

Senator Luchini's Proposed Revision to §1355-A
For discussion by the Title 28-A Subcommittee on 12/19/19

§1355-A. Manufacturer licenses

1. Issuance of licenses. The bureau may issue licenses under this section to breweries, small breweries, wineries, small wineries, distilleries, ~~and small distilleries,~~ bottlers and rectifiers in the State that operate under federal law and federal supervision.

2. Manufacturers. The following provisions apply to brewery, small brewery, winery, small winery, distillery small distillery licensees.

A. A licensee under this section may permit sampling of the liquor product on the premises:

- (1) By employees for the purpose of quality control of the product; and
- (2) By wholesalers for the purpose of determining whether to carry the product as a wholesale product if the holder of the license pays the excise tax on the product sampled according to section 1652.; ~~and~~
- ~~(3) By the public if the holder of the license pays the excise tax on the product sampled according to section 1652.~~

~~B. A licensee under this section may serve to the public complimentary samples of liquor produced by the licensee at the licensed premises where liquor is produced by the licensee under the conditions specified in this paragraph.~~

- ~~(1) The licensee may sell the samples or may offer them to the public at no cost.~~
- ~~(2) The licensee shall pay the excise tax, if any, according to section 1652 on all samples sold or offered to the public at no cost. If the sample is sold by the licensee, it is also subject to the sales tax on liquor under Title 36, section 1811.~~
- ~~(3) The licensee shall maintain a record of all samples the licensee sells under this paragraph and shall maintain those records for a period of 2 years.~~
- ~~(4) A licensee may sell samples or offer complimentary samples under this paragraph only during the hours of legal sale set forth in section 4.~~
- ~~(5) The area of the licensed premises where a licensee sells or offers complimentary samples is not required to be separate from and may be accessed by the same entrance as the area licensed for on-premises consumption of liquor under chapter 43 in accordance with paragraph I.~~
- ~~(6) Spirits samples sold or offered to the public at no cost by distilleries must first be sold to the State, subject to the listing, pricing and distribution provisions of this Title. Spirits sold or offered to the public at no cost by small distilleries are subject to the requirements of subsection 5, paragraph H.~~
- ~~(7) The licensee may not sell samples to or offer complimentary samples to minors or visibly intoxicated persons.~~

~~C. A licensee under this section may sell to nonlicensees during regular business hours from the licensed premises where liquor is produced by the licensee liquor produced by the bottle, by the case or in bulk for consumption off the licensed premises. Spirits sold by distillers in accordance with this paragraph must be first sold to the State, subject to the listing, pricing and distribution provisions of this Title.~~

~~D. A licensee under this section may sell for off-premises consumption liquor produced by the licensee at from the licensed premises where liquor is produced by the licensee liquor produced by the licensee for consumption off the licensed premises under the conditions specified in this paragraph.~~

- ~~(1) Sales made in accordance with this paragraph do not require a The licensee under this section is not required to obtain an additional retail license under chapter 45.~~

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(2) Liquor sold in accordance with this paragraph may not be consumed anywhere on the licensed premises.

(3) The area of the licensed premises where a licensee opts to transact sales for off-premises consumption is not required to be separate from and may be accessed by the same entrance as for the area licensed for on-premises consumption of liquor under chapter 43 in accordance with paragraph I.

(4) Sales under this paragraph may only be made during the hours of legal sale as provided in section 4.

(5) Spirits sold by distilleries must first be sold to the State, subject to the listing, pricing and distribution provisions of this Title. Spirits sold by small distilleries are subject to the requirements of subsection 5, paragraph G.

(6) Except as provided in subsection 3, paragraphs C and C-1, sales may be made by the bottle, by the case or in bulk.

~~E. A licensee may serve complimentary samples of liquor on Sunday after the hour of 5 a.m. and may sell liquor on Sunday after the hour of 5 a.m. if the municipality in which the licensed premises is located has authorized the sale of liquor on Sunday for consumption off the premises under chapter 5.~~

~~F. A licensee may charge for samples or shall otherwise comply with the conditions in paragraph E. Each sample poured is subject to a charge in an amount determined by the licensee and is subject to the sales tax on liquor under Title 36, section 1811. A licensee shall maintain a record of liquor samples subject to a charge and maintain those records for a period of 2 years.~~

~~G. A licensee that is a brewery or small brewery may sell on the premises during regular business hours and within the hours of legal sale to nonlicensees liquor produced at the licensed premises. The volume of the package may not exceed 15.5 gallons and must be consumed off the premises. The sale of packages described in this paragraph must comply with keg tagging requirements provided in section 714. Each licensee shall submit a monthly report to its wholesaler detailing sales made directly from the premises. The wholesaler shall calculate the fees for any bottle deposit and submit an invoice to the licensee for expenses associated with the requirements prescribed in Title 38, chapter 33 including the retailer handling fee, state container deposit and a mutually agreed upon pick up fee.~~

