premises as the auction as prohibited by sub-§2(F)? Is that really a sale in violation of law so that the Class E penalty in §1 applies? ◦ Note: Chapter 33 administrative penalties are not applicable to non-licensees.

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Current Section: Title 28-A	Notes and Questions
Subpart 3: Non-retail Sales	
Chapter 51: Certificate of Approval Holders	
Subchapter 1: General Provisions	
§1351. Certificate of approval	<ul style="list-style-type: none"> • CONFLICT: Under §1351 <u>all</u> out-of-state manufacturers must obtain a certificate of approval, but rest of Title makes it unclear whether out-of-state spirits manufacturers are included in this requirement. (See Appendix A: Certificate of approval questions) • CONFLICT: Under §1351 and the definition in §2(8) all manufacturers, <i>including in-state manufacturers</i>, must obtain a certificate of approval. But, under §1355-A, in-state manufacturers obtain a “license”. (Manufacturers licensed under §1355-A are considered “certificate of approval holders” under the definition in §2(8) but there is no analogous definition of “certificate of approval” that includes licenses.) <ul style="list-style-type: none"> ○ <i>Suggestion:</i> Rewrite §1351: “License or certificate of approval required. All in-state manufacturers <u>must obtain a license from the bureau under section 1355-A to manufacture, offer for sale or sell liquor in the State, and all</u> out-of-state manufacturers and out-of-state wholesalers must obtain a certificate of approval from the bureau <u>to sell or offer for sale in this State any liquor or to transport or cause to be transported into the State for resale any liquor.</u>” (<i>cf.</i> §1361)
Subchapter 2: Manufacturers	
§1355-A. Manufacturer licenses	<ul style="list-style-type: none"> • ERROR: P.L. 2019, chapter 529, §4 amended sub-§1 to specify that only in-State manufacturers are licensed under §1355-A. But, in the process of making this amendment, the authority to issue licenses to in-State bottlers and rectifiers was removed from the statute. Should this authority be added back to the statute? • CLARITY: Sub-§2 is a bit confusing in its organization (as it evolved over time). It might be helpful to reorganize it as follows: <ul style="list-style-type: none"> ○ Combine sample provisions in ¶¶ A, B, E & F? Also, need to examine the relationship between these provisions: when may the manufacturer charge for samples rather than having them be complimentary? What does it mean in ¶F to “or otherwise comply with . . . ¶D”? ○ Move ¶G (applicable only to breweries/small breweries) to sub-§3? ○ Separate ¶I (license for on-premises sales) in own sub-section, with headnote? ○ Move substance of sub-§§3(D); 4(D); & 5(I) to §1052-D, the applicable taste-testing event section? This would be consistent with §1368, a taste-testing event provision that authorizes certain §1355-A licensees to make sales at the events. • OMISSION? Other provisions of Title 28-A authorizing public taste testing or sampling impose restrictions on the amount of liquor served. Should §1355-A(2)(A, B, E & F) or §1355-A(5)(F)? (See Appendix E: Taste-testing and product sampling) • CLARITY: Are sub-§2(D)(2), sub-§2(I)(2-A) & sub-§3(C)(6) intended to impose <i>duties on manufacturers</i> to control consumption of alcoholic beverages on the premises or are they <i>duties on the imbibers</i>? Should clarify. <ul style="list-style-type: none"> ○ If the former use language similar to Sub-§2(I)(5), which clearly imposes the <i>duty on a manufacturer</i> that also has an on-premises license to ensure liquor sold for off-premises consumption under sub-§2(D) is not consumed on the licensed premises. ○ If the latter, should the penalty on the imbibers mirror §11(2) (Class E crime to imbibe liquor at a place under “the common roof” of an off-premises licensee)? • CONFLICT (or ambiguity): Ambiguities are created given the various provisions authorizing Maine manufacturers to make off-premises retail sales in sub-§2, ¶C, ¶D & ¶G, sub-§3(C), sub-§4(B)(2) & sub-§5(B)(3). (See Appendix G: Maine manufacturers and off-premises sales questions). • CLARITY: Sub-§3(C) may benefit from a cross reference to sub-§2(I), which is the authority to obtain an on-premises retail license at the brewery.

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Current Section: Title 28-A	Notes and Questions
	<ul style="list-style-type: none"> • TERMINOLOGY: should “liquor” be “malt liquor” in sub-§2(G) & should “brewery” (3x) be “brewery or small brewery” in sub-§3(C) and its subparagraphs? • ERROR?: Under sub-§4(C)(1) a small winery that produces fortified wine may only produce a combined total of “50,000 gallons per year” of all wine products. But, small wineries were authorized to produce up to 50,000 of wine that is not hard cider <u>and</u> 3,000 barrels of hard cider per year in P.L. 2019, ch. 529. Should the 50,000 gallon limit in sub-§4(C)(1) also be written in a way that excludes hard cider products? • CLARITY: Sub-§5(B)(1) states the “small distillery off-premises license” is \$100 <ul style="list-style-type: none"> ○ Is this really the fee for the small brewery to sell its products for off-premises consumption, as is authorized for all types of §1355-A manufacturers by sub-§2(D)? If so, move the fee there and clarify the fee for other manufacturers? ○ Or, is this the fee for a small distillery to have an “additional location” off premises license via sub-§5(B)(3)? If so, move the fee to that provision. ○ Or, is this the small distillery manufacturing license fee (which is also listed in §1551(3)(H))? If so, suggest removing here and leaving in §1551(3)(H). • OMISSION? Sub-§5(B)(3) & (5)(G): there is no prohibition on small distilleries selling their products <i>to minors</i> for off-premises consumption. (This is a gap in the law created by §705 above – could fill the gap in §705 or in this section.) • DUPLICATE (maybe): What is the relationship between sub-§2(I) (all Maine manufacturers may obtain one Chapter 43 on-premises retail license if same person has controlling interest in both manufacturer and retailer) and sub-§5(E) (distillery or small distillery may obtain one Chapter 43 retail license for a connected establishment owned by the in-state manufacturer)? <ul style="list-style-type: none"> ○ Are these separate potential licenses (so 2 max per spirits manufacturing license) or does sub-§5(E) impose additional requirements on the single license obtained by a distillery or small distillery under sub-§2(I)? Either way, should clarify. • CONFLICT (in part): Sub-§5, ¶F requires a distillery <i>or small distillery</i> that provides samples to the public first to sell those spirits to the State “in accordance with paragraph D”—which renders the spirits “subject to the listing, pricing and distribution provisions of this Title.” To the extent ¶F applies to small distilleries, it conflicts with sub-§5, ¶H, which allows a small distillery to sell samples of its spirits to the public without physically transporting the spirits through the State distribution system and applies a special discount rate to the small distillery under §606(4-B). <ul style="list-style-type: none"> ○ <i>Suggestion:</i> eliminate the conflict by stating “except as provided in paragraph H” in sub-§5, ¶F. This would clarify that samples <i>sold</i> by the small distillery enjoy the special transportation exemption & discount rate provided in sub-§5, ¶H. ○ <i>Further suggestion:</i> If this protection is also intended to apply to free samples, strike “small distillery” from sub-§5, ¶I and clarify in sub-§5, ¶H that this paragraph applies not only to spirits “sold for on-premises consumption” (as currently written) but also to complimentary samples for on-premises consumption. • INCONSISTENCY: Sub-§5, ¶I authorizes a distillery <i>or small distillery</i> to sell spirits directly to customers for off-premises consumption at a taste-testing event under §1052-D. Sub-§5, ¶I further provides that spirits sold at these events are “subject to the listing, pricing and distribution provisions of this Title.” This contrasts with spirits sold by a small distillery for off-premises consumption in other situations—<i>i.e.</i>, at the small distillery, at an off-premises retail location owned by the small distillery, or at a farmers’ market taste-testing event under §1368)—under sub-§5, ¶G, spirits sold by the small distillery in these locations are exempt from transportation to the state distribution system and benefit from the special discount rate under §606(4-B). <ul style="list-style-type: none"> ○ <i>Suggestion:</i> If want the same treatment for spirits sold by a small distillery for off-premises consumption at a §1052-D event, rewrite sub-§5(I)(2) as follows: “Spirits sold by a distillery in accordance with this paragraph are subject to the listing, pricing and distribution provisions of this Title. <u>Spirits sold by a small distillery in accordance with this paragraph are subject to the provisions of paragraph G.</u>” Compare §1368(3)(F) (sales at farmers’ market taste-testing events).

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	<ul style="list-style-type: none"> • CLARITY: Sub-§7, last sentence of lead-in ¶, is oddly drafted. It appears to mean that a tenant winery may produce both traditional wine and hard cider. (Is that right?) <ul style="list-style-type: none"> ◦ <i>Suggestion:</i> Eliminate this sentence and instead amend first sentence of sub-¶7 to state: "... the holder of a tenant winery license may produce wine <u>and hard cider</u> at the manufacturing facility of another winery." (Under current law this phrase is unnecessary because the definition of "wine" in §2(36) includes hard cider, but the phrase is necessary if the definition of wine is rewritten to exclude hard cider.) • OMISSION: Sub-§6 & Sub-§7: What are the license fees for a tenant brewer and a tenant winery? (These fees do not appear in either §1355-A or §1551.) Are they required to pay the regular brewery/small brewery or winery/small winery license fees? • CLARITY: Sub-§§6 & 7: may tenant breweries and tenant wineries only operate out of breweries and wineries (as opposed to small breweries and small wineries)?
§1355-B. Research manufacturer license	
§1356. Illegal manufacture	<ul style="list-style-type: none"> • CLARITY: As written, the first phrase of this section appears to attempt to outlaw liquor manufacturing in other states by entities not licensed in Maine. Should the language be clarified to apply only to in-state manufacturing?
<i>Subchapter 3: Malt Liquor and Wine</i>	
§1361. Certificate of approval	<ul style="list-style-type: none"> • CLARITY: Sub-§1, -§2 and -§4 suggest this section requires <i>in-state</i> manufacturers of malt liquor or wine, who are already required by §1355-A to obtain manufacturing licenses, also to obtain <i>certificates of approval</i> under §1361; is this the intent? • OMISSION? Should this section require out-of-state manufacturers of <i>low-alcohol spirits</i> to obtain certificates of approval? (<i>Compare §1361(1) with §1365 and see Appendix B: Low-alcohol spirits product questions.</i>) • OMISSION: What is the penalty for violating sub-§1 (<i>i.e.</i>, if the entity does <u>not</u> have a certificate of approval upon which sub-§3 penalties may be imposed)? <ul style="list-style-type: none"> ◦ Some activities prohibited in §1361(1) are covered by the Class E crimes set forth in §1 (illegal sale/import/transport), §2073 (illegal intrastate transport), §2072 (possess with intent to sell illegally), and §2078 (illegal sale). ◦ But "offering" for illegal interstate sale or "causing to transported" into the State for illegal sale are prohibited in §1361(1) and not covered by other penalty provisions in Title 28-A. What penalty applies? (Or is §1361(1) relying on the attempt statute in 17-A MRSA §152 for "offering for sale" and accomplice liability under 17-A MRSA §57 for "causing to be transported"?) • DUPLICATE (in part): §1361(2) and §1551(1)(A & B) both list the \$1,000 fees for certificate of approval holders. §1361(2) but not §1551 also lists a reduced \$100 fee for small (<120 gallons/year) wine or malt liquor manufacturers. <ul style="list-style-type: none"> ◦ <i>Larger problem:</i> §1551 lists many non-retail license fees (some, but not all, are duplicated in other statutes). ◦ <i>Options:</i> make the list of non-retail fees in §1551 comprehensive or remove those fees from §1551 and keep/add the fees in the statutes for each type of license. • CLARITY: The authority in sub-§3, ¶A for the District Court to suspend or revoke a certificate of approval for any violation of bureau rules has an unclear relationship with Chapter 33. Is the intent to apply the grounds, procedures and penalties for discipline of Chapter 33 to certificate of approval holders? If so, the existence of sub-§3, ¶A undermines this intent by suggesting different rules apply. <ul style="list-style-type: none"> ◦ <i>Different grounds:</i> Chapter 33 allows discipline also for: violations of State <i>and federal</i> liquor <i>laws</i> or rules (§802(1)); making material false statement in license application (§802(2)); or failure to maintain requirements for licensure (§802(3)). By contrast, §1361(3)(A) only allows discipline for violating <i>bureau rules</i>.

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Current Section: Title 28-A	Notes and Questions
	<ul style="list-style-type: none"> ○ Different penalties: Chapter 33 penalties include license suspension or revocation and warnings (§803(6)); fines (§803(8)); or filing the case (§803(3)(B)). By contrast, §1361(3)(A) only allows suspension or revocation. ○ Note: “Licensee” is defined in §2(14) to include a certificate of approval holder, suggesting the provisions of Chapter 33 apply to certificate of approval holders where the word “licensee” is used. But because “license” is not similarly defined that term could be interpreted to exclude a certificate of approval wherever used in Chapter 33. [<i>Compare also</i> §803(9) offer in compromise option expressly applicable to “certificate of approval holders”.] ○ Suggestion: if intend to subject certificate of approval holders to all grounds, penalties and procedures in Chapter 33, repeal §1361(3) or amend it to state Chapter 33 applies to certificate of approval holders AND add definition of “license” to Title 28-A or add “certificate of approval” throughout Ch. 33. • CLARITY: Sub-§4: It may make sense to separate out the exception in this provision for small breweries and wineries, rather than using the confusing parenthetical clause. • TERMINOLOGY: Sub-§5: is the phrase “wholesale licensee” as used in this subsection intended to include only Maine wholesalers or also out-of-state wholesalers with certificates of approval? (See Appendix J: Wholesale licensee definition)
§1362. Disposal of fees	<ul style="list-style-type: none"> • AMBIGUITY / POTENTIAL INCONSISTENCY: By specifying that fees for certificates of approval are credited to the General Fund, this section creates an ambiguity whether other licensing fees collected under Title 28-A similarly should be credited to the General Fund. ○ <i>Compare</i> 28-A MRSA §83-B(10), which requires BABLO to deposit “<i>all net revenues</i>” from licensing and enforcement in the General Fund. Does the interplay between §83-B(10) and §1362 mean that <u>gross</u> revenues of certificate of approval fees are sent to the General Fund but only <u>net</u> revenues from all other licensing & enforcement fees go to General Fund? <i>But see</i> §803(8) (fines go to General Fund). ○ Suggestion: if want licensing & certificate of approval fees treated the same, delete §1362 as unnecessary and allow §83-B(10) to apply. Can state in bill summary that this is <u>not</u> intended to be a change in the law. ○ Reorganization Note: If non-retail license fees are all combined in §1551, including the fees in §1361(2), then §1362 must be moved (unless it is deleted above).
§1363. Manufacture of malt liquor or table wine; credit; furnishing materials and equipment	<ul style="list-style-type: none"> • TERMINOLOGY: Headnote of section and text of sub-§2(A): should we replace “table wine” with “wine,” or is only a subset of all wine intended? • CLARITY: Sub-§1 appears intended to prevent any manufacturer from having an interest in any wholesaler of malt liquor or wine. If so, the text is ineffective: <ul style="list-style-type: none"> ○ By stating “holder of a manufacture’s certificate of approval” the text suggests Maine manufacturers, which receive licenses, are excluded [Note that the phrase “certificate of approval holder”, used in sub-§1’s headnote, is defined to include Maine manufacturers, but that phrase is not in the statutory text.] ○ By limiting the sub-§1 prohibition to situations where the manufacturer is “any other corporation” [than the wholesaler] the language exempts from the prohibition situations where the licensed wholesaler and manufacturer are the same, single corporation. Is this exception intended? ○ By stating “corporation which holds a wholesale license” the text suggests out-of-state wholesalers, which receive certificates of approval, are excluded. <ul style="list-style-type: none"> ▪ Similarly, sub-§2 prohibits loans from manufacturers to a “wholesale licensee”—does this include out-of-state wholesalers, who receive certificates of approval? (See Appendix J: Wholesale licensee definition) ○ Suggestion: explain what is intended and OPLA will re-draft this subsection • REORGANIZATION: May want to move sub-§1 substance to §707 (see above) • CLARITY: Given the confusing interplay of the “certificate of approval holder” and “licensee” definitions (which are broader in scope than “certificate of approval” and “license”) and confusion around definition of “wholesale licensee”, need to ensure that sub-§2 text matches its intent.

