

HOUSE BILL 811

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A1

2002 Regular Session
2r1769
CF 2r1767

By: **Delegates McIntosh, Franchot, Klima, Brinkley, Montague, Clagett, and Hecht Hecht, Donoghue, Love, Kach, Goldwater, Krysiak, Pendergrass, and Pielke**

Introduced and read first time: February 7, 2002
Assigned to: Economic Matters

Committee Report: Favorable with amendments
House action: Adopted
Read second time: March 18, 2002

CHAPTER _____

1 AN ACT concerning

2 **Alcoholic Beverages - Direct Wine Seller's Permit**

3 FOR the purpose of establishing a direct wine seller's permit to be issued by the
4 Office of the Comptroller to certain persons who are domiciled outside of the
5 State; entitling a permit holder to sell wine to a certain personal consumer in
6 the State by receiving and filling orders that the personal consumer transmits
7 by electronic or other means; establishing certain requirements, term, and fee
8 for the permit; prohibiting a direct wine seller from selling certain wine and
9 certain amounts of wine; establishing a procedure by which wine that is
10 delivered to a personal consumer is shipped first to a certain wholesaler and a
11 certain retail dealer; requiring a personal consumer to take personal delivery of
12 wine at a certain licensed premises; requiring a personal consumer to pay
13 certain charges; prohibiting a personal consumer from receiving more than a
14 certain amount of wine from a direct wine seller in a year; specifying that the
15 wholesaler and retail dealer are not liable for certain damages; authorizing the
16 Office of the Comptroller to adopt certain regulations; requiring that a direct
17 wine seller file a certain tax return at a certain time; defining certain terms; and
18 generally relating to a direct wine seller's permit.

19 BY repealing and reenacting, with amendments,
20 Article 2B - Alcoholic Beverages
21 Section 2-101(b)(1)(i)
22 Annotated Code of Maryland
23 (2001 Replacement Volume)

24 BY adding to

1 Article 2B - Alcoholic Beverages
 2 Section 7.5-101 through 7.5-110 to be under the new title "Title 7.5. Direct Wine
 3 Seller's Permit"
 4 Annotated Code of Maryland
 5 (2001 Replacement Volume)

6 BY repealing and reenacting, without amendments,
 7 Article - Tax - General
 8 Section 5-101(a)
 9 Annotated Code of Maryland
 10 (1997 Replacement Volume and 2001 Supplement)

11 BY adding to
 12 Article - Tax - General
 13 Section 5-101(n) and 5-201(d)
 14 Annotated Code of Maryland
 15 (1997 Replacement Volume and 2001 Supplement)

16 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
 17 MARYLAND, That the Laws of Maryland read as follows:

18 **Article 2B - Alcoholic Beverages**

19 2-101.

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

22 1. \$50 for a solicitor's permit, an individual storage permit,
 23 or a commercial nonbeverage permit;

24 2. \$75 for a public storage permit, a public transportation
 25 permit, or an import and export permit;

26 3. \$100 for a public storage and transportation permit, a
 27 nonresident dealer permit, or a bulk transfer permit; [and]

28 4. \$400 for a family beer and wine facility permit; AND

29 5. \$10 FOR A DIRECT WINE SELLER'S PERMIT.

30 TITLE 7.5. DIRECT WINE SELLER'S PERMIT.

31 7.5-101.

32 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS
 33 INDICATED.

1 (B) "DIRECT WINE SELLER" MEANS THE HOLDER OF A DIRECT WINE SELLER'S
2 PERMIT ISSUED UNDER THIS SUBTITLE.

3 (C) "PERMIT YEAR" MEANS THE PERIOD THAT BEGINS ON NOVEMBER 1 AND
4 ENDS ON OCTOBER 31 OF THE FOLLOWING YEAR.

5 (D) "PERSONAL CONSUMER" MEANS AN INDIVIDUAL WHO:

6 (1) IS AT LEAST 21 YEARS OLD;

7 (2) IS A RESIDENT OF THE STATE;

8 (3) DOES NOT HOLD AN ALCOHOLIC BEVERAGES LICENSE ISSUED IN
9 THE STATE; AND

10 (4) INTENDS TO USE WINE PURCHASED UNDER THIS SUBTITLE FOR
11 PERSONAL CONSUMPTION ONLY AND NOT FOR RESALE OR OTHER COMMERCIAL
12 PURPOSE.

13 7.5-102.

14 THERE IS A DIRECT WINE SELLER'S PERMIT.

15 7.5-103.