~~H. A small winery or small brewery licensee shall keep and maintain complete records on all sales to a retail licensee.~~

~~I. A licensee under this section may be issued one on-premises retail license under chapter 43 per licensed ~~location~~, manufacturing facility under the conditions specified in this paragraph ~~on the premises of the licensed location or at another location~~, for the sale of liquor to be consumed on the premises at the retail premises if the same person or persons hold a controlling interest in both the licensed manufacturing location and the licensed retail establishment.~~

(1-A) The chapter 43 retail license may be located on the same premises as the licensed manufacturing facility or at another location if the same person or persons hold a controlling interest in both the licensed manufacturing facility and the chapter 43 retail license.

(2) The chapter 43 retail license authorizes the sale of products ~~of produced by the brewery, small brewery, winery, small winery, distillery or small distillery~~, in addition manufacturing facility as well as to other liquor permitted to be sold under the applicable class of the on-premises retail license, to be consumed on the premises.

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(2-A) Liquor sold under a chapter 43 retail license located on the same premises as the licensed manufacturing facility operated on the premises of a location licensed under this section may not be consumed on any part of the premises where patrons are not generally permitted.

(3) All records related to activities under ~~a manufacturer~~ the manufacturing facility license issued under this section must be kept separate from records related to the chapter 43 retail license. Income from the sale of liquor under paragraph B or paragraph D by a licensed manufacturing facility that is on the same premises as the chapter 43 retail license is not included in calculating whether the chapter 43 retail license satisfies the food-sales requirement set forth in section 1061, subsection 3, section 1062, subsection 3 or section 1073-A, subsection 3.

(4) ~~A distillery or small distillery must meet the requirements of subsection 5, paragraphs D and E.~~ Spirits sold under the chapter 43 retail license issued to the holder of a distillery license must first be sold to the State, subject to the listing, pricing and distribution provisions of this Title. Spirits sold under an on-premises retail license issued to the holder of a small distillery license are subject to the requirements of subsection 5, paragraph H.

(4-A) A chapter 43 retail license that is not located on the same premises as the licensed manufacturing facility may sell liquor for off-premises consumption under the conditions stated in paragraph D.

(5) The licensee shall ensure that products purchased for off-premises consumption under paragraph D are not consumed on the ~~licensed premises~~ of the manufacturing facility or the premises of the on-premises retail licensee.

J. A licensee under this section may display up to 25 bottles of liquor produced by the licensee in a window of ~~the any location where the licensee is authorized by this section to sell its products for on-premises consumption or for off-premises consumption. under paragraph D where liquor is sold for consumption off the licensed premises.~~ Locations licensed under subsection 4, paragraph B, subparagraph (2) or subsection 5, paragraph B, subparagraph (3) may also display up to 25 bottles of liquor produced by the licensee.

K. ~~For the purposes of selling liquor for on-premises and off-premises consumption, a licensee who operates more than one facility licensed for the manufacture of liquor under this section may~~ A manufacturing facility licensed under this section may transport liquor produced at the manufacturing facility in bulk or packaged in kegs, bottles or cans, including by the case, to one of the following licensed facilities:

(1) ~~Transfer product produced by the licensee in bulk or packaged in kegs, bottles or cans, including by the case, at one facility licensed for the manufacture of liquor to~~ To another manufacturing facility licensed under this section if the same person or persons hold a controlling interest in both of the licensed manufacturing facilities; at which the licensee is licensed to manufacture liquor or to any location where the licensee:

(a) ~~Serves samples of the manufacturer's product in accordance with subsection 2, paragraphs E and F; and~~

(b) ~~Is authorized under this section to sell the manufacturer's product to nonlicensees for off-premises consumption; and~~

(2) ~~Transfer product produced by the licensee in bulk or packaged in kegs, bottles or cans, including by the case, from a facility at which the licensee is licensed to manufacture liquor to~~ To any establishment licensed for on-premises consumption under chapter 43 retail sales operated by the licensee as authorized under paragraph I or subsection 4, paragraph B, subparagraph 2 or subsection 5, paragraph B, subparagraph 3 as long as the same person or persons hold a controlling interest in both the licensed manufacturing facility and the licensed retail establishment.

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~~If the same person or persons hold a majority ownership interest of greater than 50% in more than one facility licensed for the manufacture of liquor under this section, the person or persons are considered one licensee for the purpose of transferring liquor as authorized by this paragraph.~~

2-B. Grandfathering of certain licenses issued prior to January 1, 2018. The bureau may not suspend, revoke or refuse to renew a license issued under this section or chapter 43 or 45 that was initially issued prior to January 1, 2018 solely on the basis that:

- A. The establishment licensed under chapter 43 or 45 was determined by the bureau after the license was issued to not be exclusively held or exclusively owned by a person licensed to manufacture liquor under this section; or
- B. The licensee is in violation of section 707, subsection 2, 3 or 4, if the violation existed in the same manner at the time the license was initially issued or at the time the license was renewed.