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Current Section: Title 28-A	Notes and Questions
<p>§1364. Invoices and reports</p>	<ul style="list-style-type: none"> • CLARITY: Sub-§1: what invoices are included: malt liquor and wine sales (1) from out-of-state manufacturers or wholesalers to Maine wholesalers? (2) from in-state manufacturers to Maine wholesalers? (As written, both are included.) • CLARITY: should sub-§1 be limited to malt liquor and wine? (<i>Cf.</i> sub-§3) • CLARITY: Sub-§2: the text is completely silent on <i>the topic</i> of the report • OMISSION: Sub-§4: how do foreign low-alcohol spirits manufacturers obtain certificates of approval? (<i>See</i> §1361 above, which doesn't cover these entities)
<p>§1365. Low-alcohol spirits product tax</p>	<ul style="list-style-type: none"> • OMISSION: How do low-alcohol spirits manufacturers obtain certificates of approval? Also, who makes these items? (<i>See</i> questions under §2, §1361 & §1364 & Appendix B: Low-alcohol spirits product questions) • OMISSION: If a manufacturer with a certificate of approval sells low-alcohol spirits products to a Maine wholesale licensee, the 30¢ per gallon tax from this section applies. But, as written, if the low-alcohol spirits product is sold to the Maine wholesale licensee by an out-of-state wholesaler, then this tax is inapplicable. Is that intended? <ul style="list-style-type: none"> ◦ <i>Relatedly:</i> How do out-of-state wholesalers of low-alcohol spirits products obtain certificates of approval? (<i>See</i> Appendix B: Low-alcohol spirits product questions) • DUPLICATE: The second sentence of §1365 is redundant to §1364(4), although §1364(4) adds more detail to the requirement. It might make sense to add this detail to §1365 and then break each sentence of §1365 into its own subsection.
<p>§1368. Retail sales and taste testing at farmers' markets</p>	
<p><i>Subchapter 4: Special Warehouses</i></p>	
<p>§1371. Special warehouse storage facilities controlled by certificate of approval holder</p>	<ul style="list-style-type: none"> • CONSISTENCY: Should the fees listed in sub-§2 be moved to §1551 (list of non-retail fees)? – <i>See</i> discussion under §1551 below.
<p>Chapter 55: Malt Liquor and Wine Wholesale Licenses</p>	
<p>§1401. Wholesale licenses</p> <p>Terminology note:</p> <p>§1361: out-of-state wholesalers are issued certificates of approval</p> <p>§1401: in-state wholesalers are issued licenses</p> <p>§2(8): "certificate of approval holder" includes entities with certificates of approval and licensed in-state manufacturers (but not licensed in-state wholesalers)</p> <p>§2(14): "licensee" includes entities with either licenses or certificates of approval</p>	<ul style="list-style-type: none"> • CLARITY: Sub-§1: should this section be limited to licenses for selling and distributing malt liquor and wine <i>in Maine</i>? <i>I.e.</i>, out-of-state wholesalers who obtain certificates of approval under §1361 do not also need §1401 licenses, right? • TERMINOLOGY: Sub-§§1, 9: should we remove "fortified wine" because it is a type of wine under the definition in §2(36)? • OMISSION: May a wholesaler with a license to distribute malt liquor and wine under this section also distribute low-alcohol spirits? (<i>See</i> Appendix B: Low-alcohol spirits product questions) • DUPLICATE: The fees in §1401(2)(A) & (B) also appear in §1551(2)(A) & (C). Suggestion below under §1551 is either to locate all non-retail fees only in §1551 or locate them all with the underlying license provisions. <ul style="list-style-type: none"> ◦ If the fees are all located in §1551, probably should rewrite §1551 to clarify that a separate \$600 fee applies to the wholesaler's principal place of business and to any additional warehouse. • CLARITY: There are two fees listed under the "wholesale license" category of §1551—for storage of malt liquor or wine for one month, <i>see</i> §1551(2)(B) & (D)—that do not appear in §1401. Are these one-month storage fees related to §1401(4)'s temporary permit provisions? <ul style="list-style-type: none"> ◦ If so, §1401(4) should probably be amended to clarify that these permits are issued in one-month increments and the headnote of §1551 should be changed to "wholesale licenses <i>and</i> permits" ◦ But, if the \$50 one-month fees are not related to §1401(4), then: the fee for §1401(4) permits must be identified (none is currently stated) <i>and</i> the bureau's authority to issue and the conditions for obtaining these one-month storage licenses listed in §1551(2)(B) & (D) must be established in §1401.

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	<ul style="list-style-type: none"> • TERMINOLOGY: Is the phrase “wholesale licensee” in sub-§2(B), sub-§7 and sub-§8 intended to include out-of-state wholesalers with certificates of approval? (See Appendix J: Wholesale licensee definition)
<p>§1402. Taste testing of wine and malt liquor products</p>	<ul style="list-style-type: none"> • TERMINOLOGY: Is §1402 limited to licensed Maine wholesalers or all wholesalers, including out-of-state wholesalers that have certificates of approval? (See Appendix J: Wholesale licensee definition) • TERMINOLOGY: change “taste testing activity” to “taste-testing events”? see §1368 • CLARITY: sub-§3: clarify these conditions apply to taste-testing events <u>under this section</u> (not all taste testing under any other section...) • CLARITY: Other taste-testing statutory provisions (ex: §1051(8)) prohibit serving intoxicated persons. Is the intent to apply a similar prohibition to the taste testing events in §1402 (even though only retail licensees or agents can be served)? <ul style="list-style-type: none"> ○ <i>Note:</i> §705(3-A) generally prohibits licensees from serving liquor to visibly intoxicated persons, but only if the liquor is “to be consumed on the premises <i>where sold</i>.” §705(3-A) thus may not apply to §1402 events. ○ There is no need for a specific prohibition on serving minors because §705(4) prohibits licensees from allowing minors “to consume or possess liquor . . . on the premises” & these taste testing events occur on a licensed premises.
<p>§1402-A. Samples of products</p>	<p>Note: as drafted, this section likely only applies to Maine wholesalers because the word “licensee” is not used. Instead, it states “a person . . . licensed as a wholesaler.” (Foreign wholesaler are not “licensed”, they obtain certificates of approval via §1361.) Is that ok?</p>
<p>§1403. Interstate purchase or transportation</p>	<ul style="list-style-type: none"> • TERMINOLOGY: Is the “wholesale licensee” referenced throughout this section intended to include an out-of-state wholesaler with a certificate of approval? (See Appendix J: wholesale licensee definition) • INCONSISTENCY Sub-§1 & 2’s headnotes suggests licensed in-state wholesalers of malt liquor and wine can purchase malt liquor and wine from all “certificate of approval holder[s]”—a term defined in sub-§2(8) to include licensed in-state manufacturers—but the text of sub-§1 & sub-§2 only authorizes wholesalers to purchase from a subset of these entities. Is the intent to include: all foreign manufacturers and wholesalers with certificates of approval as well as all licensed in-state manufacturers of malt liquor or wine? If so, clarify the language of both sub-§§. • CLARITY: Sub-§3 makes revocation of a wholesale license mandatory in certain circumstances; should there be a “notwithstanding §803” clause (because under §803 any violation of liquor laws can result in various penalties, not just license revocation)? <ul style="list-style-type: none"> ○ Also, should the first sentence be amended to say: “The District Court Judge shall revoke the license <u>or certificate of approval</u> of any wholesale licensee”—to more accurately describe what occurs with an out-of-state wholesaler? • CLARITY: Sub-§4: should the final word “month” be “calendar month”?
<p>§1403-A. Direct shipment of wine</p>	<ul style="list-style-type: none"> • RELOCATION: This section allows manufacturers (not wholesalers) to ship wine directly to retail customers. But, it is located in Part 3, Sub-part 2 entitled “non-retail sales” and Chapter 55 related to “wholesale licenses”. Should this be moved to Subpart 2 (retail sales), chapter 45 (off-premises sales)? • CLARITY: Sub-§2 purports to impose a \$200 fee on any winery—inside or outside of Maine—that intends to ship wine directly to customers. But, to whom does the license requirement apply: Maine wineries (that ship anywhere) and out-of-state wineries (but only if they ship to Maine)? Sub-§3 suggests only the latter are included but sub-§2 does not contain any language imposing such a limitation. • CONFLICT? Is the fee for a direct shipper license an amount “not more than \$200” (as in sub-§2) or \$100 (as in sub-§3)? Or, are there two separate fees: an “application” fee of not more than \$200 with an additional \$100 “registration” fee to be paid before the first shipment is made to a Maine resident? • TERMINOLOGY: Sub-§9 states that an out-of-state shipper must comply with Maine tax laws “as a condition of receiving a <i>certificate of approval</i>.” But, shippers obtain <i>licenses</i>, not <i>certificates of approval</i> under sub-§2. Should this be changed?

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§1407. Exclusive distributors of certificate of approval holders' products	<ul style="list-style-type: none"> • TERMINOLOGY: Sub-§1: should “liquor”(2x) be changed to “malt liquor or wine”? • CLARITY: Should §1407 be limited to Maine distribution? (Ex: “the exclusive distributor for specific brands of <u>malt liquor or wine in Maine . . .</u>”) • CLARITY: Violations of this provision are considered an unfair trade practice – is that the only remedy or is Chapter 33 discipline also available?
§1408. Posting of prices	<ul style="list-style-type: none"> • OMISSION? Sub-§1 refers to “licensed bottlers” – but where is the statutory authority to license bottlers and what are the qualifications for licensure? <ul style="list-style-type: none"> ○ <i>Note:</i> “Winery” & “small winery” as defined in §2(29-B) & §2(37) include entities that bottle wine or hard cider, but if they are located in Maine they receive winery or small winery (not bottler) licenses under §1355-A, making them “certificate of approval holders” already covered by that phrase in sub-§1. Thus, the phrase “licensed bottlers” can be removed from §1408 unless the bureau issues distinct, non-winery bottler-only licenses. ○ <i>Note also:</i> §1551(3)(D) lists a \$1,000 fee for an in-State “bottler” license. If this is a type of in-State license available under §1355-A, should clarify in §1355-A(1) and create license qualifications & list powers of bottlers in a new sub-§ of §1355-A. • TERMINOLOGY: In sub-§1 (last phrase), sub-§2(headnote and text), & sub-§4, does the phrase “wholesale licensees” include out-of-state wholesalers that have certificates of approval or only Maine wholesalers? (See Appendix J: Wholesale licensee definition) • TYPO: Sub-§4: “manufacturer’s” should not be possessive (remove apostrophe)
Chapter 57: Certificate of Approval Holder and Maine Wholesale Licensee Agreement Act	Note: There is no confusion about the scope of the phrase “wholesale licensee” in <i>this chapter</i> because the definition in §1451 clearly includes only licensed in-state wholesalers.
§1451. Definitions	<ul style="list-style-type: none"> • CLARITY: Why is there a “notwithstanding §2(34)” in the definition of “wholesale licensee”? Does this “notwithstanding” suggest that the definition in §2(34)—which applies to the remainder of Title 28-A—includes out-of-state wholesalers? See questions under §2(34). • TERMINOLOGY: If change “brewer” and “distiller” to “brewery” and “distillery” in Section 2 of the Title, should also change those terms in §1451(3).
§1452. No inducement or coercion	
§1453. No dual distributorship	<ul style="list-style-type: none"> • CLARITY: Sub-§2 the structure of the first sentence suggests that a “bottler” is “authorized to distribute products” – if not, this should be clarified. • DUPLICATION (in part): Sub-§2: The requirement for a certificate of approval holder to list its wholesalers for the bureau is also set forth in §1406(1), although the two provisions have slightly different requirements.
§1454. Cancellation	
§1455. Notice of intent to terminate	<ul style="list-style-type: none"> • HEADNOTE: Sub-§1: change headnote from “written notice” to “written notices”? • INCONSISTENCY (intentional?): The “good cause” grounds for termination, amendment, cancellation or nonrenewal of an agreement in §1454(1) do not match the listed grounds for which notice of an intended termination is not required in §1455(1): paragraphs D are different. Is the difference in these two lists intentional?
§1456. Assignment, transfer or sale of business	
§1457. Compensation	<ul style="list-style-type: none"> • CLARITY: What is the meaning of the second-to-last sentence of sub-§2? Rewrite? <ul style="list-style-type: none"> ○ <i>Option 1:</i> If the parties agree to split the arbitrator’s costs 50/50, then no provisions of the Uniform Arbitration Act govern the arbitration. ○ <i>Option 2:</i> The Uniform Arbitration Act’s provisions generally govern the arbitration except that the fees are split 50/50 rather than being allocated in accordance with the Uniform Act. See 14 MRSA §5936 (Uniform Act provision stating that the arbitration agreement or arbitration award defines who pays fees).

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	<ul style="list-style-type: none"> • CLARITY: Sub-§9: provides that sales tax registration (via Title 36, Part 3) is a condition for an out of state shipper to obtain a “certificate of approval” – but this section of statute relates to direct shipping “licenses”. <ul style="list-style-type: none"> ◦ <i>Suggestions.</i> If the Title 36 registration is required for the direct shipper <i>license</i>, §1403-A(9) should be amended accordingly. Alternatively, if the Title 36 registration is required for the shipper’s underlying certificate of approval, it may make sense to move this provision to §1401 and rewrite it to clarify whether <i>all</i> certificates of approval for out-of-state manufacturers are conditioned upon Title 36 registration or whether the requirement applies to certificates of approval but only for wineries that intend to apply for a direct shipper license. • CLARITY: Sub-§13 authorizes <i>the bureau</i> to suspend/revoke direct shipper licenses (or to accept offers of fines in compromise). Should this authority be clearly listed in Chapter 33 (ex: §801) as an exception to the “exclusive jurisdiction” of the District Court to discipline licensees for liquor law violations?
<p>§1404. Unbonded wholesale licensees</p>	<ul style="list-style-type: none"> • TERMINOLOGY: Is §1404 limited to licensed Maine wholesalers or does it apply to all wholesalers, including out-of-state wholesalers with certificates of approval? (See Appendix J: Wholesale licensee definition) • CONFLICT: Sub-§1(C) requires a wholesale licensee to pay the excise taxes on all malt liquor or wine it orders. But, <i>if</i> the malt liquor or wine is produced by a licensed Maine manufacturer, then §1652(1) & (2) require the Maine manufacturer—not the wholesaler—to pay the tax.
<p>§1405. Bonded wholesale licensees</p>	<ul style="list-style-type: none"> • TERMINOLOGY: Is §1405 limited to licensed Maine wholesalers or all wholesalers, including out-of-state wholesalers that have certificates of approval? (See Appendix J) ◦ The language in sub-§1(F) suggests that “foreign wholesalers” are not considered to be wholesale licensees subject to this provision of law. • REDUNDANCY: Sub-§3 requires payment of excise taxes based on invoices “by the out-of-state wholesaler or certificate of approval holder” – but an out-of-state wholesaler must have a certificate of approval to ship its products to Maine. Should “out-of-state wholesaler” be removed from this sentence as redundant? • CLARITY: Sub-§2: explicitly limit section to “malt liquor and wine”? (<i>Cf.</i> sub-§§1, 3) • CLARITY: Sub-§2(B) provides that failure to pay excise taxes is grounds for suspension of wholesale license – does this mean revocation of the license or payment of a fine in compromise (both allowed in Chapter 33) are not options? <ul style="list-style-type: none"> ◦ <i>Suggestion:</i> if only suspension is possible, add “Notwithstanding section 803” to this provision and clearly state that license revocation or fines in lieu of suspension are unavailable. If all forms of discipline are available, amend sub-§2(B) to say “grounds for suspension discipline under Chapter 33”. • CLARITY: Under §1652 excise taxes are paid by a Maine manufacturer or importing wholesaler. This raises a question under §1405(2)(B): if the wholesale licensee is distributing and selling malt liquor or wine manufactured in Maine, is that wholesaler’s license subject to suspension because the <i>Maine manufacturer failed to pay</i> the excise taxes when due as required by §1652? Or, is the wholesaler’s license only subject to suspension for the manufacturer’s own failure to pay excise taxes on imported malt liquor and wine?
<p>§1406. Report of changes in wholesale licensees and certificate of approval holders to bureau</p>	<ul style="list-style-type: none"> • TERMINOLOGY: In sub-§1 headnote, sub-§1(B)(1), sub-§2 (lead in) & sub-§3(A) & (B) does the phrase “wholesale licensees” include out-of-state wholesalers that have certificates of approval or only Maine wholesalers? (See Appendix J: Wholesale licensee definition) • SCOPE: Sub-§1: should the requirement that “each certificate of approval holder” report its in-State wholesalers to the bureau be limited to manufacturers or foreign wholesalers of malt liquor and wine (<i>i.e.</i>, no need for distilleries or small distilleries, which are “certificate of approval holders,” to report their wholesaler to the bureau)? <i>Compare</i> sub-§2(A)(1) (converse requirement applies only to malt liquor and wine).

