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VETERANS AND LEGAL AFFAIRS

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STATE OF MAINE
SENATE
129TH LEGISLATURE
FIRST REGULAR SESSION

COMMITTEE AMENDMENT " " to S.P. 593, L.D. 1761, Bill, "An Act To Assist Small Beer Manufacturers"

Amend the bill by striking out the title and substituting the following:

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

Amend the bill by striking out everything after the enacting clause and inserting the following:

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

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

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

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

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

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

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

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

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

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

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1 small wineries, distilleries and small distilleries in the State that operate under federal law
2 and federal supervision.

3 **Sec. 5. 28-A MRSA §1355-A, sub-§3, ¶¶A and B**, as enacted by PL 2011, c.
4 629, §22, are amended to read:

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

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

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

13 (2) A holder of a small brewery license may sell or deliver its products to
14 licensed retailers or wholesalers. The licensee may sell, on the premises for
15 consumption off the premises, malt liquor produced at the licensed premises by
16 the bottle, by the case or in bulk to licensed retailers, including, but not limited
17 to, off-premises retail licensees, restaurants and clubs. Notwithstanding section
18 1361, the holder of a small brewery license may sell its products directly to a
19 retail licensee under this paragraph without selling to a wholesale licensee.

20 **Sec. 6. 28-A MRSA §1355-A, sub-§4, ¶¶A and B**, as enacted by PL 2011, c.
21 629, §22, are amended to read:

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

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

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

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

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

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

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

16 **1. Written notice.** Before any termination procedure initiated by the certificate of
17 approval holder, the certificate of approval holder shall give the wholesale licensee
18 written notice of any claimed deficiency existing in ~~his~~ the wholesale licensee's territory
19 and the certificate of approval holder shall give the wholesale licensee reasonable time or,
20 if the certificate of approval holder is a small beer manufacturer or a small hard cider
21 manufacturer, at least 30 days to correct the claimed deficiency or deficiencies. After this
22 ~~reasonable~~ time has elapsed, the certificate of approval holder shall provide the wholesale
23 licensee ~~at least 90 days prior~~ with written notice of any the certificate of approval
24 holder's intent to amend, cancel, terminate, ~~cancel or not~~ refuse to continue, refuse to
25 renew any or cause the wholesale licensee to resign from an agreement. ~~The notice must~~
26 ~~state all the reasons for the~~ at least 90 days prior to the effective date of the intended
27 amendment, cancellation, termination, ~~cancellation~~ refusal to continue, refusal to renew
28 or nonrenewal causing of resignation. The written notice must state all of the reasons for
29 the intended amendment, cancellation, termination, refusal to continue, refusal to renew
30 or causing of resignation. The notice provisions of this section do not apply if the reason
31 for the intended amendment, cancellation, termination, ~~cancellation~~ refusal to continue,
32 refusal to renew or nonrenewal causing of resignation is:

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

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

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

1 **§1457. Compensation**

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

10 **1-A. Definitions.** As used in this section, unless the context otherwise indicates, the
11 following terms have the following meanings.

12 A. "Affected brand or brands" means the brand or brands of a certificate of approval
13 holder that will no longer be distributed by a wholesale licensee after the certificate
14 of approval holder makes a triggering change to the agreement between the certificate
15 of approval holder and the wholesale licensee.

16 B. "Case equivalent" means a volume equivalent to 24 12-ounce units.

17 C. "Good cause" has the same meaning as described in section 1454.

18 D. "Small beer manufacturer" means a small brewery or out-of-state brewer that
19 brews, lagers and kegs, bottles or packages its own malt liquor, not to exceed 30,000
20 barrels per year.

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

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

32 **1-B. Reasonable compensation; general rule.** Except as otherwise provided in
33 subsections 1-C and 1-D, if a certificate of approval holder makes a triggering change to
34 an agreement, the certificate of approval holder shall pay the wholesale licensee
35 reasonable compensation for the fair market value of the wholesale licensee's business
36 related to the affected brand or brands. The fair market value of the wholesale licensee's
37 business related to the affected brand or brands includes inventory and other tangible
38 assets and the wholesale licensee's good will.

