

Department of Legislative Services
Maryland General Assembly
2009 Session

FISCAL AND POLICY NOTE

Senate Bill 338 (Senator Raskin, *et al.*)
Education, Health, and Environmental Affairs

Alcoholic Beverages - Direct Wine Shipper's License

This bill repeals the ability of the Comptroller's Office to issue a direct wine seller's permit and requires it to issue a direct wine shipper's license. A person licensed as a direct wine shipper may engage in shipping wine directly to a resident in the State. The annual license fee is \$100.

The bill takes effect July 1, 2009.

Fiscal Summary

State Effect: General fund revenues increase by \$90,000 in FY 2010. Sales and excise tax revenues may increase by a significant amount depending on the increase in new wine sales. General fund expenditures increase by \$21,900 in FY 2010. Future years reflect annualization and inflation.

(in dollars)	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
GF Revenue	\$90,000	\$97,800	\$101,700	\$100,600	\$94,800
GF Expenditure	\$21,900	\$28,400	\$29,700	\$31,000	\$32,400
Net Effect	\$68,100	\$69,400	\$72,000	\$69,600	\$62,400

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: None.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: The bill requires that a person be licensed as a direct wine shipper by the Comptroller's Office before the person may engage in shipping wine directly to a resident in the State. For the purposes of the bill, wine includes brandy that is distilled from the pulpy residue of the wine press, including the skins, pips, and stalks of grapes.

To qualify for a direct wine shipper's license, the applicant must be (1) a person licensed outside of the State to engage in the manufacture of wine; (2) an authorized brand owner of wine, a U.S. importer of wine, or a designated Maryland agent of a brand owner or U.S. importer; (3) a holder of a State issued Class 3 manufacturer's (winery) license or a Class 4 manufacturer's (limited winery) license; or (4) a person licensed by the State or outside of the State to engage in the retail sale of wine for consumption off the premises.

The direct wine shipper must (1) ensure that all containers of wine shipped directly to a State resident are conspicuously labeled "contains alcohol; signature of person at least 21 years of age required for delivery"; (2) annually report to the Comptroller's Office the total of wine, by type, shipped in the State the preceding calendar year; (3) annually pay to the Comptroller's Office all sales and excise taxes due on sales to residents of the State in the preceding calendar year; (4) allow the Comptroller's Office to audit the direct wine shipper's records upon request; and (5) consent to the jurisdiction of the Comptroller's Office or other State unit and the State courts concerning enforcement of this section and any related law. A direct wine shipper is prohibited from shipping more than 24 9-liter cases of wine annually to any one individual or shipping to an address in an area in which the board of license commissioners may not issue a license authorizing the sale of wine.

The Comptroller's Office may adopt regulations for the issuance and enforcement of the provisions of this license.

To receive a direct shipment of wine, a State resident must be 21 years old. In addition, the bill stipulates that a wine shipment may be ordered or purchased through a computer network. A person who receives a wine shipment can only use it for personal consumption and not resell it.

A person who violates the laws associated with a direct wine shipper's license would be guilty of a felony and subject to imprisonment of up to two years, a fine of up to \$1,000, or both.

Current Law: The Federal Liquor Law Repeal and Enforcement Act, also referred to as the Webb-Kenyon Act, prohibits the shipment of alcoholic beverages from one state into another state in violation of any law of the receiving state. Maryland State law provides

for a three-tier distribution system and prohibits wineries located inside or outside of the State from delivering wine directly to a resident of the State.

The Comptroller's Office is authorized to issue a direct wine seller's permit, for an annual fee of \$10. A direct wine seller's permit can be issued to a person or entity that (1) is domiciled outside of the State; (2) is engaged in the manufacture of wine, or is the brand owner, U.S. importer, or designated Maryland agent of the brand owner or U.S. importer of wine sold under this authority; (3) holds and acts within the scope of any alcoholic beverages license or permit required in the state where the applicant is domiciled or by the federal Bureau of Alcohol, Tobacco, and Firearms; and (4) does not hold any alcoholic beverages license or permit issued by the State within two years before the application, and is not owned, as a whole or in part, by another person or entity that holds another alcoholic beverages license or permit issued by the State or one of its political subdivisions within two years before the application.

A direct wine seller's permit authorizes a direct wine seller to sell wine to a personal consumer by receiving and filling orders that the personal consumer transmits by electronic or other means. A direct wine seller, however, may not sell a brand of wine in the State that (1) is distributed in the State by a wholesaler licensed in the State; or (2) was distributed in the State within two years before the application for the direct wine seller's permit is filed. During a permit year (November 1 to October 31), a direct wine seller may not sell in the State more than 900 liters of wine or more than 108 liters to a single personal consumer. A direct wine seller is required to file an annual tax return.

Wine shipped to a personal consumer must be shipped to a wholesaler licensed in the State that is designated by the federal Alcohol and Tobacco Tax Bureau, and then delivered by the wholesaler to a retail dealer. The wholesaler and retail dealer are solely facilitators in the shipping process and do not have title to the wine. The personal consumer must take personal delivery of the shipment at the licensed premises of the retail dealer promptly upon receiving notice from the dealer. The wholesaler may impose a service charge at a rate of \$2 per bottle but no more than \$4 per shipment, and the retail dealer may impose a service charge of \$5 per bottle but no more than \$10 per shipment when the consumer takes delivery.