Analysis of Title 28-A pursuant to Resolve 2019, chapter 15 (Jan. 2020)

Current Section: Title 28-A	Notes and Questions
§1458. Judicial remedies	<ul style="list-style-type: none"> • CLARITY: Is the civil suit remedy (by wholesalers against certificate of approval holders) the sole remedy for violations of this Chapter? Or, may the bureau also impose licensee sanctions under Chapter 33 for these violations? (If no Chapter 33 penalties are available—<i>i.e.</i>, if a lawsuit between the parties is the sole remedy—then the inapplicability of Chapter 33 probably should be explicitly stated in this section.)
§1459. Price of product	
§1460. Retaliatory action prohibited	
§1461. Management and personnel of wholesale licensee	
§1462. No waiver; good faith settlements	
§1463. Sale of certificate of approval holder	
§1464. Coverage	<ul style="list-style-type: none"> • CLEANUP: Is this section (act applies from 1979 onward...) still necessary?
§1465. Right of free association	
Chapter 59: Sales Representatives	
§1501. Lists of officers, partners and sales representatives	<ul style="list-style-type: none"> • CLARITY: Does this section apply to all authorized manufacturers, wholesalers and retailers? (That is how it is currently written) Or, only a subset of these entities? <ul style="list-style-type: none"> ○ Note that §1551 lists sales representatives fees for a “manufacturer or certificate of approval holder”, which would only include manufacturers and foreign wholesalers, not in-State wholesalers or on-premises or off-premises retailers.
§1502. License; fee; renewals	<ul style="list-style-type: none"> • CLARITY: This provision is drafted broadly and, read in concert with §1501, implies that all individuals who sell liquor—for all manufacturers and wholesalers as well as any person selling in any on-premises or off-premises retail establishment—is a sales representative who “shall” apply for a license. Is the requirement for licensed sales representatives intended to be this broad—<i>all</i> of these entities? If not, there should be a definition of “sales representative” here or in §2 to add clarity. • CLARITY: Should there be a specific statement that it is a violation of this Title to sell liquor without a sales representative license (when the license is required)? <ul style="list-style-type: none"> ○ If so, what would be the penalty? <i>Options:</i> impose Chapter 33 penalties on the employer (manufacturer, wholesaler, etc.) <i>and/or</i> civil or criminal penalties on the sales representative/employee who fails to obtain a license?
§1503. Revocation of license	<ul style="list-style-type: none"> • CLARITY: Is license revocation the only mandatory discipline authorized & is it mandatory for licensed sales representatives who violate this title or implementing rules? <i>L.e.</i>, they can’t instead be issued a warning, fined or have their license suspended? If so, add “notwithstanding section 803” to this section. If alternative forms of discipline are available, then delete §1503 as redundant.
§1504. Samples of products	<ul style="list-style-type: none"> • TERMINOLOGY: Lead-in: what is a spirits supplier? (See question under §1052-D) • DUPLICATION/INCONSISTENCY? Sub-§3-A and sub-§6 (with sub-§4) both authorize pouring partial-bottle samples for on-premises licensees. The attendant requirements differ in these subsections (logs of names, requiring person to be over age 21, etc.). Should these subsections be combined? • CLARITY: Sub-§7 when would a retail licensee be “giving” samples under this section? The lead-in language to this section indicates that only manufacturers or suppliers are authorized to give samples to retail licenses under this section. <ul style="list-style-type: none"> ○ Is the intent instead that the sales representative keep records on samples they have given out and retailers keep records of samples they have received?
§1505. Participation in tasting events	<ul style="list-style-type: none"> • OMISSION? Is the list of taste-testing events—in which licensed sales representative may participate subject to the conditions of this section—set forth in the lead-in to this section complete? If the list is accurate, does that mean licensed sales representatives are prohibited from participating in other taste-testing events or, are they permitted to

Analysis of Title 28-A pursuant to Resolve 2019, chapter 15 (Jan. 2020)

Current Section: Title 28-A	Notes and Questions																		
	<p>participate, but they are exempt from the conditions of this section? The taste-testing event sections that are not listen in this section currently include:</p> <ul style="list-style-type: none">○ §1051(6): which explicitly allows spirits <i>sales representatives</i> to conduct taste-testing events for on-premises retail licensees.○ §1052-D: special event taste-testing events by manufacturers, certificate of approval holders, spirits brokers/suppliers, etc. Unlike §1501(6), this section does not explicitly require sales representatives to participate but does require the entity to list all people who will be pouring at the event. <i>See</i> §1502-D(7)(K) & (L).○ §1368: which allows licensed Maine small breweries, small wineries and small distilleries to conduct taste-testing events at farmers' markets. (Predicate question: are these entities required to have licensed sales representatives under §1502?)○ §1402: which allows wholesale licensees to conduct taste-testing events on their own premises or on a retail licensee's premises (but not for the general public). <ul style="list-style-type: none">• CLARITY: The lead-in to §1505 and the provisions it cross-references—§§460, 1051(8), 1205 & 1207—make participation of a licensed sales representative (and thus the additional requirements of §1505) optional at these taste testing events. <u>What rules apply if a licensed sales representative does not participate in the taste-testing event?</u> (Does the Legislature want to specify?) For example:<ul style="list-style-type: none">○ Who may pour the product? Must it be an agent/employee of the licensee-host?○ Must the person pouring the product have completed an alcohol server education course? <i>See</i> §§460, 1051(8), 1205, 1207, 1505(5) (all requiring a licensed sales representative who pours the products to complete an alcohol server education course but not mentioning whether such a course is required by a pourer who is not a licensed sales representative).○ May educational presentations be made as in §1505(1)? <i>Compare</i> §§460, 1205, 1207 (no mention educational presentations) <i>with</i> §1051(8)(Q) (discussing advertising material but not educational presentations).○ May complimentary food or snacks be served as in §1505(2)? If yes:<ul style="list-style-type: none">▪ Is there a \$200 limit on snacks? <i>Compare</i> §§460, 1205, 1207 (no mention of snacks) <i>with</i> §1051(8)(P) (imposing same \$200 snack limit).▪ Must records and invoices of food cost be kept as in §1505(3)?																		
Chapter 61: Nonretail Licenses and Fees																			
§1551. Fees for nonretail licenses	<ul style="list-style-type: none">• TERMINOLOGY: Change “distiller” in sub-§3(A) and “small distiller” in sub-§3(H) to “distillery” and “small distillery” respectively. <i>See</i> §1355-A(5).• CLARITY/OMISSION?: Some of the license types with fees listed in this section do not appear elsewhere in Title 28-A—put differently, no statute authorizes the bureau to issue these licenses or establishes the license qualifications:<table><tr><td>§1551(2)(B)</td><td>\$50</td><td>One-month storage of malt liquor (unless these are the temp. permits in §1401(4))</td></tr><tr><td>§1551(2)(D)</td><td>\$50</td><td>One-month storage of wine (unless these are the temp. permits in §1401(4))</td></tr><tr><td>§1551(3)(C)</td><td>\$1000</td><td>Rectifier (includes bottling)</td></tr><tr><td>§1551(3)(D)</td><td>\$1000</td><td>Bottler only</td></tr></table>• DUPLICATE (in part): Section 1551 contains some but not all of the non-retail license fees for Title 28-A, and some, but not all, of the fees in §1551 also appear in sections of the title describing the underlying licenses. There are two options:<ul style="list-style-type: none">○ Option 1: List all nonretail fees <u>only</u> in §1551 (remove them from other sections), adding the following fees that are missing from current §1551:<table><tr><td>§1355-A(6)</td><td>Not stated</td><td>Tenant brewery</td></tr><tr><td>§1355-A(7)</td><td>Not stated</td><td>Tenant winery</td></tr></table>	§1551(2)(B)	\$50	One-month storage of malt liquor (unless these are the temp. permits in §1401(4))	§1551(2)(D)	\$50	One-month storage of wine (unless these are the temp. permits in §1401(4))	§1551(3)(C)	\$1000	Rectifier (includes bottling)	§1551(3)(D)	\$1000	Bottler only	§1355-A(6)	Not stated	Tenant brewery	§1355-A(7)	Not stated	Tenant winery
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§1355-A(7)	Not stated	Tenant winery																	

Analysis of Title 28-A pursuant to Resolve 2019, chapter 15 (Jan. 2020)

Current Section: Title 28-A	Notes and Questions		
	§1355-B(7)	\$100	Research manufacturer license
	§1361(2)	\$100	Manufacturer/foreign wholesaler certificate of approval for ≤ 120 gallons malt liquor or wine
	§1371(2)	\$600	Special warehouse storage facility – malt liquor
		\$600	Special warehouse storage facility – wine
		\$600	Special warehouse storage facility – spirits
	§1401(2)(B)	\$600	Additional warehouse for licensed Maine wholesaler of malt liquor or wine
	§1401(4)	Not stated	Temporary storage permits (unless these are the one-month wine & malt liquor fees in §1551(2))
	§1553	\$100	Post-secondary educational institution sampling
	<ul style="list-style-type: none">○ Option 2: List non-retail license fees only in the statutory sections outlining the qualifications / issuance of the underlying license. But, this option highlights the need to create licensing statutes for the license types identified above for which no licensing statute currently exists (e.g., rectifiers, bottlers, one-month storage).		
§1552. Bottle club fees	<ul style="list-style-type: none">• DUPLICATE: This fee is also set forth in §161(1)(B) – eliminate?<ul style="list-style-type: none">○ <i>Other option:</i> if this fee is kept here to make the list of nonretail fees in Chapter 61 complete, then should the fee for B.Y.O.B. function permits be added to this Chapter? <i>See</i> §163(2) (\$10 per day of the function).		
§1553. Postsecondary educational institution sampling license			
PART 4: TAXES AND ALCOHOL PREMIUM			
Chapter 65: Taxes			
§1651. Consumers' tax	<ul style="list-style-type: none">• CONFLICT: §1651(1) indicates that “the commission” (the State Liquor and Lottery Commission) sets the retail price of spirits. But, §83-C(2) states that BABLO sets the wholesale <i>and retail prices</i> of spirits in Maine without mentioning the commission.• ERROR? §1651(1) states the commission sets “the retail price at which to sell all spirits <i>to</i> agency liquor stores” – but spirits are sold <u>to</u> agency liquor stores at the wholesale price and sold <u>by</u> agency liquor stores at the retail price. Should this phrase be rewritten as: “the retail price at which spirits must be sold <i>by</i> agency liquor stores”?		
§1652. Excise tax on malt liquor and wine; deficiency account; credits; refunds	<ul style="list-style-type: none">• INCONSISTENCY: The excise tax on malt liquor in sub-§1 only applies to malt liquor “sold in the State” while the excise taxes on low-alcohol spirits products in sub-§1-A and wine in sub-§2 apply when those products are “manufactured in or imported into the State.” Should the language of these provisions match? <i>See also</i> §1209 question.• LOCATION: Should 30¢ per gallon product tax on low-alcohol spirits manufacturing in §1365 be combined with or at least relocated next to the \$1.24 per gallon excise tax paid by the Maine manufacturer or importing wholesaler pursuant to §1652(1-A)?• CLARITY/DUPLICATE TAX: “wine” as defined in §2(36) includes all “fortified wine” and some “low-alcohol spirits” products. Are the products that qualify as both wine and fortified wine and/or low-alcohol spirits subject to both the wine (sub-§2) and the fortified wine/low-alcohol spirits product (sub-§1-A) excise taxes?<ul style="list-style-type: none">○ Similarly, “hard cider” as defined in §2(12-A) is a subset of “wine” as defined in §2(36). Do both the wine and the hard cider taxes from sub-§2 apply to hard cider products? (Compare: Sub-§2 clearly exempts “sparkling wine” from the “wine” excise tax, but it does not also clearly exempt “hard cider.”)(See Appendix B: Low-alcohol spirits product and hard cider questions)• CLARITY: Sub-§2-B: Is license revocation (“take back”) by BABLO (not by the District Court) the only penalty available for failure to pay excise tax under sub-§2-B? If so, should state “notwithstanding Chapter 33” in sub-§2-B. Or, if all of the Chapter 33 penalties and process are available, that should be clarified in this subsection.		

Analysis of Title 28-A pursuant to Resolve 2019, chapter 15 (Jan. 2020)

Current Section: Title 28-A	Notes and Questions
	<ul style="list-style-type: none"> • TERMINOLOGY: Sub-§4: Is the phrase “wholesale licensee” as used in this subsection intended to include only Maine wholesalers or also out-of-state wholesalers with certificates of approval? (See Appendix J: wholesale licensee definition) Should the phrase be rewritten as “<u>importing</u> wholesale licensee” to match sub-§§1, 1-A & 2? • CLARITY: Sub-§4, ¶B: what is a “supplier”? Is it different for malt liquor and wine as compared to a “supplier” of spirits in §1052-D(1)? Does it need a definition? • CLARITY: The first sentence is confusing—does “resale to” modify only “an airline” or the entire list of items following “resale to”? Perhaps the lead-in should simply say: “The bureau shall grant to the wholesale licensee a credit of all state excise tax paid in connection with a sale <u>when the wholesale licensee presents proof that the sale was made</u> under the following conditions.” • INCONSISTENCY: A wholesale licensee who sells malt liquor or wine to a “food service organization” (unlicensed entity that caters international flights, <i>see</i> §83-B(8)) does <u>not</u> receive a credit for excise taxes paid in connection with that sale, by contrast, under §1652(4)(D)(3), if the wholesale licensee sells malt liquor or wine to a <i>licensee</i> registered to resell the product to an airline for international flights, a credit is given. • TERMINOLOGY: Sub-§4(D)(3): change “table wine” to “wine” or are these credits only intended to apply to a subset of all types of wine?
Chapter 67: Alcoholism Prevention, Education, Treatment and Research	
§1703. Premiums; collection	<ul style="list-style-type: none"> • CLARITY: Sub-§1: does only the bureau sell spirits (see discussion under §455, §606, §503)? If not, should this section be amended to require the section 90 contractor (a.k.a. the wholesale liquor provider) to collect premiums when selling spirits?
PART 5: NONBEVERAGE USE OF LIQUOR	
Chapter 75: Sale of Food products with a High Alcohol Content	
§1901. Restrictions on sale of food containing liquor	
§1902. Penalties	
PART 6: PROHIBITED ACTS AND PENALTIES	
Chapter 81: Prohibited Acts by Minors	
§2051. Prohibited acts by minors	<ul style="list-style-type: none"> • REORGANIZATION: Should the fine amounts be consolidated in sub-§2 rather than being listed 9 times in sub-§1 (they are all identical)? • CLARITY: Sub-§1(D-2) sets forth the penalty for a minor to furnish a false ID to a minor – it is a civil violation. What is the penalty for an adult to furnish a false ID to a minor? (Is it the generally stated Class D crime in §2081(1)(A), <i>i.e.</i>, “aid[ing] or assist[ing]” a minor in procuring alcohol? Should ID furnishing be stated more clearly?) • CLARITY: Sub-§4: is the intent that the prohibition on charging a minor under §2051 and §2052 be limited to “any given instance in which the same set of facts is involved” as in sub-§3? As written, there is no temporal limitation on the charge prohibition. • CONSISTENCY: Sub-§6: the phrase “and the evidence of the violation of this section is obtained as a result of a person contacting emergency medical services or law enforcement” is only located in ¶B, but it seems likely intended to apply to ¶A as well. Is that true? If so, repeat in ¶A or move to blocked ¶ below. [Same question §2087]
§2052. Illegal transportation by minors	<ul style="list-style-type: none"> • CLARITY: Sub-§4: as with §2051(4), is there intended to be a temporal limitation on the prohibition on charging a minor with both §2051 and §2052 offenses?

