

OFFICE OF POLICY AND LEGAL ANALYSIS

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To: Veterans and Legal Affairs Committee

From: Janet Stocco, Legislative Analyst

**LD 306 An Act To Temporarily Waive Certain Requirements for Relicensing for
Restaurants That Serve Liquor** (*Senator Luchini*) - Emergency

SUMMARY

Under current law, the following categories of retailers licensed to sell liquor for on-premises consumption are required to sell a specified amount of food as a condition of licensure:

- For hotels—except hotels with a Class I-A license that does not require the sale of food—restaurants and bowling centers: “at least 10% of the gross annual income must be from the sale of food.” A bowling center’s income from the bowling business may not be considered as part of this calculation (*i.e.*, the calculation involves only income from liquor and food sales); and
- For Class A restaurants, Class A restaurants / lounges and qualified catering services, the licensee must sell a specific dollar amount of food each year, depending on the size of the municipality in which the establishment is located and the number of months the entity is open.

See the chart attached to this bill analysis for more details of these requirements.

This bill, which is an emergency measure, temporarily exempts these categories of licensees from these statutory requirements by providing that, for licenses that expire on or before January 1, 2022, the licensee is not required to demonstrate that it has satisfied the food-sale requirement during the license renewal process.

ADDITIONAL INFORMATION:

- **Food sales requirements and license renewal.** Although the statutes are not drafted in an entirely consistent manner, current law authorizes (and sometimes requires) BABLO to deny a license-renewal application if a licensee with a food-sales requirement is unable to demonstrate compliance with that requirement.
 - The restaurant-licensing statute provides: “The bureau [BABLO] may not renew any license for the sale of wine or malt liquor unless the licensee furnishes proof to the bureau that the previous year’s business conformed to the income requirement of this subsection.” [28-A M.R.S. §1062\(3\)\(A\)](#). Similar statutory language prohibits BABLO from renewing a Class A restaurant, Class A restaurant/lounge or qualified catering establishment license absent proof that the licensee complied with applicable food-sale requirements. [§1063\(4\)](#); [§1076\(5\)](#).
 - Although similar language does not appear in the statutes governing hotel and bowling center licenses, however, as a general rule [28-A M.R.S. §653\(2\)\(E\)](#) provides that “A license may be denied on one or more of the following grounds . . . A violation of any provision of this Title.”

- **Past legislation.** In the 129th Legislature, the VLA Committee considered a bill—[LD 2131](#), *An Act To Correct Errors, Inconsistencies and Conflicts in and To Revise the State's Liquor Laws*—which would have made several changes to the food-sales requirement statutes, including: On the one hand, adding language to the statutes governing hotels and bowling centers to clarify that BABLO may not renew such licenses unless the licensee demonstrates compliance with the food-sales requirement. On the other hand, establishing a one-year grace period for any on-premises licensee that fails to demonstrate compliance with a statutory food-sales requirement when applying for license renewal. This bill was unanimously reported out of committee OTP-A, but ultimately died without reaching the floor upon conclusion of the 129th Legislature.

ISSUES RAISED & AMENDMENTS PROPOSED AT PUBLIC HEARING

- **BABLO Proposed Amendment - grace period.** BABLO proposed amending the bill to replace the one-year waiver of the food-sales requirements with a one-year grace period similar to the proposal from LD 2131 in the 129th Legislature. Under BABLO’s proposal, if on-premises retailer that is required by law to sell a specific amount of food *fails* to demonstrate compliance with that requirement upon application for license renewal, BABLO *may* renew the license for one year:

<u>LD 2131 proposed grace period language</u>	<u>BABLO proposed amendment to LD 306</u>
<p><i>Provision added to the statues governing each affected on-premises retailer:</i></p> <p><u>If the bureau determines that the licensee has not satisfied the requirements of [reference to applicable food-sale requirement provision], the bureau may renew the license for only one year, during which the licensee must meet the requirements of [same cross-reference] to be eligible for further license renewal.</u></p>	<p><i>General license-renewal provision:</i></p> <p><u>If the licensee fails to meet the food requirements of this Title during any non-consecutive licensure period, the licensee may be granted one additional licensure period to meet the minimum food sales requirement of this Title if approved by the Bureau. The Bureau shall not unreasonably deny a licensee’s request for a waiver under this section.</u></p>

TECHNICAL ISSUES

- **Timing of waiver.** If the Committee does not adopt BABLO’s proposed amendment, should the bill should be made retroactive to all license-renewal applications submitted beginning on January 1, 2021? Otherwise, the subset of entities whose licenses expired between January 1 and the effective date of the bill will not receive the benefit of the waiver.

FISCAL IMPACT

Not yet determined.

