

Department of Legislative Services
2010 Session

FISCAL AND POLICY NOTE

House Bill 716
Economic Matters

(Delegate Krysiak, *et al.*)

Alcoholic Beverages - Direct Wine Shipper's License

This bill repeals the direct wine seller’s permit and instead establishes a direct wine shipper’s license to be issued by the Comptroller’s Office. A person licensed as a direct wine shipper may engage in shipping wine directly to a resident in the State. The initial license fee is \$100.

The bill takes effect July 1, 2010.

Fiscal Summary

State Effect: General fund revenues increase by \$90,000 in FY 2011. Sales and excise tax revenues may increase by a significant amount depending on the increase in new wine sales. General fund expenditures increase by \$38,600 in FY 2011. Future years reflect annualization and inflation.

(in dollars)	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015
GF Revenue	\$90,000	\$97,800	\$101,700	\$100,600	\$94,800
GF Expenditure	\$38,600	\$44,500	\$46,400	\$48,400	\$50,600
Net Effect	\$51,400	\$53,300	\$55,300	\$52,200	\$44,200

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

Local Effect: The majority of counties indicated there would be no effect. However, Montgomery County indicated a significant loss of revenue based on the assumption that consumers will purchase wine from direct wine shippers instead of from the county dispensary.

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 personal consumer 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 personal consumer are conspicuously labeled "Contains Alcohol; Signature of Person at Least 21 Years of Age Required for Delivery"; (2) monthly report to the Comptroller's Office the total amount of wine, by type, shipped in the State, the price charged, and the name and address of each purchaser; (3) monthly pay to the Comptroller's Office all sales and excise taxes due on sales to personal consumers in the State, calculating the amount of the taxes as if the sale were made at the delivery location; (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 delivering wine on Sunday to an address in the State.

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 personal consumer in the State must be at least 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 shipment must be made by a common carrier and be accompanied by a shipping label that clearly indicates the name of the direct shipper and the name and address of the recipient. To complete delivery of a shipment, the common carrier must require the signature of the individual and photo identification demonstrating that the individual is at least 21 years old.

The bill specifies that a holder of a direct wine shipper's license may ship wine directly to a personal consumer in Montgomery County.

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.

Unless otherwise specified, in Montgomery County, no person, firm, or corporation may keep for sale any alcoholic beverage not purchased from the Montgomery County Department of Liquor Control. A holder of a Class 6 limited wine wholesaler's license or of a nonresident winery permit may sell or deliver wine directly to a county liquor dispensary, restaurant or other retail dealer in Montgomery County. A county liquor dispensary, restaurant, or other retail dealer in Montgomery County may purchase wine directly from a holder of a Class 6 limited wine wholesaler's license or of a nonresident winery permit.

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 three direct wine seller's permits in fiscal 2009. The Comptroller's Office advises that it generally 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 6,725 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 2011</u>	<u>FY 2012</u>	<u>FY 2013</u>	<u>FY 2014</u>	<u>FY 2015</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 currently issued 849 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 \$550,000 annually, assuming an average per case cost of \$360 (\$30 per bottle). 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 \$30 per bottle, is taxed at a rate of \$22.56 per case. For each case of wine, this tax consists of \$0.96 in State excise tax and \$21.60 in sales tax.

Under another set of assumptions, general fund revenues from sales and excise tax could increase by approximately \$200,000, assuming an average per case cost of \$144. 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.

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 \$38,600 in fiscal 2011, 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; and one *part-time tax consultant* to handle anticipated additional administrative hearings. 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: HB 1262 of 2009 received an unfavorable report from the House Economic Matters Committee. Its cross file, SB 338, received a hearing in the Senate Education, Health, and Environmental Affairs Committee, but no further action was taken. 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: SB 566 (Senator Raskin, *et al.*) - Education, Health, and Environmental Affairs.

Information Source(s): Anne Arundel, Baltimore, Charles, Frederick, Montgomery, and Somerset counties; Comptroller's Office; Judiciary (Administrative Office of the Courts); Department of Legislative Services

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