Background: In May 2005, The U.S. Supreme Court in *Granholm v. Heald* struck down laws in Michigan and New York that prohibited direct shipment of wine to consumers within the state from out-of-state businesses but permitted direct shipment to those consumers from in-state businesses. Court cases against wine shipping laws have been filed in at least 24 states, including Arizona, Arkansas, California, Delaware, Florida, Illinois, Indiana, Kentucky, Maine, Maryland, Massachusetts, Missouri, New Jersey, North Carolina, Ohio, Oklahoma, Pennsylvania, Rhode Island, Tennessee, Texas, Virginia, and Washington.

At least 35 states have passed legislation authorizing the direct shipment of wine to consumers, including Virginia, West Virginia, and the District of Columbia.

State Revenues: According to the *Alcohol and Tobacco Tax Annual Report*, the Comptroller’s Office issued two direct wine seller’s permits in fiscal 2008. The Comptroller’s Office advises that it charges a \$200 application fee for new alcoholic beverages licenses it issues and a \$30 application fee for each license it renews.

Revenues from Permits Issued

It is uncertain how many of the 6,200 federally licensed wine manufacturers would apply for a direct wine shipper’s license in Maryland. Additionally, the bill would also authorize retailers licensed in other states for off-premises sales to apply for a direct shipper’s license in Maryland. **Exhibit 1** illustrates potential revenues from the issuance of licenses.

Exhibit 1
Potential Revenues from Direct Wine Shipper’s Licenses

	<u>FY 2010</u>	<u>FY 2011</u>	<u>FY 2012</u>	<u>FY 2013</u>	<u>FY 2014</u>
Number of New Licenses Issued	300	250	200	150	100
Number of Licenses Renewed	-	285	521	695	810
Total Number of Permits	300	535	721	845	910
Total Revenue from Licenses	\$90,000	\$97,800	\$101,700	\$100,600	\$94,800

This estimate is based on the experience of other states and includes \$300 for each new license issued, including the \$100 license fee and a \$200 one-time application fee. For each license renewed, revenues would increase by \$80 annually, including the \$50 renewal license fee and a \$30 renewal application fee. This estimate assumes that 5% of licenses issued would not be renewed. As a point of reference, Virginia has issued 870 in and out of state wine shipper’s licenses.

Sales and Excise Tax

The majority of wine that would be sold by holders of a direct wine shipper's license would have otherwise been sold at a retail location in the State. To the extent that consumer access to additional brands of wine, lower prices offered from nationwide Internet wine retailers, and the convenience of home delivery would result in an increase in per-capita wine consumption, State sales and excise tax would increase. *For illustrative purposes only*, if sales of wine consumed at home were to increase by one-half of 1% (0.5%), general fund revenues from sales and excise tax would increase by approximately \$200,000 annually. For comparative purposes, a 0.5% increase in wine sales equates to an additional five cases purchased per 1,000 residents of legal drinking age in the State. This estimate assumes 100% compliance with sales and excise tax requirements.

A 9-liter case of wine, which includes 12 bottles of 750 milliliters of wine sold at \$12 per bottle, is taxed at a rate of \$9.59 per case. For each case of wine, this tax consists of \$0.95 in State excise tax and \$8.64 in Sales tax.

Receipt of Tax Revenues

Alcoholic beverages licensees in Maryland regularly remit sales and excise taxes to the Comptroller's Office. The bill requires that direct wine shippers pay sales and excise tax annually. Although the total revenue of in-State sales that would be replaced by direct wine sales from out of state cannot be determined, altering the timing of these revenues could have a significant fiscal impact.

State Expenditures: Due to an expected increase in the volume of direct wine sales and the number of licensed direct wine shippers, the cost of ensuring compliance with State tax laws is expected to increase. Based on the experience of other states in implementing the sale of wine directly to consumers, the general fund expenditures for the Comptroller's Office will increase by approximately \$21,900 in fiscal 2010, which reflects a 90-day start-up delay. This estimate reflects the cost of hiring one contractual revenue examiner to review the records of direct wine shippers, ensure that the appropriate taxes are being paid, and that the shippers are not selling more than the allowed limits to any one individual. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses. Future year expenditures reflect full salaries with 4.4% annual increases and 1% annual increases in ongoing operating expenses.

Small Business Effect: The bill authorizes both wine retailers and wine manufacturers outside of the State to ship wine directly to Maryland residents. Authorizing the shipment of wine directly to consumers may result in a decline in sales for certain

retailers and wholesalers of alcoholic beverages in the State. To the extent that direct wine shipper's licenses are obtained by wineries and retailers in Maryland, these small businesses could be positively impacted by a potential increase in sales.

Additional Information

Prior Introductions: SB 616 of 2008 received an unfavorable report from the Senate Education, Health, and Environmental Affairs Committee. Its cross file, HB 1260, received an unfavorable report from the House Economic Matters Committee.

Cross File: None.

Information Source(s): Comptroller's Office, Wine Institute, Department of Legislative Services

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