

SENATE BILL 248

A1
SB 566/10 – EHE

11r0341
CF HB 234

By: **Senators Raskin, Astle, Benson, Brinkley, Brochin, Colburn, Dyson, Forehand, Frosh, Garagiola, Getty, Glassman, Jacobs, Jennings, Jones–Rodwell, Kasemeyer, Kelley, King, Kittleman, Madaleno, Manno, Montgomery, Muse, Pinsky, Pipkin, Pugh, Ramirez, Reilly, Robey, Shank, Young, and Zirkin**

Introduced and read first time: January 28, 2011

Assigned to: Education, Health, and Environmental Affairs

A BILL ENTITLED

1 AN ACT concerning

2 **Alcoholic Beverages – Direct Wine Shipper’s Permit**

3 FOR the purpose of repealing provisions that provide for a direct wine seller’s permit;
4 establishing a direct wine shipper’s permit to be issued by the Office of the
5 Comptroller; authorizing the Office of the Comptroller to issue a common
6 carrier permit to certain persons; specifying a certain common carrier permit
7 fee; requiring a person to be licensed before the person or the person’s agent
8 may engage in shipping wine directly to a direct wine consumer in the State;
9 requiring an applicant to meet certain qualifications for a shipper’s permit,
10 submit an application and a copy of its current alcoholic beverages license or
11 proof of the applicant’s status to the Office of the Comptroller, and pay a certain
12 fee; specifying the term of a direct wine shipper’s permit; requiring a direct wine
13 shipper to perform certain actions; prohibiting a direct wine shipper from
14 shipping more than a certain amount of wine annually to any one consumer or
15 make deliveries on Sunday; requiring a direct wine shipper to meet certain
16 requirements to renew the permit; authorizing the Office of the Comptroller to
17 deny a renewal application under certain circumstances; specifying certain
18 requirements for receiving a direct shipment of wine; requiring a common
19 carrier to make a certain report; allowing a shipment of wine to be ordered or
20 purchased through electronic or other means; authorizing the Office of the
21 Comptroller to adopt certain regulations; prohibiting a person without a permit
22 from shipping wine directly to consumers in the State; requiring a certain
23 security to be posted under certain circumstances; defining certain terms;
24 making certain technical corrections; altering a certain definition; making the
25 provisions of this Act severable; and generally relating to the establishment of a
26 direct wine shipper’s permit.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 BY repealing
 2 Article 2B – Alcoholic Beverages
 3 Section 7.5–101 through 7.5–110 and the title “Title 7.5. Direct Wine Seller’s
 4 Permit”
 5 Annotated Code of Maryland
 6 (2005 Replacement Volume and 2010 Supplement)

7 BY repealing and reenacting, with amendments,
 8 Article 2B – Alcoholic Beverages
 9 Section 2–101(b)(1)(i), 9–102(a), and 15–204(b)
 10 Annotated Code of Maryland
 11 (2005 Replacement Volume and 2010 Supplement)

12 BY adding to
 13 Article 2B – Alcoholic Beverages
 14 Section 2–101(y); and 7.5–101 through 7.5–113 to be under the new title “Title
 15 7.5. Direct Wine Shipper’s Permit”
 16 Annotated Code of Maryland
 17 (2005 Replacement Volume and 2010 Supplement)

18 BY repealing and reenacting, without amendments,
 19 Article – Tax – General
 20 Section 5–101(a)
 21 Annotated Code of Maryland
 22 (2010 Replacement Volume)

23 BY repealing and reenacting, with amendments,
 24 Article – Tax – General
 25 Section 5–101(f), 5–201(d), and 13–825(b)
 26 Annotated Code of Maryland
 27 (2010 Replacement Volume)

28 BY adding to
 29 Article – Tax – General
 30 Section 13–825(i)
 31 Annotated Code of Maryland
 32 (2010 Replacement Volume)

33 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
 34 MARYLAND, That Section(s) 7.5–101 through 7.5–110 and the title “Title 7.5. Direct
 35 Wine Seller’s Permit” of Article 2B – Alcoholic Beverages of the Annotated Code of
 36 Maryland be repealed.