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Current Section: Title 28-A	Notes and Questions
<p>§2053. Suspension of minor's operator's license for violations</p>	<ul style="list-style-type: none"> • CONFLICT: Despite subsection 4's protestations to the contrary, a portion of the license suspension penalties in this section do conflict with Title 15, Part 6 (<i>a.k.a.</i> the Maine Juvenile Code) in two ways. Specifically, <ul style="list-style-type: none"> ○ 15 MRSA §3314(3-A) authorizes the juvenile court to suspend a juvenile's (person under age 18's) driver's license for <i>up to 6 months</i> for a violation of 28-A MRSA §2052. But, 28-A MRSA §2053(1)(C) imposes a mandatory suspension of <i>one year</i> for a 3rd violation of §2052. If the penalties in §2053 are preferred, it may make sense to amend both the Maine Juvenile Code and §2053(4) to make that clear. ○ 15 MRSA §3314(3-A) does not authorize the juvenile court to suspend the license of a juvenile found to have violated 28-A MRSA §2051(1)(D), but 28-A MRSA §2053(1-A) authorizes the court to suspend the license of a minor found to have violated §2051(1)(D). Should probably amend the Maine Juvenile Code for clarity. <p><i>Alternatively</i>, if the Maine Juvenile Code's license-suspension provisions are intended to control the penalties imposed on a defendant less than 18 years of age (a "juvenile") and §2053 is intended to control the penalties imposed on a defendant aged 18-20, that bifurcation should be clarified in §2053(4).</p>
<p>§2054. Execution of suspension stayed during appeal</p>	<ul style="list-style-type: none"> • OMISSION? Is the stay on imposition of a driver's license suspension intended to apply only to §2052 (as currently written) or also to §2051(D) offenses? <i>See</i> §2053(1-A)
<p>Chapter 83: Prohibited Acts in General</p>	
<p>§2071. Failure to appear before the bureau</p>	<p>Sub-§1 is a tongue twister! (Not necessary to change it, unless VLA so desires.)</p>
<p>§2072. Illegal deposit or possession with intent to sell</p>	<p><i>Note: per ancient caselaw, to "deposit" is to place in a warehouse, store or other location (as opposed to having the item in one's possession).</i></p>
<p>§2073. Importation and transportation of liquor within the State</p>	<ul style="list-style-type: none"> • CLARITY: Sub-§3's headnote and lead-in indicate sub-§3 governs when "liquor may be legally imported into and transported within the State." But, only the activities in ¶E explicitly involve both importation and transportation in the State. By contrast: <ul style="list-style-type: none"> ○ The activities permitted in ¶¶A, B, C-1, D and F do not explicitly involve importation of liquor. Should they be rewritten specifically to authorize importation (esp. ¶A)? Alternatively, if importation is not authorized by these paragraphs, maybe put in a new subsection? • DUPLICATIONS / CONFLICITS / CLARITY: Some of the activities permitted in sub-§3 have analogous provisions in §2075 (importation/transportation of spirits) and §2077 (importation/transportation of malt liquor and wine). <i>See</i> Appendix H: Transportation and importation questions. <ul style="list-style-type: none"> ○ <i>Suggestion:</i> reorganize import/transport provisions to add clarity • REORGANIZATION: Why is sub-§3(F)—which authorizes hospitals and state institutions to purchase spirits from agency liquor stores—located in §2073, which is a section about importation and transportation of liquor? Move this provision to §606?
<p>§2074. Illegal transportation of liquor on or off licensed premises</p>	
<p>§2074-A. Illegal storage, purchase or sale of spirits by an on-premises licensee; penalty</p>	<ul style="list-style-type: none"> • TERMINOLOGY: Should the phrase "liquor bottles" in the opening paragraph be "spirits bottles" or "bottles of spirits"? Section headnote suggests §2074-A is limited to spirits. Also, malt liquor is allowed to be sold in reusable bottles. <i>See</i> §1355-A(3)(C). • CLARITY: Are fines in lieu of or in addition to suspension or warnings available for violations of this section? Or, are only the specific penalties in sub-§§1&2 available?
<p>§2075. Importation and transportation of spirits</p>	<ul style="list-style-type: none"> • <i>See</i> Appendix H: Transportation and importation questions. • CONFLICT: §2075(1-A)(A) renders illegal importation of < 10 gallons of spirits a civil violation, but 28-A MRSA §1 provides that importing alcohol "in violation of law" is a Class E crime. Should 28-A MRSA §1 state, "Except as otherwise provided in this Title" so that more specific penalties—like this provision—apply if there is a conflict with §1? [Same question for §2077(1-A)(A)]

Analysis of Title 28-A pursuant to Resolve 2019, chapter 15 (Jan. 2020)

Current Section: Title 28-A	Notes and Questions
	<ul style="list-style-type: none"> • OMISSION: What is the penalty for illegally transporting > 4 quarts of spirits in the state in violation of §2075(2)? <ul style="list-style-type: none"> ◦ <i>Option 1:</i> Does the Legislature intend to rely on the general Class E penalty in 28-A MRSA §1? If so, it creates an odd result: illegally <i>transporting</i> between 4 quarts and 10 gallons of spirits within the State would be a Class E crime but illegally <i>importing</i> that amount would only be a civil violation under §2075(1-A)(A). ◦ <i>Option 2:</i> Adopt same penalty structure as for importation of spirits in §2075(1-A). This mirrors §2077(1-A) & (2) (same prohibitions on malt liquor and wine).
§2076. Illegal delivery of liquor	<ul style="list-style-type: none"> • HEADNOTES: Change section and sub-§1 headnotes from “liquor” to “spirits”?
§2077. Importation and transportation of malt liquor and wine	<ul style="list-style-type: none"> • See Appendix H: Transportation and importation questions. • ERROR? Sub-§1-A: Why would a small brewery or small winery (other than a direct shipper in §1403-A) be importing malt liquor and wine into the State? <ul style="list-style-type: none"> ◦ If the language allowing small breweries and small wineries to import malt liquor and is retained, should it be limited to §1355-A licensees? • CLARITY: Sub-§2: What entity has a duty to ensure there is an invoice: licensed seller or licensed recipient? (Should clarify to know who may be penalized via Chapter 33.) • CONFLICT: §2077(1-A)(A) renders illegal importation of < 10 gallons of malt liquor or wine a civil violation, but 28-A MRSA §1 provides that importing alcohol “in violation of law” is a Class E crime. Should 28-A MRSA §1 state, “Except as otherwise provided in this Title” so that more specific penalties—like this provision—apply if there is a conflict with §1? [Same question for §2075(1-A)(A)] • TERMINOLOGY: Is the phrase “wholesale licensee” as used in Sub-§§1-A & 1-B intended to include only Maine wholesalers or also out-of-state wholesalers with certificates of approval? (See Appendix J: Wholesale licensee definition)
§2077-B. Interstate shipping of liquor prohibited	
§2078. Illegal sale of liquor	
§2079. Aiding children in illegal possession or sale	<ul style="list-style-type: none"> • HEADNOTE: The headnote of this section does not appear to match the text of the section... Perhaps state: “<i>Involving Aiding</i> children in illegal possession or sale”?
§2081. Furnishing or allowing consumption of liquor by certain persons prohibited	<ul style="list-style-type: none"> • CONFLICT (partial) & DUPLICATION (partial): Sub-§1(A)&(B) This offense overlaps with but also differs from the Class D endangering the welfare of a child offense in Title 17-A for “knowingly” selling or furnishing “to a child under 16 years of age any intoxicating liquor . . .” See 17-A MRSA §554(1)(B). Are the differences and duplications intentional? (See Appendix I: comparing these offenses) • CONFLICT (in part): §2081(1)(D) makes it a Class E crime to, among other things, furnish or <i>sell</i> imitation liquor to a minor. Section 2082, by contrast, makes it a civil violation to “sell or offer for sale or exchange” imitation liquor to a minor. <ul style="list-style-type: none"> ◦ Note that there is an exception to the offense in §2081(1)(D) if the furnishing of liquor occurs in the home of a minor and in the presence of the minor’s parent or guardian. Maybe those offenses are intended to be civil violations under §2802? But, it is likely rare for imitation liquor to be sold in someone’s home.
§2082. Sale of imitation liquor	<ul style="list-style-type: none"> • CONFLICT; with §2081(1)(D) – see above • DUPLICATION: The exception for “beverages containing <i>more than</i> ½ of 1% alcohol by volume” in §2082(2)(B) is unnecessarily duplicative; “imitation liquor” is defined in §2(13) as “any product containing <i>less than</i> ½ of 1% alcohol by volume.”
§2085. False statement by retail employee	
§2086. Sale or furnishing of brewing or wine-making equipment prohibited	
§2087. Refusal to provide proper identification	<ul style="list-style-type: none"> • TYPGRAPHICAL ERROR: §2087(1)(A) add a word: “The person is present on <u>the</u> licensed premises at a time when minors are not permitted to be on the premises.”

Analysis of Title 28-A pursuant to Resolve 2019, chapter 15 (Jan. 2020)

Current Section: Title 28-A	Notes and Questions
	<ul style="list-style-type: none"> CONSISTENCY: Sub-§6: the phrase “and the evidence of the violation of this section is obtained as a result of a person contacting emergency medical services or law enforcement” is only located in ¶B, but it seems likely intended to apply to ¶A as well. Is that true? If so, repeat in ¶A or move to blocked ¶ below. [Same question §2051]
§2088. Vaporized alcohol	
§2089. Powdered alcohol	
PART 7: ENFORCEMENT	
Chapter 91: Enforcement and Jurisdiction	
Subchapter 1: General	
§2201. Jurisdiction of courts	
§2202. Bail after failure to comply with terms of bond	<ul style="list-style-type: none"> TERMINOLOGY: Change “justice” to “judge or justice”?
§2203. Evidence of illegal sale	<ul style="list-style-type: none"> HEADNOTE: Remove “of illegal sale” from headnote to capture both subsections?
Subchapter 2: Officials and Their Duties	
§2211. Power of law enforcement officers to stop vehicles; restrictions	<ul style="list-style-type: none"> HEADNOTE: Remove “restrictions” because no restrictions (other than the probable cause requirement) appear in the section?
Subchapter 3: Search and Seizure	
§2221-A. Forfeiture of liquor and property used in illegal manufacture, transportation and sale of liquor	<ul style="list-style-type: none"> CONFUSING STRUCTURE / INCONSISTENCY: Sub-§2 gives jurisdiction over property subject to forfeiture under sub-§1(A)—<i>i.e.</i>, non-conveyances—to any court with jurisdiction over the property <u>or</u> a related criminal proceeding involving the property. By contrast, sub-§4(A) gives jurisdiction over property subject to forfeiture under sub-§1(B)—<i>i.e.</i>, conveyances—only to any Superior Court with jurisdiction over the property. Should these provisions be combined in sub-§2—which is entitled “jurisdiction—and should they be identical (<i>i.e.</i>, allow the court hearing the criminal case to deal with forfeiture of conveyances)? HEADNOTE: Sub-§3: should the headnote be rewritten as: “Conveyances not subject to forfeiture” to more clearly describe this subsection? CLARITY: Sub-§4: the headnote to this subsection suggests it outlines the procedures for <u>all</u> forfeiture proceedings, but sub-§4(A) outlines the process to file a petition only for property subject to forfeiture under sub-§1(B)—<i>i.e.</i>, conveyances. Two questions: <ul style="list-style-type: none"> Who may file a petition for forfeiture of property described in sub-¶1-A—<i>i.e.</i>, non-conveyances? Is it the same as for conveyances? If so, amend sub-§4(A). Do the other paragraphs of sub-§4 apply to forfeiture of non-conveyances as well as conveyances? (Probably yes, which is why ¶A’s language is so confusing)
§2223. Dumping of evidence; prima facie evidence	<ul style="list-style-type: none"> CLARITY/ERROR?: §2223(2) makes it a crime to violate this section, but subsection 1 only creates an evidentiary rule and does not actually prohibit any conduct. Technically, as written §2223(2) makes it a Class E crime for the factfinder (judge or jury?) not to follow the evidentiary rule. If the intent is instead to make the “pouring out or other destruction of fluids . . . on or about the premises which are about to be . . . searched” a Class E crime, then sub-§2 should be rewritten.
§2228. Recovery of liquor and damages upon final judgment	
§2229. Disposal of forfeited liquors	<ul style="list-style-type: none"> CLARITY: §2229(1) states all forfeited “liquor” must be turned over to the bureau and disposed of in the same manner as abandoned liquor under §2230. <ul style="list-style-type: none"> Issue 1: §2230(2)(B) similarly states that abandoned liquor must be transferred to the bureau for disposal. But it does not explain the process for disposal. Issue 2: §2229(2) creates a specific process for forfeited <i>spirits</i> either to be re-sold by the bureau or poured into the ground by order of the court. How does this process fit with the statement in §2229(1) that all forfeited liquor should be
§2230. Abandonment of liquor	

Analysis of Title 28-A pursuant to Resolve 2019, chapter 15 (Jan. 2020)

Current Section: Title 28-A	Notes and Questions
	disposed of “in the same manner” as abandoned liquor under §2230? Does it mean that the process for disposing of abandoned spirits should be the process in §2229(2)? Probably not, because unlike forfeited spirits there is no court involved with abandoned spirits that can decide whether to restock or destroy the spirits. Suggest rewriting these sections to clarify whether all of the same processes (timeline and final disposal) apply to both §2229 and §22230. In addition, may want to clarify process for final disposal by bureau of malt liquor or wine.
PART 8: LIQUOR LIABILITY	
Chapter 100: Maine Liquor Liability Act	
§2501. Short title	
§2502. Purposes	
§2503. Definitions	
§2504. Plaintiffs	<ul style="list-style-type: none"> • HEADNOTE: §2504(2) only limits the plaintiffs in suits alleging negligence, not those alleging recklessness. Suggested change: “Persons who may not bring suit <u>based on negligent conduct</u>”
§2505. Defendants	
§2506. Negligent service of liquor; liability	<ul style="list-style-type: none"> • CLARITY: §2506(2) states a “server” is liable for negligent service to an intoxicated individual. As defined, “server” includes both licensees and their employees and non-licensees and their employees. But, under §2505(1) & (2), only a “server who is a licensee or employee or agent of a licensee” can be a defendant in a §2506(2) lawsuit. Should this restricted scope of “server” be made explicit in §2506(2)? • HEADNOTE: change §2056(3) to “Negligent conduct <u>defined</u>”? (for clarity)
§2507. Reckless service of liquor; liability	<ul style="list-style-type: none"> • HEADNOTE: change §2057(3) to “Reckless conduct <u>defined</u>”? (for clarity)
§2508. Damages	
§2509. Limit on awards	
§2510. Common law defenses	
§2511. Exclusive remedy	
§2512. Named and retained; several liability	<ul style="list-style-type: none"> • OMITTED WORDS? §2512(1) probably should read: “No action against a server may be maintained unless the minor, <u>or</u> the intoxicated individual <u>to whom liquor was served</u> or the estate of <u>such a</u> the minor or intoxicated individual is named as a defendant in the action. . .” [I.e., “the minor” and “the intoxicated individual” refers to <i>the individual who was served liquor</i> and who must be retained as a co-defendant] <ul style="list-style-type: none"> ○ Could make a similar change in §2512(2): “The intoxicated individual <u>to whom liquor was served</u> and any server . . . are each severally liable . . .”
§2513. Notice required	
§2514. Statute of limitations	
§2515. Evidence of responsible serving practices	
§2516. Privileges	
§2517. Insurance records	
§2519. Approval of alcohol server education courses	<ul style="list-style-type: none"> • CLARITY: §2519(5) creates a \$28 per participant fee for “a <i>bureau</i> alcohol server education course.” Is this course given by the bureau and thus different from the courses offered by 3rd parties that must be approved by the bureau under sub-§1? <ul style="list-style-type: none"> ○ If the bureau <u>does offer</u> its own courses: should the bureau’s authority to offer its own courses be stated in §2519? Must those courses follow the criteria in sub-§3 and must those courses have certified instructors under sub-§6 (as written, those subsections only apply to courses seeking “approval” and “approved” courses)?

Analysis of Title 28-A pursuant to Resolve 2019, chapter 15 (Jan. 2020)

Current Section: Title 28-A	Notes and Questions
	<ul style="list-style-type: none"> ○ If the bureau <u>does not offer</u> its own courses: is the \$28 fee in sub-§5 meant to be the total fee that an approved course may charge participants, even though sub-§5 requires the bureau to retain the entire fee (and not give anything to the course providers)? If so, how does this \$28 fee relate to sub-§7, which creates a \$3 per person fee to the bureau for approved courses. ○ <i>Note:</i> BABLO's website provides an online course with an \$18 fee. <i>See</i> https://www1.maine.gov/cgi-bin/online/trainsellserve/main.cgi. BABLO's authority to approve an Internet-based course appears in sub-§9 but that subsection doesn't provide for a different fee for internet-based courses.
§2519-A. Rules	
§2520. Liquor service education	

Other terminology issues: Subcommittee should pick one, OPLA and ROS can identify necessary changes.

- “foreign” versus “out of state” to describe manufacturers, wholesalers, etc.
- “instate” versus “in-state” to describe manufacturers, wholesalers, etc.
- “off-premise retail licensee” versus “off-premises retail licensee” (also “on premises” versus “on premise retail licensee”)
 - The defined terms are “on premise retail licensee” and “off premise retail licensee” in §2(27)(A) & (B) but that phrasing is stilted and inconsistently used throughout the title. *See also* §2(27) (on premise and off premise catering). The preferred terms (per OPLA and ROS) are “on premises” and “off premises.”

Other drafting standards issues: The following issues appear in scattered sections throughout Title 28-A (we have a list). Is it acceptable to the committee to make these changes to comply with legislative drafting standards?

- **Gendered pronouns**, for example “his” or “he”, should be gender-neutral per 1 MRSA §7-A(B) (“In preparing any legislation which amends a section or larger division of statutes, the Revisor of Statutes shall be authorized to change any masculine or feminine gender word to a gender-neutral word when it is clear that the state is not exclusively applicable to members of one sex. The Revisor of Statutes shall not otherwise alter the sense, meaning or effect of any statute.”).
- **Prohibiting action; “no person may”:** The Drafting Manual, pages 101-102, directs that statutory prohibitions should be written as “A person may not [do X]” rather than “No person may [do X].”
- **Forfeitures:** When a person commits a crime or a civil violation and is ordered to pay a monetary penalty, the person is ordered to pay a “fine” not a “forfeiture” according to the Drafting Manual, page 149.
- **Provided that:** This phrase is not preferred in statute and should, where possible, be replaced with “as long as” or “if” according to page 117 of the Drafting Manual.
- **Other:** The Revisor’s Office will likely identify and propose other technical, drafting standards changes during the drafting process for any “revision” bill the committee may choose to generate.

