

CHAPTER 157
FORMERLY
HOUSE BILL NO. 190
AS AMENDED BY
HOUSE AMENDMENT NO. 1

AN ACT TO AMEND TITLE 4 OF THE DELAWARE CODE RELATING TO ALCOHOLIC LIQUORS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Chapter 5, Title 4 of the Delaware Code by making insertions as shown by underlining and deletions as shown by strike through as follows:

§ 512A. Farm wineries.

(a) Upon proper application and subject to the provisions, restrictions and prohibitions of this title, the Commissioner may grant a license to any person who is the owner or lessee of a farm winery to manufacture, ferment, blend, age, store and bottle wine ~~containing 14 percent or less of ethyl alcohol by volume~~ on the premises designated in the license. For purposes of this title, a "farm winery" is defined as an establishment at which the basic ingredients, including but not limited to the harvesting of grapes, to make wine are grown and where wine is fermented or manufactured. Notwithstanding any provisions of this title to the contrary, a farm winery licensee shall be authorized to sell, deliver and ship such wine in barrels, bottles or other closed containers to persons licensed under the provisions of this title to import wine; and to sell and ship wine to persons outside of the State in accordance with this title.

(b) A farm winery licensee shall also be authorized to store and sell wine on the premises by the bottle or by the glass for consumption on or off the premises where sold.

(c) A farm winery licensee shall be exempt from the distance requirements for establishments licensed, or to be licensed, for consumption off the premises, as contained in § 543(d) of this title, and shall not affect the granting of a license of the same type.

(d) A farm winery licensee may sell, on the licensed premises, food items, souvenirs, wine-related supplies and educational material as approved by the Commissioner.

(e) The Commissioner may grant a wine testing license to a farm winery licensee consistent with the provisions of §§ 525 and 554(ff) of this title.

(f) All wine sold by a farm winery licensee shall be in a container which is securely sealed and has attached thereto a label setting forth such information as required by this title, Commission rules and laws of the State.

(g) A farm winery licensee may not engage in any business or activity in the licensed establishment unless authorized by this title or approved by the Commissioner.

(h) A farm winery licensee or a temporary licensee not to exceed 3 years shall be authorized to purchase and receive shipments of bottled, finished wine from importers located within the State that are licensed in accordance with this title. Such purchases and shipments, if in bottled, finished form, must be manufactured specifically for the Delaware farm winery licensee and bear the private label of the Delaware farm winery licensee on each bottle, and, if being imported from without the State, shall be limited, as follows:

- (1) During the first year of operation, no more than 10,000 gallons of wine;
- (2) During the second year of operation, no more than 7,500 gallons of wine;
- (3) During the third year of operation, no more than 5,000 gallons of wine; and
- (4) After 3 years of operation, no more than 25% of the total gallons of wine manufactured within the

State.

(5) Notwithstanding the importation limitations for bottled wine established in this paragraph, at such time when there is sufficient quantity, variety and quality of wine grapes grown in the State, then the Secretary of the Department of Agriculture may mandate that all licensed Delaware farm wineries must use at least 51% Delaware-grown fruit in their blend inventories. In the case of hardship due to crop loss, the Secretary of the Department of Agriculture may issue a special permit to import fruit, juice or other raw materials to compensate for such crop loss. Until such time as the Secretary of the Department of Agriculture makes such mandate, the licensee or a temporary licensee not to exceed 3 years shall be authorized to import grapes or grape juice from other locations

within or outside of the State, pursuant to the rules and regulations of the Department of Agriculture, for the purpose of fermentation, blending, bottling and aging.

(6) A temporary farm winery license may be issued, for not more than 3 years, allowing the temporary licensee to operate according to paragraphs (h)(1), (2) and (3) of this section herein if all the licensing requirements have been met except for those required in § 543(g) of this title, which requires government permitting to manufacture or ferment wine at the location. The temporary licensee shall, however, have obtained all necessary government permitting to operate as a temporary licensee.

(i) A farm winery licensee shall be authorized to purchase and receive shipments of unfinished wine in bulk form from suppliers and importers located within and without the State that are licensed in accordance with this title.