16 THE OFFICE OF THE COMPTROLLER SHALL ISSUE A DIRECT WINE SELLER'S
17 PERMIT TO A PERSON OR ENTITY THAT:

18 (1) IS DOMICILED OUTSIDE OF THIS STATE;

19 (2) ~~(I)~~ IS ENGAGED IN THE MANUFACTURE OF WINE; OR

20 ~~(3)~~ (II) IS THE BRAND OWNER, UNITED STATES IMPORTER, OR
21 DESIGNATED MARYLAND AGENT OF THE BRAND OWNER OR UNITED STATES
22 IMPORTER FOR ALL WINE SOLD UNDER THIS SUBTITLE;

23 ~~(4)~~ (3) HOLDS AND ACTS WITHIN THE SCOPE OF ANY ALCOHOLIC
24 BEVERAGES LICENSE OR PERMIT REQUIRED:

25 (I) IN THE STATE WHERE THE APPLICANT IS DOMICILED; OR

26 (II) BY THE FEDERAL BUREAU OF ALCOHOL, TOBACCO AND
27 FIREARMS; AND

28 ~~(5)~~ (4) WITHIN 2 YEARS BEFORE THE APPLICATION:

29 (I) DOES NOT HOLD ANY ALCOHOLIC BEVERAGES LICENSE OR
30 PERMIT ISSUED BY THIS STATE; AND

1 (II) IS NOT OWNED, AS A WHOLE OR IN PART, BY ANY OTHER
2 PERSON OR ENTITY THAT HOLDS ANOTHER ALCOHOLIC BEVERAGES LICENSE OR
3 PERMIT ISSUED BY THIS STATE OR A POLITICAL SUBDIVISION OF THIS STATE.

4 7.5-104.

5 (A) A DIRECT WINE SELLER'S PERMIT ENTITLES A DIRECT WINE SELLER TO
6 SELL WINE TO A PERSONAL CONSUMER BY RECEIVING AND FILLING ORDERS THAT
7 THE PERSONAL CONSUMER TRANSMITS BY ELECTRONIC OR OTHER MEANS.

8 (B) (1) THE TERM OF A DIRECT WINE SELLER'S ~~LICENSE~~ PERMIT BEGINS ON
9 NOVEMBER 1 AND EXPIRES ON OCTOBER 31 OF THE FOLLOWING YEAR.

10 (2) A DIRECT WINE SELLER'S ~~LICENSE~~ PERMIT MAY BE RENEWED FOR A
11 1-YEAR TERM IN ACCORDANCE WITH REGULATIONS ADOPTED BY THE OFFICE OF
12 THE COMPTROLLER.

13 (C) THE ANNUAL DIRECT WINE SELLER'S PERMIT FEE IS \$10.

14 (D) (1) A DIRECT WINE SELLER SHALL FILE AN ANNUAL TAX RETURN IN
15 ACCORDANCE WITH § 5-201(D) OF THE TAX - GENERAL ARTICLE.

16 (2) THE OFFICE OF THE COMPTROLLER MAY DISAPPROVE A RENEWAL
17 APPLICATION OF A DIRECT WINE SELLER WHO FAILS TO:

18 (I) FILE THE TAX RETURN REQUIRED UNDER ITEM (1) OF THIS
19 SUBSECTION;

20 (II) REMIT ANY APPLICABLE FEE OR TAX WHEN DUE; OR

21 (III) AFTER RECEIVING NOTICE, COMPLY WITH ANY REGULATION
22 ADOPTED BY THE OFFICE OF THE COMPTROLLER.

23 7.5-105.

24 (A) A DIRECT WINE SELLER MAY NOT SELL IN THIS STATE A BRAND OF WINE
25 THAT:

26 (1) IS DISTRIBUTED IN THIS STATE BY A WHOLESALER LICENSED IN
27 THIS STATE; OR

28 (2) WAS DISTRIBUTED IN THIS STATE WITHIN 2 YEARS BEFORE THE
29 APPLICATION FOR THE DIRECT WINE SELLER'S PERMIT IS FILED.

30 (B) DURING A PERMIT YEAR, A DIRECT WINE SELLER MAY NOT SELL IN THIS
31 STATE:

32 (1) MORE THAN 900 LITERS OF WINE; OR

33 (2) MORE THAN 108 LITERS OF WINE TO A SINGLE PERSONAL
34 CONSUMER.

1 7.5-106.

