

LAWS OF DELAWARE
VOLUME 83
CHAPTER 168
151st GENERAL ASSEMBLY
FORMERLY
HOUSE BILL NO. 81

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

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Three-fifths of all members elected to each house thereof concurring therein):

Section 1. 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.~~ Microbreweries; license; alternating premises.

(a) Upon proper application and subject to the applicable provisions, ~~restrictions~~ restrictions, and prohibitions of ~~under~~ this title, the Commissioner may grant a license to any of the following:

(1) A person who is the owner or lessee of a microbrewery to manufacture and sell beer, mead mead, and cider.

(2) A person who owns a tenant microbrewery under subsection (i) of this section.

(b) For purposes of this section, ~~“microbrewery” shall mean~~

(1) “Alternating premises” means the portion of a microbrewery’s premises that is used at different times by 2 or more microbreweries to manufacture beer, mead, or cider.

(2) “Host microbrewery” means the microbrewery that owns the brewing equipment in an alternating premises.

(3) “Microbrewery” means a single establishment in which beer, mead mead, or cider is manufactured and which is operated by the licensee in accordance with under this section.

(4) “Tenant microbrewery” means the microbrewery that does not own, but uses, the brewing equipment in an alternating premises.

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

(1) To manufacture and sell on the licensed premises beer, ~~mead mead~~, or cider or a combination thereof, but the licensee ~~shall~~ may 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;~~ under 27 C.F.R., Part 25, § 25.152(a)(2).

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

(3) To sell beer, ~~mead 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;~~ State.

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

(5) To purchase and store product from a Delaware licensed importer or retailer licensed under § 516 of this title, and sell ~~said~~ the 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~~ under § 512A, § 512B, ~~§ 512C~~ § 512C, or § 512E of this title or the manufacturer, as determined by the Commissioner, would qualify for a license under ~~said 1 or more of these~~ sections if ~~it~~ the manufacturer were physically located in the ~~State;~~ and State.

(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~~ 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~~ does not exceed 6 million barrels in a calendar year.

(d) It ~~shall be~~ is unlawful for a person to operate a microbrewery ~~if:~~ if any of the following apply:

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

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

(3) The licensee owns, ~~operates~~ operates, or is affiliated with any importer of alcoholic liquor either in or without this State.

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

(f) All beer, ~~mead~~ mead, and cider sold by a microbrewery licensee for off-premise consumption ~~shall~~ must be in containers ~~which~~ that are securely sealed and have an attached ~~thereto~~ to a label setting forth ~~such~~ the information as required by under this title, Commissioner ~~rules~~ 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~~ the licensed premises in a manner approved by the Commissioner.

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

(i)(1) The requirements to grant a license to a tenant microbrewery must include all of the following:

a. An agreement with a host microbrewery that allows the tenant microbrewery to use the host microbrewery's brewing equipment for specified periods of time to manufacture beer, mead, or cider. The compensation to the host microbrewery under an agreement may not be based upon the profit of the tenant microbrewery and is subject to the approval of the Commissioner.

b. The host microbrewery and the tenant microbrewery must have the approval of the Federal Trade and Tax Bureau ("TTB"), or its successor, to operate as an alternating premises.

c. The tenant microbrewery must retain title to all of the tenant microbrewery's raw materials, except for water.

d. The tenant microbrewery must act as the brewer of the beer, mead, or cider.

e. Upon completion of the manufacturing process, the tenant microbrewery shall remove all product from the alternating premises and transport the product to a location approved by the Commissioner for the tenant microbrewery to store and sell for on or off premises consumption. A tenant microbrewery may satisfy the requirement under this paragraph § 512C(i)(1)e. by leasing space from the host microbrewery but the tenant microbrewery may only store the tenant microbrewery's brands in the leased space.

(2) The Commissioner may suspend or revoke the license of the tenant microbrewery upon the termination of the agreement between the host microbrewery and the tenant microbrewery.

(3) The Commissioner may suspend all licenses at the alternating premises if the TTB suspends the approval of the host or tenant microbrewery. The Commissioner must provide reasons for and conditions of a suspension under this paragraph § 512C(i)(3).

Approved September 15, 2021