Appendix A: Certificate of Approval Questions

Citation	Description	Intent to include out-of-state spirits manufacturers?
§1363	<p>➤ Sub-§1: Corporate officers of a company that is the “holder of a manufacture’s certificate of approval” may not have financial interest in wholesale licensee.</p> <p>➤ Sub-§2: Prohibits a “manufacturer or certificate of approval holder” from loaning money to wholesale licensee for equipping a business establishment where malt liquor or wine is sold.</p>	<i>Appears intended to apply only to malt liquor and wine manufacturers, given Subchapter and Section headnotes (but those headnotes have no legal effect). Is this correct?</i>
§1364(1), (2)	Requires “all certificate of approval holders” to submit copies of all invoices sent to wholesale licensees as well as monthly reports.	<i>Are out-of-state spirits manufacturers intended to file these reports or is this something handled in the §90 contract?</i>
§1406	➤ Requires certificate of approval holders to send to the bureau a list of licensed wholesalers who distribute their products.	<i>Given §90 contract process and heading of the chapter (“malt liquor and wine wholesale licensees”), likely not intended to apply to spirits. Is this correct?</i>
§1407	Limiting the ability of a “certificate of approval holder” who acquires new brands “of liquor” to terminate a wholesale licensee who is the exclusive distributor of those same brands “of liquor.” Violations are an unfair trade practice.	<i>Given §90 contract process and heading of the chapter (“malt liquor and wine wholesale licensees”), likely not intended to apply to spirits. Is this correct?</i>
Chapter 57 (§1451 to §1465)	<p>Certificate of Approval Holder and Maine Wholesale Licensee Agreement Act</p> <p>➤ Regulates the relationship between “wholesalers” (defined to include licensees who may distribute wine or malt liquor) and “certificate of approval holders” (a term not specially defined for purposes of this Chapter).</p>	<i>This does not apply to spirits. But, if out-of-state spirits manufacturers obtain certificates of approval, should clarify that they are not included in Chapter 57.</i>
§1652(4)	Bureau must open an account “with all . . . certificate of approval holders” pertaining to payment of excise taxes.	<i>This does not apply to spirits, which have a state tax built into their retail price and which are not subject to excise taxes. But, if out-of-state spirits manufacturers obtain certificates of approval, should clarify that they are not governed by this provision.</i>

Appendix A: Certificate of Approval Questions

Citation	Description	Intent to include out-of-state spirits manufacturers?
§708(1) & §1408	Prohibiting a “certificate of approval holder” from offering most discounts unless offered to all wholesale licensees and approved by the bureau.	?
§708-A	Allowing “certificate of approval holders” as well as wholesale and retail licensees to offer in-pack sweepstakes, contests and games	?
§708-C	Allows §1355-A licensees, wholesalers or “certificate of approval holders” to make donations for an auction or award or for consumption at on-premises events. Specifically includes spirits.	?
§1051(8)	Allows on-premises retailers to conduct liquor taste-testing events for the public. “Certificate of approval holders” that participate in these taste-testing events may: ¶P: offer free snacks during the event; ¶Q: provide promotional/advertising materials for the event; ¶R: distribute novelties to public during event.	?
§1071(6)	Incorporated civic organizations may obtain on-premises event licenses for the sale of spirits, wine and malt liquor. ➤ Sub-§6 states that an in-state manufacturer, “a certificate of approval holder” or a wholesaler who provides the malt liquor, wine or spirits for the event may serve its product.	<i>Questions: may an out-of-state spirits manufacturer’s products be served at these events and, if so, may that manufacturer serve the product at the event?</i>
§1361(3) and Chapter 33	➤ Violation of liquor laws or rules may lead to suspension or revocation of a “certificate of approval.” ➤ Chapter 33 adds that, in lieu of a suspension, the “certificate of approval holder” may pay a fine calculated as a specific percentage of its gross profits to the Court. <i>See</i> §803(9).	<i>Key question: is the intent that out-of-state spirits manufacturers be subject to these types of administrative penalties?</i>

Appendix A: Certificate of Approval Questions

Effects of not requiring a certificate of approval:

- (1) Less direct state control over out-of-state manufacturers, for example:
 - a. Not subject to statutes applicable to “certificates of approval” and “certificate of approval holders”, *see* table below; and
 - b. Not subject to administrative penalties (suspension, revocation, straight fines or fines in lieu of suspension) for violating Title 28-A or implementing rules, *see* §1361(3).
- (2) But, other forms of regulation exist, for example:
 - a. State Liquor and Lottery Commission determines which items may be sold in Maine, *see* §81(3);
 - b. The Commission & BABLO set wholesale and retail price of all spirits sold in Maine, *see* §83-C(2), §606, §1651(1);
 - c. BABLO oversees contract for spirits wholesale distribution/storage pursuant to §90 contract process; and
 - d. BABLO limits marketing, mail-in rebates, and instant coupons on spirits products, *see* §708 (although the penalty for violating these provisions is unclear if the entity does not have a certificate of approval subject to administrative penalties).

Regardless of the answer to this question, Title 28-A must be amended:

- If out-of-state spirits manufacturers **are not** required to obtain certificates of approval:
 - Amend the definition of certificate of approval holder in §2(8) and the broad, mandatory language of §1351 to exclude out-of-state spirits manufacturers.
- If out-of-state spirits manufacturers **are** required to obtain certificates of approval:
 - What is the process for obtaining a foreign spirits manufacturer certificate of approval? (Same as §1361?)
 - What is the fee for a foreign spirits manufacturer’s certificate of approval? (Need to add to list of fees in §1551)

In either case, need to ensure whether out-of-state spirits manufacturers are intended to be included in current statutes governing “certificate[s] of approval” or “certificate of approval holder[s]”:

Citation	Description	Intent to include out-of-state spirits manufacturers?
§707(3), (4), (5)	Prohibits entities in the three-tier system (including entities with a “certificate of approval”) from having financial ties with entities in the other tiers (for example, retail licensees or wholesalers).	?
§707-A	Exceptions to three-tier financial separation rules in §707, permitting a retail licensee that operates a hotel to have a financial interest in a “certificate of approval holder” and vice versa.	?

Appendix A: Certificate of Approval Questions

Are out-of-state spirits manufacturers required to obtain certificates of approval?

Cite	Statutory Text	Are out-of-state spirits manufacturers* included in certificate of approval statute?
§2(8)	[28-A definition] “Certificate of approval holder” means an instate manufacturer, out-of-state manufacturer or out-of-state wholesaler licensed by the bureau.	<ul style="list-style-type: none"> Includes spirits manufacturers
§1351	1. Certificate of approval required. All in-state manufacturers, out-of-state manufacturers and out-of-state wholesalers must obtain a certificate of approval from the bureau.	<ul style="list-style-type: none"> Includes spirits manufacturers
§1361	<p>1. Certificate of approval required. No manufacturer or foreign wholesaler of malt liquor or wine may hold for sale, sell or offer for sale in intrastate commerce, or transport or cause to be transported into the State for resale, any malt liquor or wine unless the manufacturer or foreign wholesaler has obtained from the bureau a certificate of approval.</p> <p>2. Fee for certificate of approval. The fee for a certificate of approval is \$1,000 per year for malt liquor only and \$1,000 for wine only, except that the fee for a manufacturer or foreign wholesaler of wine or malt liquor who ships 120 gallons of wine or malt liquor or less per year is \$100. Payment of the fee must accompany the application for the certificate.</p> <p>...</p> <p>4. No sales of malt liquor or wine to person without wholesale license. No certificate of approval holder, except a small brewery or small winery licensee allowed to sell 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. . . .</p> <p>5. No exclusivity agreement. No certificate of approval holder may make it a condition in selling malt liquor or wine to any wholesale licensee that the wholesale licensee may not sell malt liquor or wine manufactured or sold by other manufacturers or foreign wholesalers.</p>	<ul style="list-style-type: none"> Excludes spirits manufacturers <ul style="list-style-type: none"> Subsection 1 excludes spirits manufacturers if the phrase “of malt liquor or wine” modifies the word “manufacturer.” Subsections 2, 4 & 5 support this interpretation by explicitly applying only to malt liquor and wine. <p><u>Note:</u> No other section of Title 28-A establishes the process or fee for out-of-state spirits manufacturers to obtain certificates of approval. This interpretation—that spirits manufactures are not required to obtain certificate of approval—is also supported by:</p> <ul style="list-style-type: none"> §708(7), which distinguishes between rebates offered by “a manufacturer or a supplier of spirits” and rebates offered by “a certificate of approval holder” [latter referring only to brewery or winery]. §1052-D(1), which lists persons with “certificate[s] of approval” and a “foreign manufacturer[s] of spirits” as distinct types of entities eligible for a taste-testing license under that section. §1551, which lists fees for malt liquor or wine—but not spirits—certificates of approval.

* Note: “Manufacturer” is defined in §2(19) to include those who make spirits, wine and malt liquor. By contrast, “wholesaler” is defined in §2(35) in a way that excludes spirits. Thus, spirits wholesalers do not need a certificate of approval (instead, they have a contract with the State under §90).

Appendix B: “Hard Cider” Current Regulatory Scheme and Suggested Areas for Clarification

	Analysis of Existing Law	Suggested Areas for Clarification
Definition	<p>“Hard cider” means “liquor produced by fermentation of the juice of apples or pears” with 0.5% to 8.5% alcohol by volume. §2(12-A)</p> <ul style="list-style-type: none"> • <u>Included</u> in definition of “wine.” See §2(36) (“wine” means “any liquor containing not more than 24% alcohol by volume that is produced by fermentation of fruit or other agricultural products containing sugar . . .”). 	<p>1. Should fact that “hard cider” is necessarily included in definition of “wine” be made explicit?</p> <p><i>Compare:</i> 1st sentence of “wine” definition necessarily includes all “fortified wine” but fact that “fortified wine” is included is also explicitly stated in the 2nd sentence.</p> <p>2. Alternatively, should hard cider be excluded from the definition of wine and separately listed in each statute affecting hard cider?</p>
Manufacturing	<p>“Winery” is defined in §2(37) as “a facility that ferments, ages and bottles wine <i>and hard cider</i>” and “small winery” is similarly defined in §2(29-A) as a facility that produces both wine and hard cider.</p> <ul style="list-style-type: none"> • Because “wine” as defined includes “hard cider,” it is not necessary to state that a “winery” or “small winery” produces both wine and hard cider. 	None.
Retail Sales	<p>Sold by on- and off-premises retailers of malt liquor. See §14:</p> <p>“Notwithstanding any other provision of this Title, a person licensed to sell malt liquor for consumption on or off premises may also sell hard cider. All provisions of this Title applicable to malt liquor apply to hard cider when hard cider is sold by persons licensed to sell malt liquor for consumption on or off the premises.”</p>	<p>3. Is §14 intended to be restrictive—only licensed malt liquor retailers may sell hard cider—or permissive—in addition to licensed wine retailers, licensed malt liquor retailers may also sell hard cider?</p> <p>For example, are retailers with Class III, VII and VII-A wine-only licenses authorized to sell hard cider?</p>
Wholesalers	<p>Under the definitions in §2, a wholesaler with authority to sell “wine” may sell hard cider, but a wholesaler with authority to only sell “malt liquor” may not sell hard cider (even though retailers have different treatment above).</p>	<p>4. Is this the intent: that only wholesalers of wine may sell hard cider?</p> <p>If not, need to amend §14 and/or §1401 (wholesalers) to clarify which wholesale licenses sell hard cider.</p>
Excise Taxes	<p>Maine manufacturers or importing wholesalers must pay the following:</p> <ul style="list-style-type: none"> • 35¢/gallon excise tax on hard cider under §1652(2). • 60¢/gallon excise tax on “wine other than sparkling wine” under §1652(2). 	<p>5. Because hard cider is “wine”, must the Maine manufacturer or importing wholesale licensee pay <u>both</u> the wine <u>and</u> the hard cider excise taxes on hard cider products?</p>

Appendix B: “Low-Alcohol Spirits Products” Current Regulatory Scheme and Suggested Areas for Clarification

	Analysis of Existing Law	Suggested Areas for Clarification
Definition	<p>“Low alcohol spirits product’ means a product containing spirits that has an alcohol content of 8% or less by volume. . . .” §2(16-A) (exception omitted).</p> <ul style="list-style-type: none"> • <u>Excluded</u> from definitions of “spirits,” §2(31), and “malt liquor,” §2(18) • <u>Sometimes included</u> in definition of “fortified wine” §2(11-B)—to qualify, the low-alcohol spirits product must be “wine to which spirits have been added.” If the product qualifies as “fortified wine” it is also deemed “wine.” 	<p><i>Note:</i> General definition of “liquor,” which is regulated under Title 28-A, <i>excludes</i> any product with < 0.5% alcohol content, §2(16).</p> <ol style="list-style-type: none"> 1. Should products with < 0.5% alcohol content be excluded from the definition of “low-alcohol spirits product?”
Manufacturing	<p>It is not clear who may manufacture these products:</p> <ul style="list-style-type: none"> • A “winery” produces “wine” (and “fortified wine”) which includes the subset of low-alcohol spirits made by adding spirits to wine (see above) • A “brewer” produces “malt liquor,” which is defined to exclude any product containing spirits—<i>i.e.</i>, all low-alcohol spirits products (see above) • A “distiller” produces “spirits,” which is defined to exclude all low-alcohol spirits products (see above) • A “rectifier” “produces <i>spirits</i> by combining spirits with other products,” but note that the final product is “spirits,” which is defined to exclude low-alcohol spirits products (see above). * <p>*No statute provides for licensing of rectifiers, although a fee is listed in §1551.</p>	<ol style="list-style-type: none"> 2. Licensed wineries may produce all spirits that qualify as “fortified wine”, but which licensed entities may manufacture the subset of low-alcohol spirits products that do not qualify as fortified wine?
Wholesalers	<p>It is not clear which wholesale licenses authorize the importation and resale of low-alcohol spirits products:</p> <ul style="list-style-type: none"> • <i>The entity with a contract under §90 for “spirits”?</i> Not under current law. • <i>Wholesalers of malt liquor or wine under Chapter 55?</i> A “wine” wholesale license authorizes sale of products that qualify as “fortified wine”, but what about other low-alcohol spirits products? (Chapter 55 does not specify.) 	<ol style="list-style-type: none"> 3. Which licensed wholesalers may import or distribute low-alcohol spirits products that do not qualify as “fortified wine”?
Retail Sales	Sold by on- and off-premises retailers of wine . <i>See</i> §13.	None
Excise Taxes	<p>All low-alcohol spirits products are subject to the following taxes:</p> <ul style="list-style-type: none"> • 30¢/gallon tax under §1365, payable by any certificate of approval holder that sells low-alcohol spirits to a Maine wholesale licensee. • \$1.24/gallon excise tax under § 1652(1-A) payable by Maine manufacturer or importing wholesale licensee on low-alcohol spirits and fortified wine.* <p>* Wine is subject to a 60¢/gallon excise tax under §1652(2).</p>	<ol style="list-style-type: none"> 4. If a low-alcohol spirits product fits the definition of “fortified wine”, do <u>both</u> the low-alcohol spirits product/fortified wine excise tax <u>and</u> the wine excise tax apply to that product?

Appendix C: Local approval of bottle clubs and on-premises retail licenses

	Bottle clubs	On-premises licensees
Filing of application	<p>1. Application to local authorities. Prior to registration with the bureau under section 161, an owner or operator of a bottle club must apply to the municipal officers or, in the case of unincorporated places, the county commissioners of the county in which the unincorporated place is located, for permission to operate the bottle club or for transfer of location of an existing bottle club. . . .</p> <p style="text-align: right;">§161-B(1)</p>	<p>1. File application with bureau. An applicant for a liquor license shall file an application in the form required by the bureau.</p> <p style="text-align: right;">§651(1)</p>
Forms	<p>The bureau shall prepare and supply application forms.</p> <p style="text-align: right;">§161-B(1)</p>	<p>A. The bureau shall prepare and supply application forms.</p> <p style="text-align: right;">§653(1)(A)</p>
Local hearing	<p>The municipal officers or, in the case of unincorporated places, the county commissioners of the county in which the unincorporated place is located shall hold a public hearing for the consideration of applications for new bottle clubs and applications for transfer of location of existing bottle clubs.</p> <p style="text-align: right;">§161-B(2)</p>	<p>The municipal officers or, in the case of unincorporated places, the county commissioners of the county in which the unincorporated place is located, may hold a public hearing for the consideration of applications for new on-premises licenses and applications for transfer of location of existing on-premises licenses . . .</p> <p style="text-align: right;">§653(1)</p>
Hearing for renewal applications	<p>N/A – statute does not mention hearings for renewal applications</p>	<p>The municipal officers or county commissioners may hold a public hearing for the consideration of requests for renewal of licenses, except that when an applicant has held a license for the prior 5 years and a complaint has not been filed against the applicant within that time, the applicant may request a waiver of the hearing.</p> <p style="text-align: right;">§653(1)</p>
Notice of hearing	<p>The municipal officers or the county commissioners shall provide public notice of a hearing held under this section. The notice, at the applicant's prepaid expense, must state the name and place of the hearing and must appear for at least 3 consecutive days before the date of the hearing in a daily newspaper having general circulation in the municipality or unincorporated place where the bottle club is located or for 2 consecutive weeks before the hearing date in a weekly newspaper having general circulation in the municipality or unincorporated place where the bottle club is located.</p> <p style="text-align: right;">§161-B(2)</p>	<p>B. The municipal officers or the county commissioners, as the case may be, shall provide public notice of any hearing held under this section by causing a notice, at the applicant's or applicants' prepaid expense, stating the name and place of hearing, to appear on at least 3 consecutive days before the date of hearing in a daily newspaper having general circulation in the municipality where the premises are located or one week before the date of the hearing in a weekly newspaper having general circulation in the municipality where the premises are located.</p> <p style="text-align: right;">§653(1)(B)</p>
Effect of local officials' failure to act	<p>N/A – statute does not address this issue</p>	<p>C. If the municipal officers or the county commissioners, as the case may be, fail to take final action on an application for a new on-premises license [or] transfer of the location of an existing on-premises license . . . within 60 days of the filing of an application, the application is deemed approved and ready for action by the bureau. For purposes of this paragraph, the date of filing of the application is the date the application is received by the municipal officers or county commissioners. This paragraph applies to all applications pending before municipal officers or county commissioners as of the effective date of this paragraph as well as</p>