(j) A farm winery licensee shall be prohibited from owning or operating or being affiliated with any ~~other manufacturer, importer, supplier,~~ or retailer of alcoholic liquor either within or without this State. Notwithstanding the foregoing, it shall be permissible for a farm winery to apply to the Commissioner for a license, under § 512(g)(1) of this title, for use of a portion of the farm winery premises as a caterer.

(k) The Commissioner may promulgate such rules and regulations with respect to the enforcement or furtherance of the objectives and provisions of this section as it may deem necessary, and all such rules and regulations that are not inconsistent with the provisions of this title shall have the force and effect of law.

(l) A Delaware winery or farm winery shall be exempt from the prohibition of sales on Sundays as prescribed in § 709 of this title, but is limited on Sundays to the sale hours of 12 noon to 6 p.m. Where any other major holiday, as listed in § 709(e) of this title, falls on Sunday, then sales shall be prohibited pursuant to § 709 of this title.

(m) A farm winery licensee shall be authorized to export grapes, grape juice or unfinished wine grown in this State in bulk to persons outside the State for crushing, fermenting, bottling and labeling and shall be authorized to receive the finished product from that person, so long as no grapes, grape juice or wine, grown or manufactured outside the State, are added to the finished product.

(n) The provisions of § 506 of this title to the contrary notwithstanding, a farm winery licensee shall be permitted to have an interest in, be affiliated with, operate, or own another supplier or manufacturer located outside the State and have an interest in a brewery-pub, microbrewery, and/or craft distillery licensed under this chapter and actually located in this State.

§ 512B. Brewery-pubs.

(a) Subject to the provisions, restrictions and prohibitions of this title, the Commissioner may grant a brewery-pub license to each qualified applicant therefor. No person shall own or operate a brewery-pub unless licensed to do so by the Commissioner. For purposes of this section, a "brewery-pub" shall be an establishment in which beer is manufactured on the premises of the licensed establishment, limited to restaurants owned or leased by the brewery-pub applicant.

(b) The following conditions and restrictions shall apply to the holder of each brewery-pub license:

(1) It must be situated on the premises of, or be physically a part of, a restaurant;

(2) It may brew, bottle, and sell beer at no more than 3 licensed establishments, provided that each such licensed establishment qualifies as a separate brewery-pub under this section;

(3) It shall brew no more than 4,000 barrels of beer in any calendar year;

(4) It may sell beer manufactured on licensed premises in labeled barrels, bottles, or other closed containers to wholesalers licensed under this title for delivery by them to persons inside or outside this State;

(5) It may sell at the licensed premises beer manufactured on the licensed premises at retail for consumption off the premises;

(6) It may sell at the licensed premises beer manufactured on the licensed premises for on-premises consumption, ~~and;~~

(7) It shall be prohibited from owning, operating or being affiliated with any ~~other manufacturer or importer of alcoholic liquor, either in or without this State; except that the holder of a brew pub license may own,~~

~~operate or be affiliated with a brewery or a microbrewery licensed under this chapter and actually located within this State; and~~

(8) The provisions of § 506 of this title to the contrary notwithstanding, it shall be permitted to have an interest in, be affiliated with, operate, or own another supplier or manufacturer located outside the State and have an interest in a farm winery, microbrewery, and/or craft distillery licensed under this chapter and actually located in this State, provided that the total domestic sales of all affiliated suppliers or manufacturers shall not exceed the maximum amount currently specified in 27 C.F.R., Part 25, § 25.152(a)(2) or as hereafter amended.

(c) It shall be unlawful for a person to operate a brewery-pub if:

(1) The restaurant portion of the licensed establishment fails to offer complete meals for consideration to patrons or fails to operate as a bona fide restaurant as defined by Commissioner rules or this title;

(2) The license is denied, cancelled, suspended or revoked for any of the grounds contained in § 543 or § 561 of this title;

(3) The business is transferred to a different location.

(d) This section shall not prohibit the granting of a restaurant license to sell alcoholic liquors, for on-premises consumption, as provided in § 512 of this title.

(e) The Commissioner may make and publish such rules and regulations with respect to the assessment and payment of the tax on beer, as contained in § 581 of this title, as it deems proper, and all such rules and regulations that are not inconsistent with this title shall have the force and effect of law.