39 **1-C. Exception; small beer manufacturer or small hard cider manufacturer.**
40 Notwithstanding subsection 1-B, a small beer manufacturer or small hard cider
41 manufacturer must pay a wholesale licensee reasonable compensation in accordance with
42 subsection 1-D if:

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

6 B. During the 12-month period immediately preceding the date on which the small
7 beer manufacturer or the small hard cider manufacturer provides the wholesale
8 licensee with the first written notice of the triggering change, if notice is required
9 under section 1455, or the date on which the small beer manufacturer or small hard
10 cider manufacturer unreasonably withholds its consent to any assignment, transfer or
11 sale of the wholesale licensee's business, the total number of case equivalents of the
12 affected brand or brands of malt liquor or hard cider distributed by the wholesale
13 licensee was less than 10,000 and represented no more than 3% of the total number of
14 case equivalents of all brands of liquor for all certificate of approval holders that were
15 distributed by the wholesale licensee.

16 **1-D. Reasonable compensation; alternative calculation.** Notwithstanding
17 subsection 1-B, if a small beer manufacturer or small hard cider manufacturer makes a
18 triggering change to an agreement that meets the requirements of subsection 1-C, the
19 small beer manufacturer or small hard cider manufacturer shall pay the wholesale
20 licensee reasonable compensation for the fair market value of the wholesale licensee's
21 business related to the affected brand or brands of malt liquor or hard cider in accordance
22 with this subsection.

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

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

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

41 **1-E. Waiver.** Notwithstanding section 1462, nothing in this chapter prevents a
42 wholesale licensee from limiting or waiving its right to receive reasonable compensation
43 under subsection 1-B or 1-D from a small beer manufacturer or a small hard cider
44 manufacturer in an agreement between the wholesale licensee and the small beer
45 manufacturer or the small hard cider manufacturer.

1 **2. Neutral arbitrator.** If the certificate of approval holder and the wholesale
 2 licensee are unable to agree on the amount of reasonable compensation to be paid for the
 3 fair market value of the wholesale licensee's business, as defined in subsection 4 related
 4 to the affected brand or brands of the certificate of approval holder, they shall submit the
 5 matter to a neutral arbitrator selected by the parties, or, if they cannot agree, by the Chief
 6 Justice of the Supreme Judicial Court. The costs of the arbitration shall must be paid 1/2
 7 by the wholesale licensee and 1/2 by the certificate of approval holder or otherwise the
 8 arbitration proceeding shall must be governed by the ~~Maine~~ Uniform Arbitration Act.
 9 The arbitrator shall issue a written decision on the matter no later than 45 days after the
 10 date of the commencement of the arbitration proceeding.

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

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

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

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

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

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

SUMMARY

30 This amendment makes the following changes to the bill:

31 1. It clarifies that only in-state entities are eligible for manufacturing licenses issued
 32 by the Department of Administrative and Financial Services, Bureau of Alcoholic
 33 Beverages and Lottery Operations under the Maine Revised Statutes, Title 28-A, section
 34 1355-A;

35 2. Similar to the bill's provision regarding small breweries, it changes the definition
 36 of "small winery" by increasing the amount of wine that a small winery may produce.
 37 Under current law, a small winery may produce up to 50,000 gallons per year of wine,
 38 including hard cider. Under the amendment, a small winery may produce up to 50,000
 39 gallons per year of wine that is not hard cider and may produce up to 3,000 barrels per
 40 year of wine that is hard cider;

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3. Similar to the definition of "small beer manufacturer" in the bill, it defines "small hard cider manufacturer" as a licensed Maine small winery or out-of-state winery that ferments, ages or bottles any amount of wine, as long as it ferments, ages or bottles no more than 3,000 barrels per year of wine that is hard cider;

4. It applies the provisions of the bill that affect the relationship between a wholesale licensee and a small beer manufacturer to the relationship between a wholesale licensee and a small hard cider manufacturer, including by establishing the amount of reasonable compensation that a small hard cider manufacturer must pay to a wholesale licensee when it terminates the authority of the wholesale licensee to distribute its hard cider products and by authorizing the small hard cider manufacturer to continue selling its products during the arbitration of any dispute between the parties regarding the amount of reasonable compensation;

5. Under current law, when any manufacturer and wholesale licensee disagree over the amount of reasonable compensation due after the manufacturer amends or terminates the contract between the parties in a way that removes the wholesaler's authority to distribute one or more of the manufacturer's brands of liquor, the parties must submit the reasonable compensation question to arbitration. Under the amendment, the arbitrator is directed to issue a written decision on the matter no later than 45 days after the date of the commencement of the arbitration proceeding; and

6. The amendment also makes several technical changes and reorganizes the structure of the bill.

FISCAL NOTE REQUIRED

(See attached)

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