APPROVED
MARCH 17, 2021
BY GOVERNOR

CHAPTER
3
PUBLIC LAW

STATE OF MAINE

IN THE YEAR OF OUR LORD

TWO THOUSAND TWENTY-ONE

S.P. 94 - L.D. 205

An Act To Extend the Ability of Restaurants and Bars To Serve Alcohol To Go

Emergency preamble. Whereas, acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, the spread of the novel coronavirus disease referred to as COVID-19 has created a public health emergency; and

Whereas, in response to this public health emergency, the Governor issued an executive order on March 18, 2020 requiring all restaurants and bars, including tasting rooms, to close their dine-in facilities but permitting restaurants and bars to offer carry-out, delivery and drive-through food and beverage services, including carry-out, delivery and drive-through liquor sales; and

Whereas, although restaurants across the State were permitted to reopen June 17, 2020, restaurants are required to limit indoor seating capacity to prevent spread of the virus while the reopening of bars and tasting rooms has been postponed until further notice; and

Whereas, it is impossible to ascertain when the current public health emergency will abate, rendering the economic survival of restaurants, bars and tasting rooms dependent on their continued ability to provide carry-out, delivery and drive-through food and beverage services, including carry-out, delivery and drive-through liquor sales; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

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

Sec. 1. 28-A MRSA §1056 is enacted to read:

§1056. Authorized take-out and delivery sales of liquor; repeal

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

A. "Approved cocktail" means a beverage prepared by combining spirits or wine with spirits, wine or a nonalcoholic liquid or liquids and that:

(1) Is prepared on the day of sale by a qualified on-premises retailer's or qualified distillery's employee who is at least 21 years of age or by an employee who is between 17 and 20 years of age and who is in the presence of another employee who is at least 21 years of age and is serving in a supervisory capacity;

(2) Contains no more than 4 1/2 ounces of spirits; and

(3) Is sealed in an approved container.

B. "Approved container" means a tamper-evident container that:

(1) Is rigid, is not made of paper or polystyrene foam, has not previously been used to contain beverages and has a secured lid or cap that does not contain any holes or opening including any hole or opening through which a straw may be inserted or the contents of the container may be sipped;

(2) Is sealed in a manner that makes opening the container or tampering with the contents of the container easily detectable; and

(3) Has an affixed label that identifies the name and license number of the qualified on-premises retailer or qualified distillery that prepared and sold the approved cocktail, the date on which the approved cocktail was prepared and sealed in the approved container and the ingredients of the approved cocktail.

C. "Food order" means an order of a full course meal as defined in section 2, subsection 15, paragraph R-1 or an order of a cold or hot meal including but not limited to a sandwich, salad, hamburger, cheeseburger, hot dog, pizza or other food item that customarily appears on a restaurant menu. "Food order" does not include an order consisting solely of a prepackaged snack food or foods such as popcorn, chips or pretzels.

D. "Original container" means, with respect to a wine or malt liquor product, the container in which the wine or malt liquor product was sealed when the qualified on-premises retailer obtained the wine or malt liquor product from an in-state manufacturer or a wholesale licensee.

E. "Qualified distillery" means a distillery or a small distillery licensed under section 1355-A that:

(1) Serves samples of its products to the public for on-premises consumption under section 1355-A, subsection 2, paragraph A, B, E or F or sells its products to the public for off-premises consumption under section 1355-A, subsection 2, paragraph C, D or G; and

(2) Has notified the bureau in accordance with subsection 2 of its intention to sell approved cocktails for off-premises consumption.

F. "Qualified on-premises retailer" means an establishment that possesses a license to sell spirits, wine or malt liquor for on-premises consumption under this chapter and has notified the bureau in accordance with subsection 2 of its intention to sell approved cocktails, wine or malt liquor for off-premises consumption.

2. Authorized take-out and delivery sales of liquor for off-premises consumption. Notwithstanding any provision of law to the contrary, a qualified on-premises retailer or a qualified distillery may sell liquor for off-premises consumption only under the following conditions.

A. Prior to engaging in sales of liquor for off-premises consumption, a qualified on-premises retailer or qualified distillery shall notify the bureau of its intention to sell approved cocktails, wine or malt liquor for off-premises consumption on a form prepared and approved by the bureau.

B. Liquor sold by a qualified on-premises retailer for off-premises consumption must be accompanied by a food order.

C. A qualified on-premises retailer may sell for off-premises consumption only the type or types of liquor that it is authorized to sell for on-premises consumption pursuant to its license issued under this chapter.

(1) If the qualified on-premises retailer is licensed under this chapter to sell wine for on-premises consumption, it may sell wine for off-premises consumption only in an original container or as an ingredient in an approved cocktail. An approved cocktail sold by a qualified on-premises retailer under this subparagraph may not contain spirits unless the qualified on-premises retailer is also licensed to sell spirits for on-premises consumption under this chapter.

(2) If the qualified on-premises retailer is licensed under this chapter to sell malt liquor for on-premises consumption, it may sell malt liquor for off-premises consumption only in an original container.

(3) If the qualified on-premises retailer is licensed under this chapter to sell spirits for on-premises consumption, it may sell spirits for off-premises consumption only as an ingredient of an approved cocktail. An approved cocktail sold by a qualified on-premises retailer under this subparagraph may not contain wine unless the qualified on-premises retailer is also licensed to sell wine for on-premises consumption.

D. Except as provided in section 1355-A, a qualified distillery may sell spirits for off-premises consumption only as an ingredient of an approved cocktail. An approved cocktail sold by a qualified distillery under this paragraph may not contain wine or spirits not manufactured by the qualified distillery unless the qualified distillery purchased the wine or spirits from an agency liquor store licensed as a reselling agent.

E. Liquor sold for off-premises consumption must be accompanied by a sales receipt with a time stamp that indicates the time of purchase.

F. Liquor sold for off-premises consumption may be delivered by the qualified on-premises retailer or the qualified distillery or by an employee of the qualified on-premises retailer or the qualified distillery to a customer at the licensed premises or at a remote location only in accordance with this paragraph.

(1) Liquor may not be delivered to a customer at a remote location unless the individual making the delivery is at least 21 years of age.

(2) Liquor may not be delivered to a visibly intoxicated person.

(3) Liquor may not be delivered unless the individual making the delivery verifies, by means of reliable photographic identification containing the person's name and date of birth, that the person to whom the delivery is made is not a minor.

3. Repeal. This section is repealed September 10, 2022.

Emergency clause. In view of the emergency cited in the preamble, this legislation takes effect when approved.