37 SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland
 38 read as follows:

39 **Article 2B – Alcoholic Beverages**

1 2-101.

2 (b) (1) (i) The Office of the Comptroller shall collect a fee for the
3 issuance or renewal of the following permits:

4 1. \$50 for a solicitor's permit, an individual storage
5 permit, a nonresident winery permit, or a commercial nonbeverage permit;

6 2. \$75 for a public storage permit, a public
7 transportation permit, or an import and export permit;

8 3. \$200 for a public storage and transportation permit, a
9 nonresident dealer's permit, a resident dealer's permit, or a bulk transfer permit;

10 4. \$400 for a family beer and wine facility permit; and

11 5. ~~[\$10]~~ **\$100** for a direct wine ~~[seller's permit]~~
12 **SHIPPER'S PERMIT; AND**

13 6. **\$100 FOR A COMMON CARRIER PERMIT.**

14 **(Y) (1) THE OFFICE OF THE COMPTROLLER MAY ISSUE A COMMON**
15 **CARRIER PERMIT TO A PERSON WHO MEETS THE DEFINITION OF A "COMMON**
16 **CARRIER" UNDER § 7.5-101 OF THIS ARTICLE.**

17 **(2) THE HOLDER OF A COMMON CARRIER PERMIT MAY DELIVER**
18 **WINE FROM A LOCATION INSIDE OR OUTSIDE THE STATE TO A CONSUMER IN**
19 **THE STATE FOR THE CONSUMER'S PERSONAL USE.**

20 **TITLE 7.5. DIRECT WINE SHIPPER'S PERMIT.**

21 **7.5-101.**

22 **(A) IN THIS TITLE THE FOLLOWING WORDS HAVE THE MEANINGS**
23 **INDICATED.**

24 **(B) (1) "COMMON CARRIER" MEANS A BUSINESS ENTITY THAT HOLDS**
25 **ITSELF OUT AS BEING AVAILABLE TO THE PUBLIC TO TRANSPORT IN**
26 **INTERSTATE OR FOREIGN COMMERCE FOR COMPENSATION ANY CLASS OF**
27 **PASSENGER OR PROPERTY.**

28 **(2) "COMMON CARRIER" DOES NOT INCLUDE A BUSINESS ENTITY**
29 **THAT TRANSPORTS ONLY PROPERTY IT OWNS OR THAT IS CONSIGNED TO IT.**

1 (C) **“DIRECT WINE SHIPPER” MEANS THE HOLDER OF A DIRECT WINE**
2 **SHIPPER’S PERMIT ISSUED UNDER THIS TITLE.**

3 (D) **“WINE” INCLUDES BRANDY THAT IS DISTILLED FROM THE PULPY**
4 **RESIDUE OF THE WINE PRESS, INCLUDING THE SKINS, PIPS, AND STALKS OF**
5 **GRAPES.**

6 **7.5–102.**

7 **A PERSON SHALL BE ISSUED A PERMIT BY THE OFFICE OF THE**
8 **COMPTROLLER AS A DIRECT WINE SHIPPER BEFORE THE PERSON OR THE**
9 **PERSON’S AGENT MAY ENGAGE IN SHIPPING WINE DIRECTLY TO A CONSUMER IN**
10 **THE STATE.**

11 **7.5–103.**

12 **TO QUALIFY FOR A DIRECT WINE SHIPPER’S PERMIT, AN APPLICANT**
13 **SHALL BE:**

14 (1) **A PERSON LICENSED OUTSIDE THE STATE TO ENGAGE IN THE**
15 **MANUFACTURE OF WINE;**

16 (2) **AN AUTHORIZED BRAND OWNER OF WINE, A UNITED STATES**
17 **IMPORTER OF WINE, OR A DESIGNATED MARYLAND AGENT OF A BRAND OWNER**
18 **OR UNITED STATES IMPORTER;**