Appendix C: Local approval of bottle clubs and on-premises retail licenses

		all applications filed on or after the effective date of this paragraph. This paragraph applies to an existing on-premises license that has been extended pending renewal. The municipal officers or the county commissioners shall take final action on an on-premises license that has been extended pending renewal within 120 days of the filing of the application. §653(1)(C)
Amendment of application after bureau inspection	N/A – does not seem relevant to bottle clubs	D. If an application is approved by the municipal officers or the county commissioners but the bureau finds, after inspection of the premises and the records of the applicant, that the applicant does not qualify for the class of license applied for, the bureau shall notify the applicant of that fact in writing. The bureau shall give the applicant 30 days to file an amended application for the appropriate class of license, accompanied by any additional license fee, with the municipal officers or county commissioners, as the case may be. If the applicant fails to file an amended application within 30 days, the original application must be denied by the bureau. The bureau shall notify the applicant in writing of its decision to deny the application including the reasons for the denial and the rights of appeal of the applicant. §653(1)(D)
Decision	In granting or denying an application, the municipal officers or the county commissioners shall indicate the reasons for their decision and provide a copy to the applicant. §161-B(3)	In granting or denying an application, the municipal officers or the county commissioners shall indicate the reasons for their decision and provide a copy to the applicant. §653(2)
Grounds for denial	<p>An application may be denied on one or more of the following grounds:</p> <ul style="list-style-type: none"> A. Conviction of the applicant of any Class A, Class B or Class C crime; B. Noncompliance of the bottle club with any local zoning ordinance or other land use ordinance not related directly to liquor control; C. Conditions of record such as waste disposal violations, health or safety violations or repeated parking or traffic violations on or in the vicinity of the bottle club and caused by persons patronizing or employed by the bottle club or other such conditions that unreasonably disturb, interfere with or affect the ability of persons or businesses residing or located in the vicinity of the bottle club to use their property in a reasonable manner; D. Repeated incidents of record of breaches of the peace, disorderly conduct, vandalism or other violations of law at or in the vicinity of the 	<p>A license may be denied on one or more of the following grounds:</p> <ul style="list-style-type: none"> A. Conviction of the applicant of any Class A, Class B or Class C crime; B. Noncompliance of the licensed premises or its use with any local zoning ordinance or other land use ordinance not directly related to liquor control; C. Conditions of record such as waste disposal violations, health or safety violations or repeated parking or traffic violations on or in the vicinity of the licensed premises and caused by persons patronizing or employed by the licensed premises or other such conditions caused by persons patronizing or employed by the licensed premises that unreasonably disturb, interfere with or affect the ability of persons or businesses residing or located in the vicinity of the licensed premises to use their property in a reasonable manner; D. Repeated incidents of record of breaches of the peace, disorderly conduct, vandalism or other

Appendix C: Local approval of bottle clubs and on-premises retail licenses

	<p>bottle club and caused by persons patronizing or employed by the bottle club;</p> <p>E. A violation of any provision of this Title;</p> <p>F. In the case of corporate applicants, ineligibility or disqualification under section 601 of any officer, director or stockholder of the corporation; and</p> <p>G. Location of the bottle club at any amusement area, beach or other area designed primarily for use by minors.</p> <p style="text-align: right;">§161-B(3)</p>	<p>violations of law on or in the vicinity of the licensed premises and caused by persons patronizing or employed by the licensed premises;</p> <p>D-1. Failure to obtain, or comply with the provisions of, a permit for music, dancing or entertainment required by a municipality or, in the case of an unincorporated place, the county commissioners;</p> <p>E. A violation of any provision of this Title;</p> <p>F. A determination by the municipal officers or county commissioners that the purpose of the application is to circumvent the provisions of section 601; and</p> <p>G. After September 1, 2010, server training, in a program certified by the bureau and required by local ordinance, has not been completed by individuals who serve alcoholic beverages.</p> <p style="text-align: right;">§653(2)</p>
Appeal to bureau	<p>4. Appeal to bureau. Any applicant aggrieved by the decision of the municipal officers or county commissioners under this section may appeal to the bureau. The bureau shall hold a public hearing in the city, town or unincorporated place where the premises are situated. In acting on such an appeal, the bureau may consider all of the requirements referred to in subsection 3.</p> <p>A. If the decision appealed is approval of the application, the bureau may reverse the decision if it was arbitrary or based on an erroneous finding.</p> <p>B. If the decision appealed is denial of the application, the bureau may reverse the decision and register the bottle club under section 161 only if it finds by clear and convincing evidence that the decision was without justifiable cause.</p> <p style="text-align: right;">§161-B(4)</p>	<p>3. Appeal to bureau. Any applicant aggrieved by the decision of the municipal officers or county commissioners under this section may appeal to the bureau within 15 days of the receipt of the written decision of the municipal officers or county commissioners. The bureau shall hold a public hearing in the city, town or unincorporated place where the premises are situated. In acting on such an appeal, the bureau may consider all licensure requirements and findings referred to in subsection 2.</p> <p>A. [repealed in 1993]</p> <p>B. If the decision appealed from is an application denial, the bureau may issue the license only if it finds by clear and convincing evidence that the decision was without justifiable cause.</p> <p style="text-align: right;">§653(3)</p>
Appeal to court	<p>5. Appeal to Superior Court. Any person or governmental entity aggrieved by a bureau decision under this section may appeal the decision to the Superior Court.</p> <p style="text-align: right;">§161-B(5)</p>	<p>5. Appeal to District Court. Any person or governmental entity aggrieved by a bureau decision under this section may appeal the decision to the District Court within 30 days of receipt of the written decision of the bureau.</p> <p style="text-align: right;">§653(5)</p>
Fees pending court appeal	<p>N/A – statute does not address this issue</p>	<p>An applicant who files an appeal or who has an appeal pending shall pay the annual license fee the applicant would otherwise pay. Upon resolution of the appeal, if an applicant's license renewal is denied, the bureau shall refund the applicant the prorated amount of the unused license fee.</p> <p style="text-align: right;">§653(5)</p>

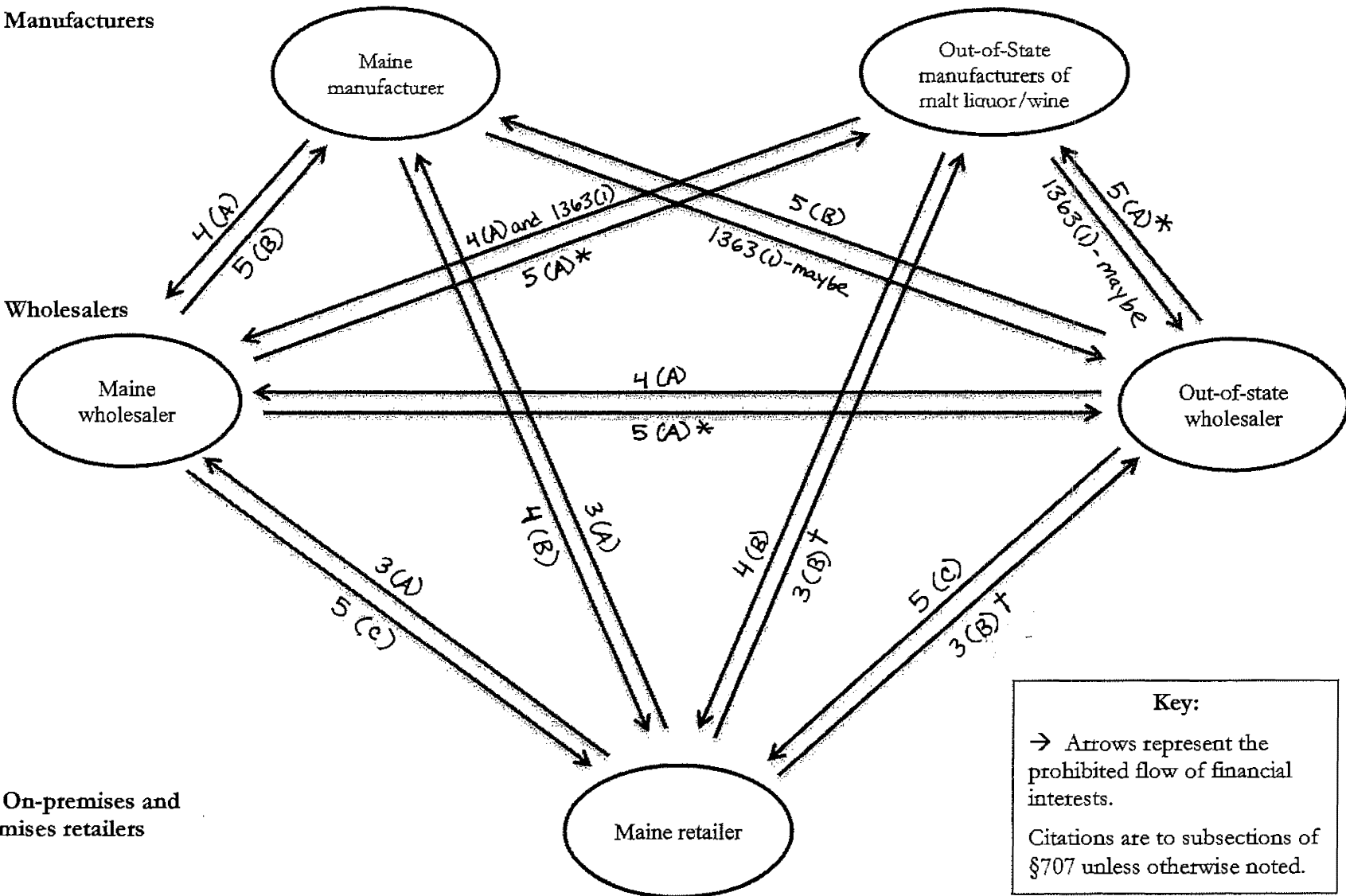
Appendix D: Three-Tier System: Prohibited Financial Interests

28-A M.R.S. §707 & §1363

Tier I: Manufacturers

Tier 2: Wholesalers

Tier 3: On-premises and off-premises retailers



* Wholesalers are only prohibited from having financial interests in out-of-state manufacturers or out-of-state wholesalers of malt liquor (not wine or spirits)

† Maine retailers are only prohibited from having financial interests in out-of-state manufacturers or out-of-state wholesalers of malt liquor or wine (not spirits)

Office of Policy and Legal Analysis (Jan. 2020)

Appendix E: Taste-Testing Provisions

Cite	Host	Type of alcohol	Audience	Location	Separate license required?	Local Approval Required?	Prohibit serving minors & visibly intoxicated?*	Liquor amount restrictions
460	Agency Liquor Store <i>May be combined with §1205 & §1207 events</i>	Spirits	Public <i>or</i> <i>Invite-only</i>	The Agency Liquor Store	No <i>(but must request permission from BABLO)</i>	No	Yes	<u>Spirits:</u> <ul style="list-style-type: none"> • ≤ 80 proof: 1½ oz. in ½ oz. servings; and • > 80 proof: ¾ oz. in ¼ oz. servings
1051(6)	Distiller, Licensed spirits sales representative, or State's wholesale liquor provider	Spirits	Retail licensees	Leased room at on-premises retail licensee's premises	No <i>(but must request permission from BABLO)</i>	No	No	None stated
1051(8)	On-premises retail licensee	Liquor	Public <i>or</i> <i>Invite-only</i>	The licensed on-premises retail location	No <i>(but must request permission from BABLO)</i>	No	Yes	<u>Spirits</u> <ul style="list-style-type: none"> • ≤ 80 proof: 1½ oz. in ½ oz. servings; or • > 80 proof: ¾ oz. in ¼ oz. servings <u>Wine:</u> <ul style="list-style-type: none"> • ≤ 14% alcohol: 5 oz.; or • > 14% alcohol: 3 oz. <u>Malt liquor:</u> <ul style="list-style-type: none"> • ≤ 6% alcohol: 12 oz.; • >6 to <12 % alcohol: 6 oz.; or • ≥ 12% alcohol: 3 oz.

Appendix E: Taste-Testing Provisions

Cite	Host	Type of alcohol	Audience	Location	Separate license required?	Local Approval Required?	Prohibit serving minors & visibly intoxicated?*	Liquor amount restrictions
1052-D	Maine manufacturer, Wholesaler, Certificate of approval holder, Spirits supplier or broker, or Foreign manufacturer of spirits. <i>(Maine manufacturer or certificate of approval holder also may "sponsor" taste testing by unlicensed manufacturers)</i>	Malt liquor, wine or spirits	Public	Not stated <i>(but not permitted at a spot currently licensed for on-premises consumption)</i>	Yes	Yes	Yes	Maximum 12 samples per day with a maximum sample size of: • <u>Spirits</u> : ½ oz. per sample • <u>Wine</u> : 1½ oz. per sample • <u>Malt liquor</u> : 4 oz. per sample **but no limits if substantial food or sit-down meals offered**
1205	Off-premises retail licensee <i>May be combined with §460 & §1207 events</i>	Wine	Public <i>or</i> <i>Invite-only</i>	The licensed off-premises retail location	No <i>(but must request permission from BABLO)</i>	No	Yes	<u>Wine</u> : • ≤ 14% alcohol: 5 oz.; and • > 14% alcohol: 3 oz.
1207	Off-premises retail licensee <i>May be combined with §460 & §1205 events</i>	Malt liquor	Public <i>or</i> <i>Invite-only</i>	The licensed off-premises retail location	No <i>(but must request permission from BABLO)</i>	No	Yes	<u>Malt liquor</u> : • ≤ 6% alcohol: 12 oz.; • > 6 to < 12 % alcohol: 6 oz.; and • ≥ 12% alcohol: 3 oz.
1368	Licensed Maine small brewery, Licensed Maine small winery, or	Malt liquor, wine or spirits	Public	Farmers' market	No <i>(but must request permission)</i>	Yes	Yes	Maximum 6 samples per day with a maximum sample size of:

Appendix E: Taste-Testing Provisions

Cite	Host	Type of alcohol	Audience	Location	Separate license required?	Local Approval Required?	Prohibit serving minors & visibly intoxicated?*	Liquor amount restrictions
	Licensed Maine small distillery.				<i>from BABLO)</i>			<ul style="list-style-type: none"> • <u>Spirits</u>: ½ oz. per sample • <u>Wine</u>: 1½ oz. per sample • <u>Malt liquor</u>: 4 oz. per sample <p><i>**restrictions are per manufacturer**</i></p>
1402	Wholesale licensee	Wine or malt liquor	Retail licensees	The wholesale licensee's premises <i>or</i> Leased room at on-premises retail licensee's premises	No <i>(but must request permission from BABLO)</i>	No	No	None stated

*** Minors:**

- 28-A M.R.S. §705(4) prohibits all licensees, agents or employees of licenses from permitting minors “to consume or possess liquor . . . *on the premises*”; this section thus independently prohibits providing any liquor to minors during taste-testing events if the events are *held on that licensee’s licensed premises*.
- 28-A M.R.S. §2081(1)(A) prohibits giving liquor to a minor, but that provision “does not apply to licensees or agents of licensees in the scope of their employment.” §2081(4).

*** Visibly intoxicated:**

- 28-A M.R.S. §705(3-A) prohibits all licensees and their agents from permitting “liquor to be consumed *on the premises where sold* to a person who is visibly intoxicated.” The italicized phrase appears to limit applicability of this prohibition in a way that would render it ineffective in the context of a free, taste-testing event.
- 28-A M.R.S. §2081(1)(C) prohibits giving liquor to a visibly intoxicated person, but that provision “does not apply to licensees or agents of licensees in the scope of their employment.” §2081(4).

