

LAWS OF DELAWARE
VOLUME 83
CHAPTER 36
151st GENERAL ASSEMBLY
FORMERLY
HOUSE BILL NO. 46

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 § 101, Title 4 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows and by redesignating Delaware Code provisions accordingly:

§ 101. Definitions

As used in this title, in addition to their usual meaning:

(20) “Fermented beverage” means any product similar to beer, including sake and seltzer, containing one-half of one percent or more of alcohol by volume, brewed from substitutes for malt, including rice, grain, bran, glucose, sugar and molasses.

Section 2. Amend § 512B, Title 4 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 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, cider, mead and/or fermented beverages are ~~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;
- (7) It shall be prohibited from owning, operating or being affiliated with any importer of alcoholic liquor, either in or without 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 beer of all affiliated suppliers or manufacturers shall not exceed 6 million barrels in a calendar year.

(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 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) 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.

Section 3. Amend § 512C, Title 4 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 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, fermented beverages, mead and cider.

(b) For purposes of this section, “microbrewery” shall mean a single establishment in which beer, fermented beverages, 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, fermented beverages, 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, fermented beverages, mead or cider for persons, other than the licensee, licensed under this title or for persons outside this State;

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

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

(5) To purchase and store product from a Delaware licensed importer or retailer licensed under § 516 of this title, and sell said product to its retail customers for consumption on the premises where sold so long as the product is manufactured by an entity that holds a Delaware license pursuant to § 512A, § 512B, § 512C or § 512E of this title or the manufacturer, as determined by the Commissioner, would qualify for a license under said sections if it were physically located in the State; and

(6) 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 beer of all affiliated suppliers or manufacturers shall not exceed 6 million barrels in a calendar year.

(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) The licensee owns, operates or is affiliated with any importer 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, fermented beverages, 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, fermented beverages, mead, or cider in this State may provide samples of the beer, fermented beverages, 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.

Section 4. Amend § 581(d)(1), Title 4 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 581(d) The tax payable under this section shall be as follows:

(1) For each barrel of beer or fermented beverage, \$8.15.

Approved June 3, 2021