19 (3) **A HOLDER OF A CLASS 3 MANUFACTURER’S LICENSE OR A**
20 **CLASS 4 MANUFACTURER’S LICENSE ISSUED UNDER THIS ARTICLE; OR**

21 (4) **A PERSON LICENSED BY THE STATE OR OUTSIDE THE STATE**
22 **TO ENGAGE IN THE RETAIL SALE OF WINE FOR CONSUMPTION OFF THE**
23 **PREMISES.**

24 **7.5–104.**

25 **(A) AN APPLICANT FOR A DIRECT WINE SHIPPER’S PERMIT SHALL:**

26 (1) **SUBMIT TO THE OFFICE OF THE COMPTROLLER A**
27 **COMPLETED APPLICATION ON A FORM THAT THE OFFICE OF THE**
28 **COMPTROLLER PROVIDES;**

29 (2) **PROVIDE TO THE OFFICE OF THE COMPTROLLER:**

1 (I) A COPY OF THE APPLICANT'S CURRENT ALCOHOLIC
2 BEVERAGES LICENSE; OR

3 (II) PROOF OF THE APPLICANT'S STATUS AS:

4 1. AN AUTHORIZED BRAND OWNER OF WINE;

5 2. A UNITED STATES IMPORTER OF WINE; OR

6 3. A DESIGNATED MARYLAND AGENT OF A BRAND
7 OWNER; AND

8 (3) PAY A FEE OF \$100.

9 (B) THE OFFICE OF THE COMPTROLLER SHALL ISSUE A DIRECT WINE
10 SHIPPER'S PERMIT TO EACH APPLICANT WHO MEETS THE REQUIREMENTS OF
11 THIS TITLE FOR THE PERMIT.

12 7.5-105.

13 A DIRECT WINE SHIPPER'S PERMIT ENTITLES THE HOLDER TO SELL WINE
14 THROUGH A HOLDER OF A COMMON CARRIER PERMIT TO A CONSUMER BY
15 RECEIVING AND FILLING ORDERS THAT THE CONSUMER TRANSMITS BY
16 ELECTRONIC OR OTHER MEANS.

17 7.5-106.

18 THE TERM OF A DIRECT WINE SHIPPER'S PERMIT IS 1 YEAR AND BEGINS
19 ON THE DAY THE COMPTROLLER ISSUES THE PERMIT.

20 7.5-107.

21 (A) A DIRECT WINE SHIPPER SHALL:

22 (1) ENSURE THAT ALL CONTAINERS OF WINE SHIPPED DIRECTLY
23 TO A CONSUMER IN THE STATE ARE CONSPICUOUSLY LABELED WITH:

24 (I) THE NAME OF THE DIRECT WINE SHIPPER;

25 (II) THE NAME AND ADDRESS OF THE CONSUMER WHO IS
26 THE INTENDED RECIPIENT; AND

27 (III) THE WORDS "CONTAINS ALCOHOL: SIGNATURE OF
28 PERSON AT LEAST 21 YEARS OF AGE REQUIRED FOR DELIVERY";

1 **(2) REPORT QUARTERLY TO THE OFFICE OF THE COMPTROLLER**
2 **THE TOTAL AMOUNT OF WINE, BY TYPE, SHIPPED IN THE STATE, THE PRICE**
3 **CHARGED, AND THE NAME AND ADDRESS OF EACH PURCHASER;**

4 **(3) FILE A QUARTERLY TAX RETURN IN ACCORDANCE WITH §**
5 **5-201(D) OF THE TAX – GENERAL ARTICLE;**

6 **(4) PAY QUARTERLY TO THE OFFICE OF THE COMPTROLLER ALL**
7 **SALES TAXES AND EXCISE TAXES DUE ON SALES TO CONSUMERS IN THE STATE,**
8 **AND CALCULATE THE TAXES AS IF THE SALE WERE MADE AT THE DELIVERY**
9 **LOCATION;**

10 **(5) ALLOW THE OFFICE OF THE COMPTROLLER TO PERFORM AN**
11 **AUDIT OF THE DIRECT WINE SHIPPER’S RECORDS ON REQUEST; AND**