Appendix E: Product-Sampling Provisions

Cite	Provider	Type of alcohol	Recipient	Location	Prohibit serving minors & visibly intoxicated?*	Amount Restrictions
1055	Class A restaurant or Class A restaurant/lounge	Malt liquor, wine or spirits	Customer	The licensed restaurant	Yes	Maximum 6 samples per day with a maximum sample size of: <ul style="list-style-type: none"> • <u>Spirits</u>: ½ oz. per sample • <u>Wine</u>: 1 oz. per sample • <u>Malt liquor</u>: 3 oz. per sample
1355-A(2)	Maine brewery or small brewery, Maine winery or small winery, or Maine distillery or small distillery	Malt liquor, wine or spirits	Employees, Wholesalers or Public	Premises where produced	No	None stated
1402-A	Maine brewery or small brewery, Maine winery or small winery, or Licensed wholesaler	Malt liquor or wine	Retail licensees	Not clearly stated (appears to be at the recipient retail licensee's premises)	Partly (minors: recipient of a partial-bottle sample must be ≥ 21 years, no similar rule if a full bottle) No (visibly intoxicated)	Max. full-bottle samples per year: <ul style="list-style-type: none"> • <u>Wine</u>: 18 liters total • <u>Malt liquor</u>: 18 gallons total <i>*no restriction on partial-bottle samples*</i>
1504	Licensed sales representative of spirits manufacturer or supplier	Spirits	Retail licensees	Not clearly stated, except §1504(6) states poured samples <i>may</i> be proved on an agency liquor store's premises	Partly (minors: recipient of a partial-bottle sample must be ≥ 21 years, no similar rule if a full bottle) No (visibly intoxicated)	Max. full-bottle samples per year: <ul style="list-style-type: none"> • <u>Spirits</u>: 6 liters total (with a maximum size of 1 liter per bottle) <i>*no restriction on partial-bottle samples*</i>

Appendix E: Product-Sampling Provisions

Cite	Provider	Type of alcohol	Recipient	Location	Prohibit serving minors & visibly intoxicated?*	Amount Restrictions
1553	Licensed postsecondary educational institution with course in hospitality, culinary arts or food sciences	Liquor	Faculty, staff or students in relevant course	Postsecondary educational institution's premises	Yes (minors) No (visibly intoxicated; but must follow school's alcohol-safety rules)	None stated

*** Minors:**

- 28-A M.R.S. §705(4) prohibits all licensees, agents or employees of licenses from permitting minors “to consume or possess liquor . . . *on the premises*”; this section thus independently prohibits providing any liquor samples to minors *on that licensee’s licensed premises*.
- 28-A M.R.S. §2081(1)(A) prohibits giving liquor to a minor, but that provision “does not apply to licensees or agents of licensees in the scope of their employment.” §2081(4).

*** Visibly intoxicated:**

- 28-A M.R.S. §705(3-A) prohibits all licensees and their agents from permitting “liquor to be consumed *on the premises where sold* to a person who is visibly intoxicated.” The italicized phrase appears to limit applicability of this prohibition in a way that would render it ineffective in the context of free distribution of liquor samples.
- 28-A M.R.S. §2081(1)(C) prohibits giving liquor to a visibly intoxicated person, but that provision “does not apply to licensees or agents of licensees in the scope of their employment.” §2081(4).

Appendix F: Qualified Catering Services – Required food sales
 28-A M.R.S. §1076(3)

Minimum Gross Annual Income from Food Sales To Qualify for License

Municipal population	Year-round catering service	Part-time (≤ 6 months) catering service	
		>3 months but ≤ 6 months	≤ 3 months
> 50,000	\$50,000	\$30,000	\$20,000
30,001 to 50,000	\$40,000	\$25,000	\$20,000
20,001 to 30,000	\$30,000	\$20,000	<i>Not stated</i>
7,501 to 20,000	\$15,000	\$10,000	
$\leq 7,500$	\$5,000	\$2,500	

Appendix G: Licensed Maine Manufacturers & off-premises sales (without an additional license)

28-A M.R.S. §1355-A

	Sub-§2(C)	Sub-§2(D)	Sub-§2(G) - kegs	Sub-§3(C) – growlers?
Type of licensed manufacturer	All	All	<ul style="list-style-type: none"> • brewery • small brewery 	<ul style="list-style-type: none"> • brewery • small brewery
Type of alcohol sold	Not stated	Liquor produced <i>by the</i> licensee	Liquor produced <i>at the</i> licensed premises	Malt liquor <i>brewed at the brewery</i>
Location of sales	Premises where liquor is produced	Premises where liquor is produced (<i>may be in same area as manufacturer's on-premises retail location, if any</i>)	At the licensed brewery or small brewery	At the <i>licensed establishment for on-premises sales</i> under sub-2(I) if it is co-located at the brewery or the small brewery
Size restrictions	Bottle, case or “in bulk”	Not stated	≤ 15.5 gallon packages (also > 5 gallons if must be a “keg”)	32 to 64 ounce bottles (maximum 6 at a time)
Hour restrictions	Regular business hours	Not stated	Regular business hours (must be hours of legal sale)	No sales after 10 p.m.
Window display Sub-§2(J)	Not stated	Up to 25 bottles liquor produced by licensee	Not stated	Not stated
Bottle deposit law	Not stated	Not stated	Applies; wholesaler calculates fees based on monthly report	Does not apply; but brewery may charge its own deposit
Other requirements and restrictions		Not stated	<ul style="list-style-type: none"> • §714 keg tagging requirements apply • Report direct sales monthly to wholesaler 	<ul style="list-style-type: none"> • Sealed, tamper-evident bottles with unique labels required • Time-stamped sales receipt required

General questions:

1. Why are both sub-§2(C) and sub-§2(D) necessary? Should they be combined?
2. Should the authority to display products in windows from sub-§2(J) apply to all off-premises sales by Maine manufacturers?

Questions specific to breweries and small breweries:

3. Do sub-§2(C) & (D) apply to breweries and small breweries, or may they only sell kegs under sub-§2(G) and growlers under sub-§3(C)? [If the broad sales authority in sub-§2(C) & (D) apply, what other types of containers may malt liquor be sold in at breweries and small breweries?]
4. How do the requirements for selling ≤ 15.5 gallon containers of malt liquor in sub-§2(G) affect the authority to sell 32-64 ounce growlers (which are less than 15.5 gallons in size) in sub-§3(C)? Because the keg tagging requirements of 714 apply to sales under sub-2(G), are these all “kegs,” which are defined in §2(13-B) as containers ≥ 5 gallons in size?
5. Should sub-§2(G) be moved to sub-§3, the part of §1355-A specific to breweries and small breweries?

Appendix H: Importation and Transportation Questions

	Liquor - §2073	Spirits - §2075	Malt Liquor and Wine - §2077
Personal Use	<p>3. Legal importation into and transportation of liquor within the State. Liquor may be legally imported into and transported within the State in the following situations.</p> <p>A. Upon application, the bureau may grant to an individual a permit to transport liquor purchased for that person's own personal use.</p>	<p>1-A. Only bureau may import spirits. Except as provided in subsection 1-B, a person other than the bureau may not import spirits into the State.</p> <p>1-B. Permitted importation. An individual may transport into the State and may transport from place to place within the State spirits for the individual's personal use in a quantity not greater than 4 quarts.</p> <p>2. Transportation of spirits within State. A person may not transport or cause to be transported any spirits within the State in a quantity greater than 4 quarts unless the spirits were purchased from an agency liquor store.</p>	<p>1-A. Importation of malt liquor or wine into State. Except as provided in section 1403 A, a person other than a wholesale licensee, small brewery licensee or small winery licensee may not transport or cause to be transported malt liquor or wine into the State in a quantity greater than 3 gallons for malt liquor or 4 quarts for wine, unless it was legally purchased in the State.</p> <p>2. Transportation of malt liquor and wine within State. Except as provided in section 1403-A, a person other than a licensee may not transport malt liquor, in a quantity greater than 3 gallons, or wine, in a quantity greater than 4 quarts, within the State unless it was purchased from an off-premise retail licensee.</p>
	<ul style="list-style-type: none"> • CLARITY: §2073(3) headnote and lead-in suggest the entire subsection applies to importing liquor—thus under ¶A the bureau grants permits to import liquor for personal use—but because the text of ¶A does not also refer to importing liquor, one could read it as requiring permits for in-state transportation of liquor for personal use (even liquor legally purchased in Maine). Is that the intent? • CONFLICT: If, as the subsection heading suggests, §2073(3)(A) requires permits <i>to import</i> liquor for personal use, it conflicts with the authorization to import ≤ 4 quarts of spirits without a permit in §2075(1-B) and the authorization to import ≤ 3 gallons of malt liquor or ≤ 4 quarts of wine without a permit in §2077(1-A). <i>Suggestion:</i> Are liquor-importation permits under §2073(3)(A) only available and required to import amounts larger than the amounts permitted in those provisions? 		

Appendix H: Importation and Transportation Questions

	Liquor - §2073	Spirits - §2075	Malt Liquor and Wine - §2077
Carriers and other commercial transportation	<p>3. Legal importation into and transportation of liquor within the State. Liquor may be legally imported into and transported within the State in the following situations.</p> <p>...</p> <p>B. For-hire carriers and contract carriers, authorized by the Department of Public Safety, may transport liquor to liquor warehouses, to licensees, from manufacturers to liquor warehouses and to the state line for transportation outside the State.</p> <p>C-1. Reselling agents may transport spirits to licensees who are licensed for the sale of spirits for on-premises consumption.</p>	<p>1-A. Only bureau may import spirits. Except as provided in subsection 1-B [relating to personal-use importation], a person other than the bureau may not import spirits into the State.</p> <p>...</p> <p>2. Transportation of spirits within State. A person may not transport or cause to be transported any spirits within the State in a quantity greater than 4 quarts unless the spirits were purchased from an agency liquor store.</p> <p><u>See also §2073(3)(C-1) in left column</u></p>	<p>3. For-hire carriers and contract carriers may import and transport within State. For-hire carriers and contract carriers, authorized by the Department of Public Safety, may transport malt liquor or wine into and within the State to licensees, to purchasers of malt liquor or wine from licensees and to the state line for transportation outside the State.</p>
	<ul style="list-style-type: none"> • POTENTIAL CONFLICT / DUPLICATION (importation): The §2073(3) lead in and headnote refer to <i>importation</i> of liquor, but ¶B does not specifically allow carriers <i>to import</i> liquor (it just discusses in-State transportation). If ¶B is intended to allow carriers <i>to import</i> all types of liquor, this conflicts with §2075(1-A) (only bureau may import spirits) a renders §2077(1-A) superfluous. • LOCATION: The placement of ¶C-1 about reselling agents is odd in §2073—applicable to all types of liquor—rather than in §2075—applicable only to spirits. In addition, lead-in language of §2073(3) suggests all of the entities listed in the paragraphs of sub-§3 are authorized <i>to import</i> liquor, but reselling agents do not <i>import</i> spirits (the bureau does), they only resell and transport spirits within the State. <ul style="list-style-type: none"> ○ <i>Suggestion:</i> delete §2073(3)(C-1), authorizing reselling agents to <i>transport</i> spirits to on-premises licensees, because that authority already exists in §459. • CONFLICT: §2075(2) restricts any “person” from transporting > 4 quarts of spirits within the State, but reselling agents can transport spirits within the state per §2073(3)(C-1). <i>Suggestion:</i> add “except as provided in §2073(3)(C-1)” to §2075(2). 		

Appendix H: Importation and Transportation Questions

	Liquor - §2073	Spirits - §2075	Malt Liquor and Wine - §2077
Manufacturers	<p>3. Legal importation into and transportation of liquor within the State. Liquor may be legally imported into and transported within the State in the following situations.</p> <p>...</p> <p>D. Manufacturers may transport liquor within the State to liquor warehouses, to persons authorized under paragraph E and to the state line for transportation outside the State.</p>	<p>1-A. Only bureau may import spirits. Except as provided in subsection 1-B [relating to personal-use importation], a person other than the bureau may not import spirits into the State.</p> <p>...</p> <p>2. Transportation of spirits within State. A person may not transport or cause to be transported any spirits within the State in a quantity greater than 4 quarts unless the spirits were purchased from an agency liquor store.</p>	<p>1-A. Importation of malt liquor or wine into State. Except as provided in section 1403-A, a person other than a wholesale licensee, small brewery licensee or small winery licensee may not transport or cause to be transported malt liquor or wine into the State in a quantity greater than 3 gallons for malt liquor or 4 quarts for wine, unless it was legally purchased in the State.</p> <p>2. Transportation of malt liquor and wine within State. Except as provided in section 1403-A, a person other than a licensee may not transport malt liquor, in a quantity greater than 3 gallons, or wine, in a quantity greater than 4 quarts, within the State unless it was purchased from an off-premise retail licensee.</p>
	<ul style="list-style-type: none"> • CLARITY / CONFLICT (importation): The §2073(3) lead in and headnote refer to <i>importation</i> of liquor, but ¶D does not specifically allow manufacturers to <i>import</i> liquor (it just discusses in-State transportation). If ¶D is intended to allow all types of manufacturers to import all types of liquor, this conflicts with §2075(1-A) (only bureau may import spirits) and §2077(1-A) (small breweries and small wineries may import malt liquor and wine, but not other manufacturers). • CONFLICT (in-state transport): §2073(3)(D) allows all types of manufacturers to transport all types of liquor within the State. This conflicts with §2075(2), which prohibits any “person” (includes manufacturers) from transporting > 4 quarts of spirits within the State unless the spirits were purchased from an agency liquor store. <ul style="list-style-type: none"> ○ <i>Question:</i> How are spirits produced by Maine manufacturers transported to the State spirits warehouse? 		

Appendix H: Importation and Transportation Questions

	Liquor - §2073	Spirits - §2075	Malt Liquor/ Wine - §2077
Industrial, Medical and Educational Uses	<p>Sub-§3: E. The bureau may permit in writing the importation of liquor into the State and the transportation of liquor from place to place within the State to the following destinations for the specified purposes:</p> <ul style="list-style-type: none"> (1) To hospitals and state institutions, for medicinal purposes only, liquor made available to them from stocks of liquor seized by the Federal Government; (2) To industrial establishments in the State for industrial uses; (3) To schools, colleges and state institutions for laboratory use only; (4) To any licensed pharmacist in the State for use in the compounding of prescriptions and other medicinal use, but not for sale by pharmacists unless compounded with or mixed with other substances; or (5) To any physician, surgeon, osteopath, chiropractor, optometrist, dentist or veterinarian for medicinal use only. 	<p>3. Importation and transportation of spirits for special purposes. The bureau may, in writing, permit and authorize the importation of spirits into the State and the transportation of spirits from place to place within the State to the following destinations for the specified purposes:</p> <ul style="list-style-type: none"> A. To industrial establishments for use as an ingredient in the manufacture of food products, or for use as an ingredient in the manufacture of commodities that by reason of their nature cannot be used for beverage purposes, or for use in the manufacture of commodities unfit for beverage purposes; B. To licensed distillers and manufacturers of spirits in the State for use as an ingredient in distilling or manufacturing spirits and other spirituous products that are authorized by 27 Code of Federal Regulations; and C. To churches or to the pastor of any church for sacramental purposes or similar religious rites. 	<p>No separate provision.</p> <p>But, left column applies to malt liquor and wine because they are types of “liquor.” These types of imports are permissible under §2077(1-A) (quoted above) if:</p> <ul style="list-style-type: none"> • ≤ 3 gallons of malt liquor or ≤ 4 quarts of wine are imported; <u>or</u> • the malt liquor or wine being imported was “legally purchased in the State.”
	<ul style="list-style-type: none"> • CONFLICT: Are <u>both</u> the list in §2073(3)(E) of uses for which all liquor may be imported <u>and</u> the list in §2075(3) for which spirits may be imported intended to apply to spirits, <u>or</u> may spirits be imported <u>only</u> for the reasons listed in §2075(3)? • CONFLICT: The bureau’s authority to permit importation of all liquor for industrial use in §2073(3)(E)(2) renders similar bureau authority to permit importation of spirits for industrial use in §2075(3)(A) potentially redundant and it may also render ineffective the restrictions on the permissible industrial uses of these imported spirits. • ERROR? §2075(3) allows the bureau to authorize churches to import spirits for religious uses, but §2073(3)(E) does not similarly allow the bureau to authorize churches to import other types of liquor (for example, wine) for religious uses. Is that intended? 		

Appendix I: Furnishing Alcohol to a Minor vs. Endangering the Welfare of a Child

	Furnishing or allowing consumption of liquor by certain persons prohibited 28-A M.R.S. §2081(1)(A)	Furnishing or allowing consumption of liquor by certain persons prohibited 28-A M.R.S. §2081(1)(B)	Endangering the welfare of a child 17-A M.R.S. §554(1)(B)										
Prohibitions	Knowingly <ul style="list-style-type: none">procure (or aid/assist in procuring)furnishgiveselldeliver liquor for or to a “minor”	Knowingly allow a “minor” under defendant’s control or a minor in a place under defendant’s control to possess or consume liquor	Knowingly <ul style="list-style-type: none">furnish (or offer to)give away (or offer to)sell (or offer to) any intoxicating liquor to a “child”										
Victim	“minor”: < 21 years of age	“minor”: < 21 years of age	“child”: < 16 years of age										
Exception	defendant serves liquor to a minor in a home in the presence of the minor’s parent, guardian or custodian	defendant serves liquor to a minor in a home in the presence of the minor’s parent, guardian or custodian	n/a										
Affirmative Defense	n/a	n/a	defendant is parent, foster parent, guardian or similar person and served the child a reasonable amount of intoxicating liquor in defendant’s home and presence										
Penalty	Class D; and required penalties apply if: <table><tr><td>Minor is <18 years old</td><td>Minimum \$500 fine</td></tr><tr><td>2nd offense in 6 years (regardless of minor’s age)</td><td>Minimum \$1,000 fine</td></tr><tr><td>≥ 3rd offense in 6 years (regardless of minor’s age)</td><td>Minimum \$1,500 fine</td></tr></table> <u>OR:</u> Class C if consumption of liquor by the minor causes serious bodily injury to or the death of any person.	Minor is <18 years old	Minimum \$500 fine	2 nd offense in 6 years (regardless of minor’s age)	Minimum \$1,000 fine	≥ 3 rd offense in 6 years (regardless of minor’s age)	Minimum \$1,500 fine	Class D; and required penalties apply if: <table><tr><td>Minor is <18 years old</td><td>Minimum \$1,000 fine</td></tr><tr><td>2nd offense in 6 years (regardless of minor’s age)</td><td>Minimum \$2,000 fine</td></tr></table> <u>OR:</u> Class C if consumption of liquor by the minor causes serious bodily injury to or the death of any person.	Minor is <18 years old	Minimum \$1,000 fine	2 nd offense in 6 years (regardless of minor’s age)	Minimum \$2,000 fine	Class D
Minor is <18 years old	Minimum \$500 fine												
2 nd offense in 6 years (regardless of minor’s age)	Minimum \$1,000 fine												
≥ 3 rd offense in 6 years (regardless of minor’s age)	Minimum \$1,500 fine												
Minor is <18 years old	Minimum \$1,000 fine												
2 nd offense in 6 years (regardless of minor’s age)	Minimum \$2,000 fine												

Appendix J: “Wholesale Licensee” Definition

Are out-of-state wholesalers of malt liquor and wine included in the definition of “wholesale licensee” in §2(34)?

