

SENATE BILL 494

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2002 Regular Session
2lr1767
CF 2lr1769

By: **Senators Harris, Hoffman, and Roesser**
Introduced and read first time: February 1, 2002
Assigned to: Education, Health, and Environmental Affairs

A BILL ENTITLED

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
25 Article 2B - Alcoholic Beverages
26 Section 7.5-101 through 7.5-110 to be under the new title "Title 7.5. Direct Wine
27 Seller's Permit"
28 Annotated Code of Maryland
29 (2001 Replacement Volume)

30 BY repealing and reenacting, without amendments,
31 Article - Tax - General

1 Section 5-101(a)
2 Annotated Code of Maryland
3 (1997 Replacement Volume and 2001 Supplement)

4 BY adding to
5 Article - Tax - General
6 Section 5-101(n) and 5-201(d)
7 Annotated Code of Maryland
8 (1997 Replacement Volume and 2001 Supplement)

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

11 **Article 2B - Alcoholic Beverages**

12 2-101.

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

15 1. \$50 for a solicitor's permit, an individual storage permit,
16 or a commercial nonbeverage permit;

17 2. \$75 for a public storage permit, a public transportation
18 permit, or an import and export permit;

19 3. \$100 for a public storage and transportation permit, a
20 nonresident dealer permit, or a bulk transfer permit; [and]

21 4. \$400 for a family beer and wine facility permit; AND

22 5. \$10 FOR A DIRECT WINE SELLER'S PERMIT.

23 TITLE 7.5. DIRECT WINE SELLER'S PERMIT.

24 7.5-101.

25 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS
26 INDICATED.

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

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

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

32 (1) IS AT LEAST 21 YEARS OLD;

1 (2) IS A RESIDENT OF THE STATE;

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

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

7 7.5-102.

8 THERE IS A DIRECT WINE SELLER'S PERMIT.

9 7.5-103.

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

12 (1) IS DOMICILED OUTSIDE OF THIS STATE;

13 (2) (I) IS ENGAGED IN THE MANUFACTURE OF WINE, OR

14 (II) IS THE BRAND OWNER, UNITED STATES IMPORTER, OR
15 DESIGNATED MARYLAND AGENT OF THE BRAND OWNER OR UNITED STATES
16 IMPORTER FOR ALL WINE SOLD UNDER THIS SUBTITLE;

17 (3) HOLDS AND ACTS WITHIN THE SCOPE OF ANY ALCOHOLIC
18 BEVERAGES LICENSE OR PERMIT REQUIRED:

19 (1) IN THE STATE WHERE THE APPLICANT IS DOMICILED; OR

20 (II) BY THE FEDERAL BUREAU OF ALCOHOL, TOBACCO AND
21 FIREARMS; AND

22 (4) WITHIN 2 YEARS BEFORE THE APPLICATION:

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

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

28 7.5-104.

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

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

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

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

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

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

9 (I) FILE THE TAX RETURN REQUIRED UNDER ITEM (1) OF THIS
10 SUBSECTION;

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

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

14 7.5-105.

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

17 (1) IS DISTRIBUTED IN THIS STATE BY A WHOLESALER LICENSED IN
18 THIS STATE; OR

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

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

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

24 (2) MORE THAN 108 LITERS OF WINE TO A SINGLE PERSONAL
25 CONSUMER.

26 7.5-106.

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

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

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

1 (B) THE ALCOHOL AND TOBACCO TAX DIVISION OF THE OFFICE OF THE
2 COMPTROLLER SHALL RECORD THE RECEIPT AND DISPOSITION OF ALL WINE SOLD
3 BY DIRECT WINE SELLERS.

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

5 (1) PROVIDE THE OFFICE OF THE COMPTROLLER WITH A
6 DOCUMENTARY TRAIL; AND

7 (2) NOTIFY THE PERSONAL CONSUMER OF ANY HEALTH OR WELFARE
8 RECALL.

9 7.5-107.

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

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

15 (C) THE WHOLESALER WHO RECEIVES THE SHIPMENT MAY NOT ENTER THE
16 WINE INTO THE WHOLESALER'S INVENTORY BUT SHALL DELIVER THE WINE ON THE
17 WHOLESALER'S NEXT DELIVERY DATE TO THE RETAIL DEALER THAT THE DIRECT
18 WINE SELLER DESIGNATES.

19 7.5-108.

20 (A) A PERSONAL CONSUMER SHALL TAKE PERSONAL DELIVERY OF THE
21 SHIPMENT AT THE LICENSED PREMISES OF THE RETAIL DEALER PROMPTLY ON
22 RECEIVING NOTICE FROM THE RETAIL DEALER.

23 (B) A PERSONAL CONSUMER SHALL PAY SERVICE CHARGES THAT ARE NOT
24 SUBJECT TO THE MARYLAND SALES TAX TO:

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

27 (2) THE WHOLESALER AT THE RATE OF \$2 PER BOTTLE BUT NOT MORE
28 THAN \$4 PER SHIPMENT.

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

31 7.5-109.

32 THE WHOLESALER AND THE RETAIL DEALER DO NOT BEAR THE RISK OF LOSS
33 AND ARE NOT LIABLE FOR ANY PRODUCT DEFECT, PRODUCT CONTAMINATION, OR
34 OTHER PRODUCT OR PACKAGING DAMAGE EXCEPT FOR DAMAGE THAT THEY CAUSE.

1 7.5-110.

2 THE OFFICE OF THE COMPTROLLER MAY ADOPT REGULATIONS TO CARRY OUT
3 THIS SUBTITLE.

4 **Article - Tax - General**

5 5-101.

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

7 (N) "DIRECT WINE SELLER" HAS THE MEANING STATED IN ARTICLE 2B, §
8 7.5-101 OF THE CODE.

9 5-201.

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

12 (2) THE ANNUAL TAX RETURN SHALL BE DUE NO LATER THAN OCTOBER
13 15 OF EACH YEAR COVERING THE PREVIOUS 12 CALENDAR MONTHS ENDING
14 SEPTEMBER 30.

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