The prohibition described in this subsection does not apply if the reason for suspension, revocation or refusal to renew is due to the licensee's substantial misrepresentation of or failure to disclose material facts required for the issuance or renewal of the license.

3. Breweries; small breweries. Except as otherwise provided in this section, the following provisions apply to breweries and small breweries.

- A. A holder of a brewery license may produce more than 30,000 barrels of malt liquor per year.
- B. A holder of a small brewery license may produce up to 30,000 barrels of malt liquor per year.
 - (1) Upon application by a holder of a small brewery license that has produced malt liquor in an amount that exceeds 30,000 barrels in one year, the bureau may renew that holder's small brewery license for only one additional year.
 - (2) A holder of a small brewery license may sell or deliver its products to licensed retailers or wholesalers. The licensee may sell, on the premises for consumption off the premises, malt liquor produced at the licensed premises by the bottle, by the case or in bulk to licensed retailers, including, but not limited to, off-premises retail licensees, restaurants and clubs. Notwithstanding section 1361, the holder of a small brewery license may sell its products directly to a retail licensee under this paragraph without selling to a wholesale licensee. A small brewery licensee shall keep and maintain complete records on all sales to a retail licensee.

C. Notwithstanding any other provision of this Title, a chapter 43 retail license issued under subsection 2, paragraph I to the holder of a brewery or small brewery license licensed in accordance with this section may sell from the establishment at the site of the brewery licensed for the sale of alcoholic beverages to be consumed on the premises malt liquor in refillable containers to be consumed off the premises under the conditions specified in this paragraph.

- (1) Only malt liquor brewed at the brewery or small brewery where the on-premises establishment is licensed may be sold at the on-premises establishment.
- (2) Malt liquor must be dispensed in bottles provided by and with labels unique to the brewery or small brewery of 32 to 64 ounces in volume.
- (3) No more than 6 bottles may be prefilled at any one time.
- (4) A deposit may be charged per bottle. Bottles sold under this paragraph are not subject to Title 38, chapter 33.
- (5) The bottle in which the malt liquor is dispensed must be sealed by the licensee with a seal that is tamper-evident.
- (6) Malt liquor dispensed in accordance with this paragraph must be consumed off the premises.

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(7) All sales of malt liquor from the on-premises establishment for off-premises consumption must be accompanied by a sales receipt with a time stamp that indicates time of purchase.

(8) Sale of malt liquor from the on-premises establishment for off-premises consumption may not be made after 10:00 p.m.

The bureau may adopt rules to enforce this paragraph. Rules adopted in accordance with this paragraph are routine technical rules ~~in accordance with~~ as defined in Title 5, chapter 375, subchapter 2-A.

C-1. A holder of a brewery or small brewery license may sell for off-premises consumption kegs of malt liquor produced by the licensee under the conditions specified in this paragraph.

(1) Only malt liquor brewed at the brewery or small brewery may be sold by the keg.

(2) The keg may not exceed 15.5 gallons in volume and must comply with the tagging and labeling requirements set forth in section 714.

(3) Sales under this paragraph may only be made during the hours of legal sale as provided in section 4.

(4) The brewery or small brewery shall submit a monthly report to its wholesale licensee detailing sales made under this paragraph. The wholesale licensee shall calculate the fees for any bottle deposit and submit an invoice to the licensee for expenses associated with the requirements prescribed in Title 38, chapter 33 including the retailer handling fee, state container deposit and a mutually agreed-upon pick-up fee.

~~D. Notwithstanding any provision of this Title to the contrary, a brewery or small brewery licensed in accordance with this section may sell malt liquor to be consumed off the premises under the conditions specified in this paragraph if the brewery or small brewery is participating in a taste testing event under section 1052 D.~~

~~(1) The brewery or small brewery may sell only malt liquor produced in the State by that brewery or small brewery.~~

~~(2) A sale of malt liquor in accordance with this paragraph must be accompanied by a sales receipt.~~

4. Wineries; small wineries. Except as otherwise provided in this section, the following provisions apply to wineries and small wineries.

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

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

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

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

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additional licensed locations but may conduct all activities permitted by this section at the additional licensed locations.

C. A holder of a winery or small winery license may fortify wine produced by the winery license holder and import spirits solely for this purpose.

(1) If a small winery license holder produces fortified wine pursuant to this paragraph, the combined total of wine, sparkling wine and fortified wine produced at the small winery may not exceed 50,000 gallons per year.

