

“An Act to Clarify the Laws Governing Financial Relationships between Entities within the Three-tier System of Alcohol Distribution”

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

Sec. 1. 28-A MRSA §707, sub-§1 is amended to read:

1. Licensee not indebted. Except as provided in subsection 7 ~~by section 1363~~, the bureau may not issue any license to or renew the license of a person who is indebted in any manner, directly or indirectly:

- A. To any other person for liquor;
- B. To the State for any tax, other than property tax, assessed and considered final under Title 36 that the State Tax Assessor certifies, in accordance with Title 36, section 172, as remaining unpaid in an amount exceeding \$1,000 for a period greater than 60 days after the applicant or licensee has received notice of the finality of that tax; or
- C. For any contributions assessed and considered final under Title 26, section 1225, when the Director of Unemployment Compensation certifies that the amount remains unpaid for a period greater than 60 days, after the applicant or licensee has received notice of the finality of that tax.

Sec. 2. 28-A MRSA §707, sub-§§3, 4 and 5 are repealed and the following enacted in their place.

3. Retailer; prohibited financial interests. Except as authorized in section 707-A and section 1355-A, a retailer may not have any financial interest, direct or indirect, in any:

- A. Licensed Maine manufacturer, out-of-state manufacturer of spirits whose products are listed by the commission for sale in the State or out-of-state manufacturer of malt liquor or wine who has been issued a certificate of approval; or
- B. Wholesale spirits provider, wholesale licensee, out-of-state spirits wholesaler or out-of-state wholesaler of malt liquor or wine who has been issued a certificate of approval.

4. Manufacturer; prohibited financial interests. Except as authorized in subsection 7, section 707-A and section 1355-A, a licensed Maine manufacturer, out-of-state manufacturer of spirits whose products are listed by the commission for sale in the State, or out-of-state manufacturer of malt liquor or wine who has been issued a certificate of approval may not have any financial interest, direct or indirect, in any:

- A. Wholesale spirits provider, wholesale licensee, out-of-state spirits wholesaler or out-of-state wholesaler of malt liquor or wine who has been issued a certificate of approval; or

B. Retailer.

5. Wholesaler; prohibited financial interests. Except as authorized in subsection 7, a wholesale spirits provider, wholesale licensee, out-of-state spirits wholesaler or out-of-state wholesaler of malt liquor or wine who has been issued a certificate of approval may not have any financial interest, direct or indirect, in any:

VLA Title 28-A Subcommittee
Three-tier Clarification Bill Draft

A. Licensed Maine manufacturer, out-of-state manufacturer of spirits whose products are listed by the commission for sale in the State or out-of-state manufacturer of malt liquor or wine who has been issued a certificate of approval; or

B. Retailer.

Sec. 3. 28-A MRS §707, sub-§§6 and 7 are amended to read:

6. ~~Minor investment~~ Directors, officers and securities. The financial interests prohibited in subsections 3, 4 and 5 include, but are not limited to, circumstances where an officer, director or holder of the securities of a business entity is also a director, officer or holder of the securities of another business entity, except that a ~~Minor-minor investment in less than 1% of the securities of a corporation engaged in liquor-business entity not amounting to more than 1% shall not be held to be an interest forbidden~~ does not constitute a financial interest prohibited by ~~this subsection~~ subsections 3, 4 or 5.

7. ~~Application Exceptions.~~ This section does not prohibit: ~~a wholesale licensee from receiving normal credits for the purchase of malt liquor or wine from the manufacturer located within or without the State.~~

A. A manufacturer or out-of-state wholesaler from extending the ordinary and customary credit to a wholesale licensee for the purchase of malt liquor or wine; or

B. A manufacturer or out-of-state wholesaler from furnishing materials and equipment for the use of a wholesale licensee or the wholesale licensee's employees, including:

(1) Painting the wholesale licensee's vehicles;

(2) Supplying legal advertising signs used by the wholesale licensee in the course of the wholesale licensee's business; and

(3) Supplying uniforms for the employees of the wholesale licensee.

Sec. 4. 28-A MRS §707, sub-§8 is enacted to read:

8. Definitions. For purposes of this section, the following terms have the following meanings:

A. "Business entity" means a partnership, corporation, firm, association or other legal entity.

B. "Out-of-state spirits wholesaler" means a person located outside the State who engages in the purchase of spirits in sealed bottles, containers or original packages, as prepared for the market by the manufacturer at the place of manufacture, for resale ~~to the bureau and not to retail licensees.~~

Sec. 5. 28-A MRS §1363 is repealed.

~~§1363. Manufacture of malt liquor or table wine; credit; furnishing materials and equipment~~

~~1. Certificate of approval holder not interested in wholesale license.~~ ~~No officer, director or stockholder of a corporation which is the holder of a manufacturer's certificate of approval may be interested, either directly or indirectly, as a director, officer or stockholder in any other corporation which holds a wholesale license.~~

VLA Title 28-A Subcommittee
Three-tier Clarification Bill Draft

~~2. Loans by certificate of approval holder. Except as provided in paragraphs A and B, no manufacturer or certificate of approval holder may, either directly or indirectly, loan any money, credit or their equivalent to any wholesale licensee for equipping, fitting out, maintaining or conducting, either in whole or in part, a business establishment where malt liquor or wine is sold.~~

~~A. A certificate of approval holder may extend the usual and customary commercial credit for malt liquor or table wine sold and delivered.~~

~~B. A manufacturer or holder of a certificate of approval may furnish a wholesale licensee materials and equipment for the use of the wholesale licensee or the wholesale licensee's employees, such as:~~

~~(1) Painting the wholesale licensee's vehicles;~~

~~(2) Supplying legal advertising signs used by the wholesale licensee in the course of the wholesale licensee's business; and~~

~~(3) Supplying uniforms for the employees of the wholesale licensee.~~

SUMMARY

This bill consolidates the laws prohibiting financial relationships between entities within the three-tier system of alcohol distribution in Maine. The bill clarifies that, with only a few minor exceptions, an entity in the manufacturer tier, wholesaler tier or retailer tier may not have any financial interest, direct or indirect, in an entity in a different tier of the three-tier system.

VLA Title 28-A Subcommittee
Three-tier Clarification Bill Draft

Consistency with COA bill:

- If COA bill is enacted first: Change the way that spirits manufacturers and wholesalers are described in this bill? -- *i.e.*,
 - Change the references to “out-of-state spirits wholesaler” in §707(3)(B), (4)(B), and (5)(lead in) and the definition in §707(8)(B) to reference out-of-state, non-manufacturer entities with a COA under §1381.
 - Change the references to out-of-state spirits manufacturers in §707(3)(A), (4)(lead in) and (5)(A) to refer to “out-of-state spirits manufacturer who has been issued a certificate of approval”
- If this three-tier bill is enacted first, need to make the changes listed above part of the COA bill.

Consistency with Errors bill

- If Errors bill is enacted first, need to ensure that the correct language of §707 is being amended (*i.e.*, incorporate changes made by the Errors bill into the text of this bill)
- If this three-tier bill is enacted first, remove amendments to §707 and §1363 from the Errors bill