12 **(6) CONSENT TO THE JURISDICTION OF THE OFFICE OF THE**
13 **COMPTROLLER OR OTHER STATE UNIT AND THE STATE COURTS CONCERNING**
14 **ENFORCEMENT OF THIS SECTION AND ANY RELATED LAW.**

15 **(B) A DIRECT WINE SHIPPER MAY NOT:**

16 **(1) SHIP MORE THAN 24 9-LITER CASES OF WINE ANNUALLY TO**
17 **ANY ONE CONSUMER; OR**

18 **(2) CAUSE WINE TO BE DELIVERED ON SUNDAY TO AN ADDRESS**
19 **IN THE STATE.**

20 **7.5-108.**

21 **(A) A DIRECT WINE SHIPPER MAY ANNUALLY RENEW ITS PERMIT IF THE**
22 **DIRECT WINE SHIPPER:**

23 **(1) IS OTHERWISE ENTITLED TO HAVE A DIRECT WINE SHIPPER’S**
24 **PERMIT;**

25 **(2) PROVIDES TO THE OFFICE OF THE COMPTROLLER A COPY OF**
26 **ITS CURRENT PERMIT; AND**

27 **(3) PAYS TO THE OFFICE OF THE COMPTROLLER A RENEWAL FEE**
28 **OF \$50.**

29 **(B) THE OFFICE OF THE COMPTROLLER MAY DENY A RENEWAL**
30 **APPLICATION OF A DIRECT WINE SHIPPER WHO FAILS TO:**

1 (1) **FILE A TAX RETURN REQUIRED UNDER THIS TITLE;**

2 (2) **PAY A FEE OR TAX WHEN DUE; OR**

3 (3) **AFTER RECEIVING NOTICE, COMPLY WITH A PROVISION OF**
4 **THIS ARTICLE OR A REGULATION THAT THE OFFICE OF THE COMPTROLLER**
5 **ADOPTS.**

6 **7.5-109.**

7 (A) **TO RECEIVE A DIRECT SHIPMENT OF WINE, A CONSUMER IN THE**
8 **STATE SHALL BE AT LEAST 21 YEARS OLD.**

9 (B) **A PERSON WHO RECEIVES A SHIPMENT OF WINE SHALL USE THE**
10 **SHIPMENT FOR PERSONAL CONSUMPTION ONLY AND MAY NOT RESELL IT.**

11 **7.5-110.**

12 (A) **A PERSON SHALL BE ISSUED A COMMON CARRIER PERMIT BEFORE**
13 **THE PERSON MAY ENGAGE IN TRANSPORTING WINE FROM A DIRECT WINE**
14 **SHIPPER TO A CONSUMER.**

15 (B) **TO COMPLETE DELIVERY OF A SHIPMENT, THE COMMON CARRIER**
16 **SHALL REQUIRE FROM A CONSUMER AT THE ADDRESS LISTED ON THE SHIPPING**
17 **LABEL:**

18 (1) **THE SIGNATURE OF THE CONSUMER; AND**

19 (2) **PHOTOGRAPHIC IDENTIFICATION SHOWING THAT THE**
20 **CONSUMER IS AT LEAST 21 YEARS OLD.**

21 (C) **A COMMON CARRIER SHALL REFUSE DELIVERY WHEN THE**
22 **INTENDED RECEIVING CONSUMER APPEARS TO BE UNDER 21 YEARS OLD OR**
23 **REFUSES TO PRESENT VALID IDENTIFICATION.**

24 **7.5-111.**

25 **A COMMON CARRIER SHALL REPORT QUARTERLY TO THE OFFICE OF THE**
26 **COMPTROLLER:**

27 (A) **THE DATE OF EACH DELIVERY OF WINE IN THE STATE; AND**

1 **(B) THE NAME AND ADDRESS OF THE DIRECT WINE SHIPPER AND THE**
2 **RECEIVING CONSUMER OF EACH DELIVERY.**

3 **7.5-112.**

4 **THE OFFICE OF THE COMPTROLLER MAY ADOPT REGULATIONS TO CARRY**
5 **OUT THIS TITLE.**

6 **7.5-113.**

7 **A BUSINESS ENTITY WITHOUT A DIRECT WINE SHIPPER'S PERMIT MAY**
8 **NOT SHIP WINE DIRECTLY TO CONSUMERS IN THE STATE.**

9 9-102.