Relevant definitions:

§2(14)	“Licensee’ means a person licensed by the bureau. ‘Licensee’ includes, but is not limited to, agency liquor stores and certificate of approval holders.”
§2(34)	“‘Wholesale licensee’ means a person <i>licensed</i> by the bureau as a wholesaler.”
§2(35)	“‘Wholesaler’ means a person who engages in the purchase and resale of malt or brewed beverages or wines, or both . . .”

Analysis:

- Technically, the definition in §2(34) excludes out-of-state wholesalers of malt liquor or wine, who receive a “certificate of approval” from the bureau under §1361 rather than a wholesaler “license” under §1401. The word “licensed,” which appears in the definition of wholesale licensee, is not defined. The plain meaning of “licensed” does not include entities with a certificate of approval. Thus, since out-of-state wholesalers are not *licensed*, they are apparently not “wholesale licensees”.
- But, the word “licensee” is defined in §2(14) to include certificate of approval holders, and use of the word “licensee” in the defined term suggests that wholesale licensees might also include certificate of approval holders. This reading of the term “wholesale licensee” would include not only in-state wholesalers of malt liquor or wine that have obtained licenses but also out-of-state wholesalers of malt liquor or wine that have obtained certificates of approval.

This interpretation is supported by the definition of “wholesale licensee” in §1451(5)—for purposes of the Wholesale Licensee Agreement Act. This definition (quoted below) includes only in-State wholesalers of malt liquor or wine and also “notwithstand[s]” the definition in §2(34), which would be unnecessary if the definition in §2(34) also only includes in-State licensed wholesalers.

§1451(5)	“As used in this chapter . . . <i>Notwithstanding section 2, subsection 34</i> , ‘wholesale licensee’ means any person holding a wholesale malt liquor or wine license within the State, offering malt liquor or wine for sale or resale to retailers, without regard to whether the business of the person is conducted under the terms of an agreement with a certificate of approval holder.”
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See also §707-A(2) (allowing hotels and manufacturers to have tied financial interests as long as it has no interest in a “*Maine* wholesale licensee”); §1365 (requiring tax to be paid for certain products sold to “a wholesale licensee *in the State*”) – in these provisions the word “*Maine*” or phrase “*in the State*” would be unnecessary unless “wholesale licensee” includes out-of-state entities. *See also* §1371(3)(A) (“*Maine* wholesale licensees”); §1364(3)(B) (same); §1364(4) (“wholesale licensees in the State”).

Suggestion: Assess whether out-of-state wholesalers of malt liquor or wine is intended to be included in each of the sections of Title 28-A that employ the term “wholesale licensee.” **See attached table listing these provisions.** Then, rewrite the “wholesale licensee” definition in §2(34) the way that makes the most sense and clarify the scope of any statute that currently uses the phrase “wholesale licensee” but that has a different scope than the amended “wholesale licensee” definition.

Appendix J: “Wholesale Licensee” Definition

Are the following statutes—governing “wholesale licensees”—intended to govern out-of-state wholesalers of malt liquor or wine that have obtained certificates of approval to sell their products in Maine?

Citation	Description	Intent to include out-of-state wholesalers of malt liquor or wine that have certificates of approval?
§4(1)(D)	Times when wholesale licensees may deliver “liquor” in Maine. <i>See also</i> §713 below.	<i>Probably only involves in-state wholesalers, unless out-of-state wholesalers are permitted to make sales and deliveries in Maine.</i>
§83-B(8)	Wholesale licensee may sell malt liquor and wine to an unlicensed food service organization that caters international flights/boat trips.	?
§86	Prohibits Commission members and commission or board employees from accepting samples or anything of value from “a manufacturer, wholesaler, wholesale licensee or retail licensee.”	<i>Note: probably should remove “wholesale licensee” as redundant to the word “wholesaler”.</i>
§705(1), (1-A)(1) & (1-E)	Prohibits wholesale licensees from accepting any type of payment for liquor except cash, check or electronic funds transfer.	?
§707(5) & (7) and §1363(2) & (2)(B)	Three-tier financial separation rules: <ul style="list-style-type: none"> • §707(5): prohibits wholesale licensees from having financial interests in (A) out-of-state manufacturers or wholesalers of malt liquor; (B) licensed Maine manufacturers; or (C) licensed retailers. <ul style="list-style-type: none"> ◦ §707(7): exception allowing wholesale licensees to receive “normal credits” for purchase of malt liquor or wine from in-state or out-of-state manufacturers. • §1363(1): prohibits manufacturers from having a financial interest in a wholesale licensee. • §1363(2): prohibits in-State and out-of-state manufacturers from loaning money to wholesale licensee or outfitting the wholesale licensee’s business (with some exceptions: like vehicle painting). 	<i>Note: The relationships that are the opposite of §707(5)(C) are prohibited by §707(3), which prevents licensed retailers from having a financial interest in a Maine wholesaler <u>or foreign wholesaler</u>. Does this provision—and the general theory of the three-tier system—suggest that out-of-state wholesalers are intended to be included in all of these three-tier provisions?</i>
§708(1) & (2)	<ul style="list-style-type: none"> • §708(1): Prohibits certificate of approval holders from giving special discounts or volume discounts, except those offered to “all wholesale licensees.” • §708(2): Prohibits wholesale licensees from offering special discounts or volume discounts, except those offered to all retail licensees. 	?

Appendix J: “Wholesale Licensee” Definition

Citation	Description	Intent to include out-of-state wholesalers of malt liquor or wine that have certificates of approval?
§708-A	Authorizing “a certificate of approval holder, wholesale licensee or retail licensee” to offer in-pack sweepstakes, games and contests.	<i>Regardless of the scope of the term “wholesale licensee”, out of state wholesalers are covered by the term “certificate of approval holder”</i>
§710(1)	Prohibition on number of signs advertising liquor on the outside of any building or premises under a person’s control – with an exception for “wholesale licensees and certificate of approval holders.”	<i>“Certificate of approval holder” includes out-of-state wholesalers, so if out-of-state wholesalers are not considered “wholesale licensees” it has no substantive effect on this provision.</i>
§713(2), (3) & (4)	Restrictions applicable when wholesale licensees sell and deliver malt liquor or wine by truck.	<i>Probably only involves in-state wholesalers, unless out-of-state wholesalers are permitted to make sales and deliveries in Maine.</i>
§752	Requiring wholesale licensees to keep records of their transactions with brewers, wineries, other wholesalers and retailers for 2 years.	?
§803(9)	Wholesale licensee or certificate of approval may pay a consensual fine (“offer in compromise”) as alternative to administrative discipline – if the compromise is approved by the District Court.	<i>“Certificate of approval holder” includes out-of-state wholesalers, so if out-of-state wholesalers are not considered “wholesale licensees” it has no substantive effect on this provision.</i>
§1012(6)(D)	A hotel must purchase the malt liquor or wine used to stock a minibar from a wholesale licensee.	<i>Probably not intended to include out-of-state wholesalers, who generally may not sell their products directly to retailers. §1361(4).</i>
§1051(8)(L, P, Q & R)	<p>Lead in: on-premises retail licensees may conduct taste-testing event with a certificate of approval holder or wholesale licensee.</p> <ul style="list-style-type: none"> • ¶L: liquor must be purchased from a wholesale licensee or agency liquor store. <p>A “certificate of approval holder” or wholesale licensee may:</p> <ul style="list-style-type: none"> • ¶P: provide food and snacks; • ¶Q: provide advertising material and promotional displays; and • ¶R: distribute inexpensive novelties. 	<p><i>“Certificate of approval holder” includes out-of-state wholesalers, so if out-of-state wholesalers are not considered “wholesale licensees” it has no substantive effect on the lead-in language of §1051(8) or the language of ¶¶P, Q or R.</i></p> <p><i>The real question is whether the malt liquor or wine used in these taste-testing events may be purchased from out-of-state wholesalers under ¶L? The answer is probably “no”. See §1361(4).</i></p>
§1055(1)(F)	When Class A restaurants and Class A restaurant/lounges provide complimentary samples of malt liquor or wine to customers, they must purchase the malt liquor or wine from a wholesale licensee.	<i>Probably not intended to include out-of-state wholesalers, who generally may not sell their products directly to retailers. §1361(4).</i>
§1205(2)(K)	Wine used in a taste-testing event conducted by an off-premises retail licensee must be purchased from a wholesale licensee.	<i>Probably not intended to include out-of-state wholesalers, who generally may not sell their products directly to retailers. §1361(4).</i>

Appendix J: “Wholesale Licensee” Definition

Citation	Description	Intent to include out-of-state wholesalers of malt liquor or wine that have certificates of approval?
§1207(2)(K)	Malt liquor used in a taste-testing event conducted by an off-premises retail licensee must be purchased from a wholesale licensee.	<i>Probably not intended to include out-of-state wholesalers, who generally may not sell their products directly to retailers. §1361(4).</i>
§1355-A(3)(B)(2) & (4)(B)(1)	Small brewery and small winery may sell and deliver their products directly to licensed retailers without first selling to a wholesale licensee.	<i>Probably not intended to include out-of-state wholesalers because the products affected by these provisions are not leaving Maine.</i>
§1361(5)	Quote: “No certificate of approval holder may make it a condition in selling malt liquor or wine to any wholesale licensee that the wholesale licensee may not sell malt liquor or wine manufactured or sold by other manufacturers or foreign wholesalers.”	?
§1364(1)	COA holders must file with BABLO copies of every invoice sent to wholesale licensees and the Maine purchase order. <ul style="list-style-type: none"> Compare §1364(3)(B) & (4) which impose reporting requirements on COA holders with respect to their interactions with a “Maine wholesale licensee” or “wholesale licensees <i>in the State</i>” 	<i>This reporting requirement appears to apply to a COA’s interaction with a Maine wholesale licensee, but the use of different language in subsection 1 as opposed to subsections (3)(B) and (4) raise the question whether subsection 1 is broader in scope.</i>
§1401(2)(B), (7) & (8)	Section 1401 is the provision for licensing Maine wholesalers. <ul style="list-style-type: none"> §1401(2)(B): requires payment of a \$600 fee for wholesale licensees’ warehouses other than their principal places of business.” §1401(7): requires wholesale licensees to maintain a warehouse in Maine and employ licensed sales representatives to solicit orders. §1401(8): requires wholesale licensees to operate under franchise agreements authorizing sales in certain allocated territories. 	<i>These provisions appear to be specific to Maine wholesalers (should that be made clear in subsection 1, however?)</i>
§1402(1), (2) & (3)	<ul style="list-style-type: none"> §1402(1): Taste-testing events on wholesale licensee’s premises §1401(2): Taste-testing event conducted by wholesale licensee on a retail licensee’s premises §1402(3)(A): wholesale licensee or certificate of approval holder may provide the products for the taste-testing event §1402(3)(D): after taste-testing event, wholesale licensee (what about certificate of approval holder) removes unused products 	<i>§1402(1) likely does not include out-of-state wholesalers, who do not have premises in Maine. Unclear if subsections 2 and 3 include out-of-state wholesalers — probably subsection 3 does, given the certificate of approval holder language, but inclusion of language about “certificate of approval holders” is not uniform in these subsections. Are the differences intentional?</i>

Appendix J: “Wholesale Licensee” Definition

Citation	Description	Intent to include out-of-state wholesalers of malt liquor or wine that have certificates of approval?
§1403 all subsections	<ul style="list-style-type: none"> • §1403(1): a wholesale licensee may not import malt liquor or wine from person who does not have a certificate of approval • §1403(1-A): bureau may authorize a wholesale licensee to purchase malt liquor or wine from another wholesale licensee • §1403(2): a wholesale licensee may not sell products to another wholesale licensee unless the products were purchased from a brewery, winery or foreign wholesaler with a certificate of approval • §1403(3): a wholesale licensee selling malt liquor or wine may not require the purchasing wholesale licensee to forgo sell other brands of malt liquor or wine • §1403(4): required wholesale licensee monthly report of sales/purchases to bureau 	<p><i>It may be odd if some of these provisions apply to out-of-state wholesalers, because Maine would be regulating sales that occur out-of-state between two out-of-state entities. But, are any of them applicable to out-of-state entities? (For example, do out-of-state wholesalers “import” malt liquor or wine into Maine as stated in subsection 1? Are reports required under subsection 4 from out-of-state wholesalers who sell their products in Maine?)</i></p>
§1404, §1405 & 1652	<ul style="list-style-type: none"> • §1404: unbonded wholesale licensees must follow specific procedures to ensure payment of excise taxes when ordering and purchasing malt liquor and wine • §1405: bonded wholesale licensees must follow specific procedures to ensure payment of excise taxes when buying malt liquor or wine • §1652: requiring payment of excise tax on malt liquor, wine, and low-alcohol spirits by the Maine manufacturer or the “importing wholesale licensee.” (But §1652(4) requires bureau to open excise tax account with all “wholesale licensees”; ensure correct usage if “wholesale licensee” is redefined to include out-of-state entities.) 	<p><i>These requirements appear to be intended to apply only to Maine wholesalers, not out-of-state wholesalers—why would the bureau regulate out-of-state wholesaler purchases of malt liquor or wine?</i></p> <p><i>Key question: are Maine wholesalers the only entities that “import” malt liquor and wine into Maine — and thus the only entities liable for the excise taxes on imported malt liquor and wine? Compare §2077.</i></p>
§1406(1), (2) & (3)	<ul style="list-style-type: none"> • §1406(1)(A): certificate of approval holders must list for bureau “the wholesale licensees who distribute their products <u>in the State</u>” • §1406(1)(B): a certificate of approval holder must report to bureau changes in its wholesale licensees or their territories <u>in the State</u> • §1406(2): a wholesale licensee must list for bureau all certificate of approval holders whose products it distributes <u>in the State</u> • §1406(3): hearings for COA holder or wholesale licensee to change the time period for providing notice of changes 	<p><i>The structure of §1406, and the requirements it imposes, suggest that only in-State wholesalers are meant to be included in the phrase “wholesale licensee” in this section.</i></p>

Appendix J: “Wholesale Licensee” Definition

Citation	Description	Intent to include out-of-state wholesalers of malt liquor or wine that have certificates of approval?
§1407(1)	Receiving COA holder may not terminate wholesale licensee that is the exclusive distributor of certain brands merely due to transfer of those brands from the prior COA holder that entered the exclusive distribution agreement.	<i>Likely this only protects Maine wholesale licensees, but the language of §1407(1) could be clarified to apply only to Maine distribution agreements.</i>
§1408(1), (2) & (4)	<ul style="list-style-type: none"> • §1408(1): COA holders must report to bureau F.O.B. price for which selling all malt liquor or wine to wholesale licensees • §1408(2): Each wholesale licensee must report to bureau delivered sales prices for malt liquor or wine it sells to any entity • §1408(4): Price change notices to bureau 	<i>If §1408(2) does not apply to out-of-state wholesalers, those entities must nevertheless report their sales prices to the bureau under §1408(1) because they are certificate of approval (COA) holders. The only difference: under §1408(1) they report the shipping point (FOB) price and under §1408(2) they report the delivered price.</i>
Chapter 57 §§1451 to 1465	There are no questions about the definition of “wholesale licensee” for purposes of this chapter, because “wholesale licensee” is defined in §1451(5) specifically only to include wholesalers with a license “within the State.”	
§2077(1-A) & (1-B)	Only a “wholesale licensee, small brewery licensee or small winery licensee” may “transport or cause to be transported malt liquor or wine into the State” in large quantities.	<i>Key question: are Maine wholesalers the only entities authorized to import malt liquor and wine “into” Maine? Or, can an out-of-state wholesaler “cause” malt liquor or wine “to be transported . . . into the State”? Compare §§1404, 1405 & 1652.</i>