



SPONSOR: Rep. Bush & Rep. Shupe & Sen. Paradee
Reps. Briggs King, Longhurst, D. Short, Michael Smith,
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HOUSE OF REPRESENTATIVES
151st GENERAL ASSEMBLY

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:

1 Section 1. Amend § 101, Title 4 of the Delaware Code by making deletions as shown by strike through and
2 insertions as shown by underline as follows and by redesignating Delaware Code provisions accordingly:

3 § 101. Definitions

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

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

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

10 § 512B. Brewery-pubs.

11 (a) Subject to the provisions, restrictions and prohibitions of this title, the Commissioner may grant a brewery-pub
12 license to each qualified applicant therefor. No person shall own or operate a brewery-pub unless licensed to do so by the
13 Commissioner. For purposes of this section, a “brewery-pub” shall be an establishment in which beer, cider, mead and/or
14 fermented beverages are ~~is~~ manufactured on the premises of the licensed establishment, limited to restaurants owned or
15 leased by the brewery-pub applicant.

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

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

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

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

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

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

25 (6) It may sell at the licensed premises beer manufactured on the licensed premises for on-premises
26 consumption;

27 (7) It shall be prohibited from owning, operating or being affiliated with any importer of alcoholic liquor,
28 either in or without this State; and

29 (8) The provisions of § 506 of this title to the contrary notwithstanding, it shall be permitted to have an
30 interest in, be affiliated with, operate, or own another supplier or manufacturer located outside the State and have an
31 interest in a farm winery, microbrewery, and/or craft distillery licensed under this chapter and actually located in this
32 State, provided that the total domestic sales of beer of all affiliated suppliers or manufacturers shall not exceed 6
33 million barrels in a calendar year.

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

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

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

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

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

42 (e) The Commissioner may make and publish such rules and regulations with respect to the assessment and
43 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
44 not inconsistent with this title shall have the force and effect of law.

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

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

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

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

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

56 § 512C. Microbrewery

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

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

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

63 (1) To manufacture and sell on the licensed premises beer, fermented beverages, mead or cider or a
64 combination thereof, but the licensee shall not manufacture or sell more than the maximum amount permitted by
65 federal regulations to qualify for a “reduced rate of tax for certain brewers” as currently found in the 27 C.F.R., Part 25,
66 § 25.152(a)(2) or as hereafter amended;

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

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

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

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

80 (6) The provisions of § 506 of this title to the contrary notwithstanding, to be permitted to have an interest in,
81 be affiliated with, operate, or own another supplier or manufacturer located outside the State and have an interest in a
82 farm winery, brewery-pub, and/or craft distillery licensed under this chapter and actually located in this State, provided
83 that the total domestic sales of beer of all affiliated suppliers or manufacturers shall not exceed 6 million barrels in a
84 calendar year.

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

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

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

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

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

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

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

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

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

104 § 581(d) The tax payable under this section shall be as follows:

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

SYNOPSIS

Currently the Delaware Code does not permit alcoholic beverage license holders to brew hard seltzers or other non-malt based products that they are otherwise allowed to brew as a result of obtaining a Federal Brewer's Notice. This Act permits Delaware brewery-pub and microbrewery license holders to brew, bottle and sell hard seltzers and other fermented beverages made from malt substitutes and includes specific tax on fermented beverages. The language of the Act also mirrors the federal definition of a malt-substitute product.