(f) Notwithstanding any other provision of this title to the contrary, the holder of a brewery-pub license may also make, bottle and sell ~~an a-malt-based~~ alcoholic liquor that is fermented or distilled on the premises, subject to the following conditions and restrictions:

(1) All of the conditions and restrictions relating to beer set forth in subsection (b) of this section; and

~~(2) For purposes of calculating taxes under § 581 of this title, malt based alcoholic liquor that is fermented or distilled on the premises shall be considered as beer and the tax on it shall be calculated on the amount in barrels of malt based beverage prior to fermentation or distillation.~~

(2) Alcoholic liquor that is fermented or distilled on the premises shall be taxed in accordance with § 581 of this title.

(g) The provisions of § 546 of this title to the contrary notwithstanding, the sale for off-premises consumption at up to a combined total of 3 licensees licensed under this section or 2 licensees licensed under this section and a microbrewery licensed pursuant to § 512C of this title all owned or controlled by the same person shall be permitted.

§ 512C. Microbrewery.

(a) Upon proper application and subject to the applicable provisions, restrictions and prohibitions of this title, the Commissioner may grant a license to any person who is the owner or lessee of a microbrewery to manufacture and sell beer, mead and cider.

(b) For purposes of this section, "microbrewery" shall mean a single establishment in which beer, mead or cider is manufactured and which is operated by the licensee in accordance with this section.

(c) Notwithstanding any provision of this title to the contrary, a microbrewery license shall allow the licensee:

(1) To manufacture and sell on the licensed premises beer, mead or cider or a combination thereof, but the licensee shall not manufacture or sell more than the maximum amount permitted by federal regulations to qualify for a "reduced rate of tax for certain brewers" as currently found in the 27 C.F.R., Part 25, § 25.152(a)(2) or as hereafter amended;

(2) To manufacture on the licensed premises beer, mead or cider for persons, other than the licensee, licensed under this title or for persons outside this State;

(3) To sell beer, mead and cider manufactured on the licensed premises in ~~labelled~~labeled barrels, bottles or other closed containers to importers licensed under this title for delivery by them to persons inside or outside the State; ~~and~~

(4) To sell at the licensed premises beer, mead and cider manufactured on the licensed premises for consumption on or off the licensed premises. The amount of beer, mead and cider sold for off-premises consumption shall be limited to a maximum of 5 cases per day to each retail customer; ~~and~~

(5) The provisions of § 506 of this title to the contrary notwithstanding, to be permitted to have an interest in, be affiliated with, operate, or own another supplier or manufacturer located outside the State and have an interest in a farm winery, brewery-pub, and/or craft distillery licensed under this chapter and actually located in this State, provided that the total domestic sales of all affiliated suppliers or manufacturers shall not exceed the maximum amount currently specified in 27 C.F.R., Part 25, § 25.152(a)(2) or as hereafter amended.

(d) It shall be unlawful for a person to operate a microbrewery if:

(1) The license is denied, canceled, suspended or revoked for any of the grounds contained in § 543 or § 561 of this title;

(2) The establishment is moved to a location other than the licensed premises; or

(3) ~~Except as permitted by (e)(2),~~ ~~the licensee owns, operates or is affiliated with any other manufacturer, importer or supplier of alcoholic liquor either in or without this State.~~

(e) A microbrewery licensee shall be exempt from the distance requirements for establishments licensed or to be licensed as contained in § 543(d) of this title, and such requirements shall not affect the granting of a microbrewery license.

(f) All beer, mead and cider sold by a microbrewery licensee for off-premise consumption shall be in containers which are securely sealed and have attached thereto a label setting forth such information as required by this title, Commissioner rules and laws of the State.

(g) Any microbrewery or brewery licensed by the Commissioner to manufacture beer, mead, or cider in this State may provide samples of the beer, mead, or cider manufactured at said premises in a manner approved by the Commissioner.

(h) The provisions of § 546 of this title to the contrary notwithstanding, the sale for off-premises consumption at a licensee licensed under this section and at up to 2 brewery-pubs licensed pursuant to § 512B of this title all owned or controlled by the same person shall be permitted.

§ 512E. Craft distillery.

