SB 494

Department of Legislative Services
Maryland General Assembly
2002 Session

FISCAL NOTE

Senate Bill 494 (Senator Harris, *et al*.)
Education, Health, and Environmental Affairs Economic Matters

Alcoholic Beverages - Direct Wine Seller's Permit

This bill establishes a State direct wine seller's permit to be issued by the Office of the Comptroller with an annual fee of $10.

The bill is effective July 1, 2002.

Fiscal Summary

State Effect: General fund revenues would increase by $10 for each direct wine seller's permit issued. It is expected that revenues generated through permit fees would be offset by decreases in sales taxes collected from local alcoholic beverage retailers. General fund expenditures would increase by $15,800 in FY 2003 and by $1,800 in FY 2004 and each year thereafter for associated costs of issuing a new class of permit.

(in dollars)	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
GF Revenue	-	-	-	-	-
GF Expenditure	15,800	1,800	1,800	1,800	1,800
Net Effect	($15,800)	($1,800)	($1,800)	($1,800)	($1,800)

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

Local Effect: None. The State Comptroller would be responsible for accepting applications, issuing permits, and establishing and enforcing regulations.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: A direct wine seller's permit may be issued to a person or entity that: (1) is domiciled outside of Maryland; (2) is engaged in the manufacture of wine or is the brand owner, United States importer, or designated Maryland agent for wine sold under this subtitle; (3) holds an alcoholic beverages license in the state where the applicant is domiciled or by the Federal Bureau of Alcohol, Tobacco, and Firearms; and (4) within two years before the application does not hold any Maryland alcoholic beverages license or permit, or is not owned in whole or in part by any other Maryland alcoholic beverages licensee or permit holder.

The bill establishes that: (1) the term of a direct wine seller's permit begins on November 1 and expires on October 31 of the following year; and (2) during a permit year may not sell in Maryland more than 900 liters of wine or more than 108 liters of wine to a single personal consumer. The bill establishes that a direct wine seller: (1) must file an annual tax return; (2) may not sell in Maryland any brand of wine that is distributed by any Maryland licensed wholesaler or was distributed in Maryland within two years before the application for the direct wine seller's permit is filed; and (3) ship wine freight prepaid to a Maryland licensed wholesaler. The direct wine seller's permit entitles a direct wine seller to sell wine to a personal consumer by receiving and filling orders that the consumer transmits by electronic or other means.

The bill requires that a consumer: (1) is at least 21 years of age; (2) is a Maryland resident; (3) may not hold an alcoholic beverages license issued in Maryland; and (4) may only use the wine purchased from a direct wine seller's permit holder for personal consumption and not for resale or other commercial purpose.

The bill also authorizes: (1) wholesalers to charge consumers a service fee of not more than $2 per bottle but not more than $4 per shipment; and (2) licensed alcoholic beverages retailers to charge the consumer a service fee of $5 per bottle but not more than $10 per shipment. The Office of the Comptroller is authorized to adopt regulations to carry out the issuance of direct wine seller's permits.

Current Law: Alcoholic beverages may not be shipped to non-licensed individuals. Wholesalers ship alcoholic beverages to licensed retailers, who sell to consumers and pay the appropriate taxes to the State.

Chapter 472 of 1995 prohibits retail delivery of alcoholic beverages statewide. The statewide prohibition applies to a purchaser of alcoholic beverages unless: (1) the delivery is made from the retail licensed premises authorized to sell alcoholic beverages by the local licensing authority in the jurisdiction where the delivery is made; and (2) the retail license holder obtains a letter of authorization from the local licensing authority to make deliveries and complies with local licensing authority regulations pertaining to such deliveries.

Background: Chapter 616 of 1999 made the act of delivering alcoholic beverages to a non-licensed recipient in Maryland a felony. The law was enacted in part to combat the proliferation of Internet alcoholic beverages sites that allow visitors to pay on-line to have alcoholic beverages delivered to their homes. There were concerns about minors acquiring alcoholic beverages through Internet distributors and also about the tax revenue that is lost when a manufacturer or wholesaler delivers straight to an individual. Before Chapter 616 of 1999, the act was only a misdemeanor and was rarely enforced. At least six other states have made the shipment of wine or other alcoholic beverages a felony.

According to the National Conference of State Legislatures (NCSL) there are more than 3,000 small U.S. wineries and microbreweries that produce limited quantities of alcoholic beverages, most being too limited to attract necessary wholesaler acceptance. Therefore, these producers seek expanded marketing and shipments directly to consumers, because they feel locked out of the national wholesale distribution system. At the same time, specialty wine publications and the Internet have made consumers more knowledgeable about wines and have increased demand for direct shipments.

Maryland wineries are affected by the ban on residential deliveries because other states will not allow Maryland wine products to be shipped there if individual Marylanders cannot receive alcoholic beverages produced in other states. According to the Wine Institute, 13 states have “reciprocal” shipping laws in place, which means that wineries can ship to consumers who live in those states as long as the wineries’ home state also allows out-of-state companies to ship to its residents. At least 15 states allow importation of limited quantities of wine for personal use, though the definition of “limited quantity” varies among the states.

The American Vinters Association has recommended the use of Internet services that allow shippers to verify the age of a purchaser by using computer databases that compare a credit card number to a portion of a Social Security number provided by the consumer. The association contends that this type of system provides assurance that the person ordering the wine is of legal drinking age and resides at the address to which the product is being shipped.

State Revenues: The Comptroller would collect $10 annually for each direct wine seller’s permit issued. It is assumed, however, that if citizens obtain out-of-state wines from direct wine seller’s permit holders wholesale, and retail distributors in Maryland will sell less wine. Therefore, most of the revenue collected from direct wine seller’s permit holders would probably be offset by less sales taxes being paid by retail alcoholic beverages licensees. The $10 permit fee is equivalent to the amount of sales taxes that would be collected from $200 of alcoholic beverage sales in Maryland. However, any such impact cannot be reliably estimated at this time. The number of permits that would be issued is unknown. Excise taxes lost due to fewer wine sales at retailers in Maryland would be offset by excise taxes paid by out-of-state permit holders.

State Expenditures: The bill creates a new type of permit; accordingly, the Comptroller would have to make modifications to license and permit computer programs. General fund expenditures are estimated to be $15,000 in fiscal 2003 for program modifications and $1,000 in fiscal 2004 and each year thereafter for associated program maintenance costs. Additionally, the Comptroller would have to create, print, and distribute new application, permit, tax, and audit forms and incur administrative costs for distributing any regulations or notices pertaining to the direct wine seller's permit and are estimated to be $800 annually.

Small Business Effect: Small retail alcoholic beverage licensees in Maryland may be impacted if Maryland citizens purchase out-of-state wines from direct wine seller's permit holders. Wholesale licensees and retail licensees could lose sales but could offset lost sales with handling fees. Small business wineries in Maryland would benefit from the ability to ship their products directly to residents of other states that allow home delivery of alcoholic beverages due to reciprocity agreements. Potentially, wineries could develop Internet web sites through which Marylanders and residents of other states could order their products.

Additional Information

Prior Introductions: Similar legislation was introduced in 2001 as a cross file (SB 272 and HB 1020) that would have created a personal consumption import license that could be purchased by consumers to allow direct shipment of wines from wineries not in the wholesale system. Both bills failed in their respective committees.

Cross File: HB 811 (Delegate McIntosh, *et al.*) – Economic Matters.

Information Source(s): Comptroller's Office (Alcohol and Tobacco Tax Division), Department of Legislative Services

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