10 (a) No more than one license provided by this article, except by way of
11 renewal or as otherwise provided in this section, shall be issued in any county or
12 Baltimore City, to any person, or for the use of any partnership, corporation,
13 unincorporated association, or limited liability company, in Baltimore City or any
14 county of the State, and no more than one license shall be issued for the same
15 premises except as provided in §§ 2-201 through 2-208, 2-301, [and] 6-701, **AND**
16 **TITLE 7.5** of this article, and nothing herein shall be construed to apply to §
17 6-201(r)(4), (15), (17), and (18), § 7-101(b) and (c), § 8-202(g)(2)(ii) and (iii), § 8-217(e),
18 § 8-508, § 8-902, § 9-217(b-1), or § 12-202 of this article.

19 15-204.

20 (b) (1) Provided, that in Montgomery County no person, firm, or
21 corporation shall keep for sale any alcoholic beverage not purchased from the
22 Department of Liquor Control for Montgomery County, provided, however, that
23 nothing in this subsection shall apply to a holder of a Class F license or a holder of a
24 Class 1 beer, wine and liquor, Class 2 wine and liquor, Class 3 beer and wine, Class 4
25 beer, or Class 5 wine wholesaler's license, who may not sell or deliver any alcoholic
26 beverage in Montgomery County for resale except to a county liquor dispensary.

27 (2) Notwithstanding paragraph (1) of this subsection:

28 (i) **1.** A holder of a Class 6 limited wine wholesaler's license
29 or of a nonresident winery permit may sell or deliver wine directly to a county liquor
30 dispensary, restaurant, or other retail dealer in Montgomery County; and

31 [(ii)] **2.** A county liquor dispensary, restaurant, or other retail
32 dealer in Montgomery County may purchase wine directly from a holder of a Class 6
33 limited wine wholesaler's license or of a nonresident winery permit; **AND**

1 1. equal to twice the amount of its largest monthly
2 alcoholic beverage tax liability for wine and distilled spirits in the preceding calendar
3 year less \$5,000; or

4 2. if the information for the preceding calendar year is
5 not available or cannot be provided, equal to the amount that the Comptroller
6 requires; AND

7 **(3) EXCEPT AS PROVIDED IN SUBSECTION (I) OF THIS SECTION, A**
8 **HOLDER OF A DIRECT WINE SHIPPER'S PERMIT TO POST SECURITY FOR THE**
9 **ALCOHOLIC BEVERAGE TAX IN AN AMOUNT NOT LESS THAN \$250.**

10 **(I) A PERSON NEED NOT POST SECURITY UNDER SUBSECTION (B)(3) OF**
11 **THIS SECTION IF:**

12 **(1) THE PERSON IS A MANUFACTURER OR WHOLESALER THAT**
13 **HAS POSTED SECURITY UNDER SUBSECTION (B)(2) OF THIS SECTION; OR**

14 **(2) NOT LATER THAN THE THIRD ANNIVERSARY OF ISSUING A**
15 **PERMIT TO THE PERSON, THE COMPTROLLER:**

16 **(I) DETERMINES THAT THE PERSON HAS A SUBSTANTIAL**
17 **RECORD OF TAX AND REPORTING COMPLIANCE; AND**

18 **(II) WAIVES THE SECURITY REQUIREMENT.**

19 SECTION 3. AND BE IT FURTHER ENACTED, That if any provision of this
20 Act or the application thereof to any person or circumstance is held invalid for any
21 reason in a court of competent jurisdiction, the invalidity does not affect other
22 provisions or any other application of this Act which can be given effect without the
23 invalid provision or application, and for this purpose the provisions of this Act are
24 declared severable.

25 SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall take effect
26 July 1, 2011.