(a) Upon proper application and subject to the applicable provisions, restrictions and prohibitions of this title, the Commissioner may grant a license to any person who is the owner or lessee of a craft distillery to manufacture and sell spirits.

(b) For purposes of this section, "craft distillery" shall mean a single establishment in which spirits are manufactured and which is operated by the licensee in accordance with this section.

(c) Notwithstanding any provision of this title to the contrary, a craft distillery license shall allow the licensee:

(1) To manufacture on the licensed premises and sell not more than 750,000 proof gallons of distilled spirits in any calendar year;

(2) To manufacture spirits, on the licensed premises, for persons other than the licensee who are licensed under this title or for persons outside this State;

(3) To sell, deliver and ship such spirits in labeled barrels, bottles or other closed containers to persons licensed under the provisions of this title to import spirits; and to sell and ship spirits to persons outside of the State in accordance with this title;

(4) To store and sell spirits on the premises by the bottle or by the glass for consumption on or off the premises where sold. The amount of spirits sold for off-premises consumption shall be limited to a maximum of 1 case (i.e., not more than 12--750 ml bottles) per day to each retail customer for consumption off the premises; and

(5) To sell, on the licensed premises, food items, souvenirs, spirit-related supplies and educational material as approved by the Commissioner.

(d) It shall be unlawful for a person to operate a craft distillery if:

(1) The license is denied, canceled, suspended or revoked for any of the grounds contained in § 543 or § 561 of this title;

(2) The establishment is moved to a location other than the licensed premises; or

(3) It is owned, operated or affiliated with any ~~other manufacturer or importer~~ of alcoholic liquor, either in or without this State; except that the holder of a craft distillery license may ~~own, operate or be affiliated with a microbrewery licensed under this chapter and actually located within this State, with a farm winery licensed under this chapter and actually located within this State, and/or with any brewery pub in common ownership licensed under this chapter and actually located within this State~~ have an interest in, be affiliated with, operate, or own in common ownership a microbrewery, farm winery, and/or brewery-pub licensed under this chapter and actually located within this State.

(e) A craft distillery licensee shall be exempt from the distance requirements for establishments licensed or to be licensed as contained in § 543(d) of this title, and such requirements shall not affect the granting of a craft distillery license.

(f) All spirits sold by a craft distillery licensee for off-premise consumption shall be in containers which are securely sealed and have attached thereto a label setting forth such information as required by this title, Commissioner rules and laws of the State.

(g) Any craft distillery licensed by the Commissioner to manufacture spirits in this State may provide tastings of the spirits at said premises pursuant to a spirits tasting license granted by the Commissioner pursuant to § 525 of this title.

(h) The provisions of § 546 of this title to the contrary notwithstanding, the sale for off-premises consumption at up to a combined total of 3 licenses licensed under this section, § 512A, § 512B, or § 512C of this title all owned or controlled by the same person shall be permitted.

(i) A craft distillery licensee shall be authorized to purchase and receive shipments of unfinished neutral grain spirit in bulk form from suppliers and importers located within and without the State that are licensed in accordance with this title.

(j) A craft distillery licensee shall be authorized to export unfinished spirit manufactured in this State in bulk to persons outside the State for blending, aging, finishing, bottling and labeling and shall be authorized to receive the finished product from that person.

(k) A craft distillery shall be exempt from the prohibition of sales on Sundays as proscribed in § 709 of this title, but any sales on Sundays shall be limited to the hours during which the holders of licenses for the sale of spirits in a store may sell on Sundays pursuant to § 709(h) of this title. A craft distillery shall remain closed on Thanksgiving, Christmas and Easter.

(l) The Commissioner may promulgate such rules and regulations with respect to the enforcement or furtherance of the objectives and provisions of this section as the Commissioner may deem necessary, and all such rules and regulations that are not inconsistent with the provisions of this title shall have the force and effect of law.

(m) The provisions of § 506 of this title to the contrary notwithstanding, the holder of a craft distillery license shall be permitted to have an interest in, be affiliated with, or own another supplier or manufacturer, whether located inside or outside the State, provided that the total domestic sales of all affiliated suppliers or manufacturers shall not exceed 750,000 proof gallons in any calendar year.

Approved August 05, 2013