2 (A) WINE THAT IS DELIVERED TO A PERSONAL CONSUMER SHALL BE:

3 (1) SHIPPED FREIGHT PREPAID TO A WHOLESALER LICENSED IN THIS
4 STATE WHO IS DESIGNATED BY THE ALCOHOL AND TOBACCO TAX DIVISION OF THE
5 OFFICE OF THE COMPTROLLER; AND

6 (2) DELIVERED BY THE WHOLESALER TO A RETAIL DEALER.

7 (B) THE ALCOHOL AND TOBACCO TAX DIVISION OF THE OFFICE OF THE
8 COMPTROLLER SHALL RECORD THE RECEIPT AND DISPOSITION OF ALL WINE SOLD
9 BY DIRECT WINE SELLERS.

10 (C) THE WHOLESALER SHALL KEEP A RECORD OF THE SHIPPING INVOICE TO:

11 (1) PROVIDE THE OFFICE OF THE COMPTROLLER WITH A
12 DOCUMENTARY TRAIL; AND

13 (2) NOTIFY THE PERSONAL CONSUMER OF ANY HEALTH OR WELFARE
14 RECALL.

15 7.5-107.

16 (A) THE DIRECT WINE SELLER SHALL LIST THE CONTENTS OF THE SHIPMENT
17 ON THE OUTSIDE OF THE SHIPPING PACKAGE WITH AN IDENTIFYING NUMBER THAT
18 THE WHOLESALER SHALL RECORD.

19 (B) THE WHOLESALER AND RETAIL DEALER ACT SOLELY AS FACILITATORS IN
20 THE SHIPPING PROCESS AND DO NOT HAVE TITLE TO THE WINE VESTED IN THEM.

21 (C) THE WHOLESALER WHO RECEIVES THE SHIPMENT MAY NOT ENTER THE
22 WINE INTO THE WHOLESALER'S INVENTORY BUT SHALL DELIVER THE WINE ON THE
23 WHOLESALER'S NEXT DELIVERY DATE TO THE RETAIL DEALER THAT THE DIRECT
24 WINE SELLER DESIGNATES.

25 7.5-108.

26 (A) A PERSONAL CONSUMER SHALL TAKE PERSONAL DELIVERY OF THE
27 SHIPMENT AT THE LICENSED PREMISES OF THE RETAIL DEALER PROMPTLY ON
28 RECEIVING NOTICE FROM THE RETAIL DEALER.

29 (B) A PERSONAL CONSUMER SHALL PAY:

30 ~~(1) ALL DIRECT SHIPMENT CHARGES; AND~~

31 ~~(2) SERVICE CHARGES THAT ARE NOT SUBJECT TO THE MARYLAND~~
32 SALES TAX TO:

1 ~~(H)~~ (1) THE RETAIL DEALER WHEN THE CONSUMER TAKES
 2 DELIVERY AT THE RATE OF \$5 PER BOTTLE BUT NOT MORE THAN \$10 PER SHIPMENT;
 3 AND

4 ~~(H)~~ (2) THE WHOLESALER AT THE RATE OF \$2 PER BOTTLE BUT
 5 NOT MORE THAN \$4 PER SHIPMENT.

6 (C) A PERSONAL CONSUMER MAY NOT RECEIVE MORE THAN 108 LITERS OF
 7 WINE IN TOTAL FROM ONE OR MORE DIRECT WINE SELLERS IN A PERMIT YEAR.

8 7.5-109.

9 THE WHOLESALER AND THE RETAIL DEALER DO NOT BEAR THE RISK OF LOSS
 10 AND ARE NOT LIABLE FOR ANY PRODUCT DEFECT, PRODUCT CONTAMINATION, OR
 11 OTHER PRODUCT OR PACKAGING DAMAGE EXCEPT FOR DAMAGE THAT THEY CAUSE.
 12 7.5-110.

13 THE OFFICE OF THE COMPTROLLER MAY ADOPT REGULATIONS TO CARRY OUT
 14 THIS SUBTITLE.

15 **Article - Tax - General**

16 5-101.

17 (a) In this title the following words have the meanings indicated.

18 (N) "DIRECT WINE SELLER" HAS THE MEANING STATED IN ARTICLE 2B, §
 19 7.5-101 OF THE CODE.

20 5-201.

21 (D) (1) A PERSON WHO IS A DIRECT WINE SELLER SHALL FILE WITH THE
 22 OFFICE OF THE COMPTROLLER AN ANNUAL TAX RETURN.

23 (2) THE ANNUAL TAX RETURN SHALL BE DUE NO LATER THAN OCTOBER
 24 15 OF EACH YEAR COVERING THE PREVIOUS 12 CALENDAR MONTHS ENDING
 25 SEPTEMBER 30.

26 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
 27 July 1, 2002.