~~D. Notwithstanding any provision of this Title to the contrary, a winery or small winery licensed in accordance with this section may sell wine to be consumed off the premises under the conditions specified in this paragraph if the winery or small winery is participating in a taste testing event under section 1052-D.~~

~~(1) The winery or small winery may sell only wine produced in the State by that winery or small winery.~~

~~(2) A sale of wine in accordance with this paragraph must be accompanied by a sales receipt.~~

For purposes of this subsection, "fortified wine" means wine to which spirits have been added as long as the resulting liquor does not exceed 24% alcohol by volume.

5. Distilleries; small distilleries. Except as otherwise provided in this section, the following provisions apply to distilleries and small distilleries.

A. A holder of a distillery license may distill, rectify, blend and bottle more than 50,000 gallons of spirits per year.

B. A holder of a small distillery license may distill, rectify, blend and bottle not more than 50,000 gallons of spirits per year.

~~(1) The small distillery off-premises license fee is \$100.~~

(2) Upon application by a holder of a small distillery license whose distillery has produced spirits in an amount that exceeds 50,000 gallons in one year, the bureau may renew that holder's small distillery license for only one additional year.

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

C. To be eligible for a distillery or small distillery license, a person must hold a basic permit for distilling, rectifying, blending and bottling spirits from the United States Department of the Treasury, Alcohol and Tobacco Tax and Trade Bureau.

D. ~~Except as otherwise provided in this section, Spirits~~ spirits produced by a holder of a distillery or small distillery license must be sold to the State and are subject to the listing, pricing and distribution provisions of this Title.

E. ~~A holder of a distillery or small distillery license may be issued one license under chapter 43 per distillery location for a connected establishment for the sale of liquor to be consumed on the premises at the distillery.~~

~~(1) For the purposes of this paragraph, "connected establishment" means a Class A restaurant or a Class A restaurant/lounge that is owned by the holder of the in-state manufacturer license.~~

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~~(2) All records of the manufacturer license must be kept separate from the records of the retail licensee.~~

~~F. A distillery or small distillery may provide samples to the public of liquors produced by the distillery that have been sold to the State in accordance with paragraph D and repurchased by the distillery or small distillery.~~

G. Notwithstanding paragraph D, a holder of a small distillery license that sells its products directly to consumers for off-premises consumption under paragraph B, subparagraph (3) or subsection 2, paragraph C, D ~~or E~~ may pay the bureau the difference between the distillery's price charged to the bureau and the discounted retail price charged by the bureau under section 606, subsection 4-B. A small distillery is not required to transport spirits that will be sold for off-premises consumption as described in this paragraph to a warehouse operated by the bureau or by a ~~wholesaler contracted by the bureau under section 90~~ wholesale spirits provider. A holder of a small distillery license shall record the quantity of spirits sold for off-premises consumption that were not transported to a warehouse as described in this paragraph and submit monthly reports of this information, along with the full amount of state liquor tax due as prescribed by chapter 65, to the bureau in a manner prescribed by the bureau.

H. Notwithstanding paragraph D, a holder of a small distillery license that sells its products or provides complimentary samples of its products directly to consumers for on-premises consumption under ~~paragraph E or~~ subsection 2, paragraph B, ~~E or F~~ may pay the bureau the difference between the distillery's price charged to the bureau and the discounted retail price charged by the bureau under section 606, subsection 4-B. A small distillery is not required to transport spirits that will be sold for on-premises consumption as described in this paragraph to a warehouse operated by the bureau or by a ~~wholesaler contracted by the bureau under section 90~~ wholesale spirits provider. A holder of a small distillery license shall record the quantity of spirits sold for on-premises consumption that were not transported to a warehouse as described in this paragraph and submit monthly reports of this information, along with the full amount of state liquor tax due as prescribed by chapter 65, to the bureau in a manner prescribed by the bureau.

~~I. Notwithstanding any provision of this Title to the contrary, a distillery or small distillery licensed in accordance with this section may sell spirits to be consumed off the premises under the conditions specified in this paragraph if the distillery or small distillery is participating in a taste testing event under section 1052-D.~~

~~(1) The distillery or small distillery may sell only spirits produced in the State by that distillery or small distillery.~~

~~(2) Spirits sold in accordance with this paragraph are subject to the listing, pricing and distribution provisions of this Title.~~

~~(3) A sale of spirits in accordance with this paragraph must be accompanied by a sales receipt.~~

**** No changes proposed to sub-6 (tenant breweries) or sub-§7 (tenant wineries), except those that are already proposed in the "Errors bill"**



**** If the Subcommittee chooses to incorporate this rewrite of §1355-A in the Errors bill, OPLA and ROS will ensure all of the cross-references to §1355-A throughout the Maine Revised Statutes are updated to reflect these changes**