HB 830

Department of Legislative Services

Maryland General Assembly
2014 Session

FISCAL AND POLICY NOTE

House Bill 830 (Delegate Arora, *et al.*)
Economic Matters

Alcoholic Beverages - Shipment of Kosher Wine Sold at Retail

This bill establishes a limited kosher wine seller's permit. The fee for the issuance or renewal of the permit is $10.

The bill takes effect July 1, 2014.

Fiscal Summary

State Effect: Minimal increase in general fund revenues from permit fees and taxes on alcoholic beverages. The amount of the increase depends on the number of permits issued and the amount of kosher wine sold. Expenditures are not affected; the Comptroller can enforce the bill using existing budgeted resources.

Local Effect: None.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: "Kosher wine" is defined as wine that is certified as kosher from a recognized kosher certification agency.

The bill authorizes the Comptroller to issue a limited kosher wine seller's permit to an applicant who (1) is licensed outside the State to engage in the manufacture or retail sale of kosher wine or is the brand owner, U.S. importer, or designated State agent of the brand owner or U.S. importer for kosher wine; (2) 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, Firearms, and Explosives; and (3) within two years before the application, does not hold any alcoholic beverages license or permit issued by the State and is not owned, wholly or partly, by any other person that holds another alcoholic beverages license or permit issued by the State. A person must be issued such a permit before the person may engage in sending kosher wine to a consumer in the State.

A limited kosher wine seller's permit authorizes the permit holder to sell kosher wine by receiving and filling orders transmitted by a consumer through electronic or other means if the consumer (1) is at least age 21; (2) is a resident of the State; (3) does not hold an alcoholic beverages license in the State; and (4) intends to use the purchased wine for personal consumption only.

The term of the limited kosher wine seller's permit begins on July 1 and expires on June 30 of the following year, and the permit may be renewed for a one-year term in accordance with regulations adopted by the Comptroller. The fee for the issuance or renewal of a limited kosher wine seller's permit is $10.

A limited kosher wine seller must file an annual alcoholic beverages tax return in accordance with State law. A holder of a limited kosher wine seller's permit must also file a quarterly alcoholic beverages tax return with the Comptroller and, except under specified circumstances, must post security for the alcoholic beverages tax in an amount of at least $1,000. The Comptroller may disapprove the permit renewal application of a limited kosher wine seller that fails to (1) file the required annual tax return; (2) remit any applicable fee or tax when it is due; or (3) on receipt of notice, comply with any regulation adopted by the Comptroller.

A limited kosher wine seller's permit holder may not sell in the State a brand of kosher wine that is distributed in the State by a wholesaler other than a county liquor control board and wholesale dispensary. During a permit year, the permit holder may not sell in the State more than 900 liters of wine in total or more than 108 liters of wine to a single consumer.

Kosher wine that is delivered by a limited kosher wine seller to a consumer must be first (1) delivered to a holder of a wholesaler's license that the Comptroller designates and (2) delivered by the wholesaler to a retail dealer that the limited kosher wine seller designates. The Comptroller must record the receipt and disposition of all kosher wine sold by a limited kosher wine seller. The wholesaler must (1) keep a record of each invoice to provide the Comptroller with a documentary trail and (2) notify the consumer of any recall on account of health or welfare.

A limited kosher wine seller must list the contents of each delivery on the outside of the shipping package with an identifying number that the wholesaler must record. The wholesaler and retail dealer act solely as facilitators in the shipping process and do not have title to the kosher wine vested in them. A wholesaler that receives the wine delivery may not enter the wine into the wholesaler's inventory, but must deliver the wine on the wholesaler's next delivery date to the retail dealer.

On receiving notice from a retail dealer, a consumer must promptly take personal delivery of a kosher wine shipment from a limited kosher wine seller at the licensed premises of the retail dealer. The wholesaler and the retail dealer may impose on the consumer a service charge that the Comptroller sets by regulation.

A consumer may not receive more than 108 liters of kosher wine in the aggregate from one or more limited kosher wine sellers in a permit year.

Except for damage that the wholesaler or the retail dealer causes, the wholesaler and the retail dealer do not bear the risk of loss and are not liable for any product defect, product contamination, or other product or packaging damage.

The Comptroller may adopt regulations to implement the limited kosher wine seller's permit.

The bill specifies that the delivery of kosher wine from a limited kosher wine seller to a consumer that is in accordance with the bill is not subject to specified provisions of law prohibiting outside solicitations by retailers and retail deliveries.

The bill also authorizes a holder of a limited kosher wine seller's permit to send wine to a consumer in Montgomery County.

Current Law/Background: The three-tier system for the manufacture, distribution, and retail sale of all alcoholic beverages, including wine, that Maryland adopted when Prohibition ended in 1933 prohibited an out-of-state winery to bypass the wholesaler tier and ship its product directly to a Maryland consumer. Chapter 251 of 2002 established a direct wine seller's permit which allowed out-of-state wineries to sell wine to consumers in Maryland provided the wine was first delivered to a wholesaler licensed in the State, and then delivered by the wholesaler to a designated retail dealer for pickup by the consumer.

According to the Comptroller, only 13 direct wine seller's permits were issued over an eight-year period, with no more than 3 permits issued in any given year.

Chapter 205 of 2011 repealed the direct wine seller's permit and established a direct wine shipper's permit and a common carrier permit. Pursuant to Chapter 205, a direct wine shipper's permit holder is authorized to ship wine directly to a consumer in the State through a holder of a common carrier permit. In fiscal 2013, the Comptroller issued 748 direct wine seller's permits.

The limited kosher wine seller's permit bears more similarity to the direct wine seller's permit established by Chapter 251 of 2002 than to the direct wine shipper's permit established by Chapter 205 of 2011. Under the bill, an entity, such as a U.S. importer for kosher wine, may be issued a limited kosher wine seller's permit to sell kosher wine to a consumer. The kosher wine must be first delivered to a wholesaler licensed in the State, and then delivered by the wholesaler to a designated retail dealer for pickup by the consumer.

State Revenues: General fund revenues increase minimally from permit fees, the sales tax on alcoholic beverages, and the alcoholic beverages tax. The amount of the increase depends on the number of permits issued and the amount of kosher wine sold. Any potential increase in tax revenues will be mitigated to the extent the kosher wine purchased from a limited kosher wine seller's permit holder would have otherwise been purchased from a Maryland retailer.

The fee for the issuance or renewal of a limited kosher wine seller's permit is $10. The sales tax on alcoholic beverages is 9%, and the alcoholic beverages tax on wine is $0.40 per gallon.

Small Business Effect: Authorizing the sale of kosher wine to consumers from outside the State may result in a decline in sales for certain retailers and wholesalers of alcoholic beverages in the State. However, the bill authorizes both the wholesaler and the retail dealer to impose a service charge on the consumer that the Comptroller sets by regulation, which may at least partially mitigate the loss in sales.

Additional Information

Prior Introductions: HB 590 of 2013, a similar bill, received a hearing in the House Economic Matters Committee, but no further action was taken.

Cross File: SB 287 (Senator Zirkin) - Education, Health, and Environmental Affairs.

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

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