

# HOUSE BILL 1079

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HB 1262/09 – ECM

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By: **Delegates Hucker, Anderson, Arora, Beidle, Bobo, Busch, Carr, Clagett, Cullison, Dumais, Elliott, Feldman, Frick, Frush, George, Gilchrist, Gutierrez, Haddaway–Riccio, Holmes, Hubbard, Kach, Kaiser, A. Kelly, Kipke, Kramer, Krebs, Lafferty, Lee, Luedtke, McIntosh, A. Miller, Murphy, Myers, Pena–Melnik, Pendergrass, Proctor, Reznik, S. Robinson, Rosenberg, Serafini, Simmons, Smigiel, Tarrant, F. Turner, V. Turner, and Zucker**

Introduced and read first time: February 11, 2011

Assigned to: Economic Matters

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## 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 and establishing a new direct wine shipper’s license to be issued by the Office of  
5 the Comptroller to certain persons in or outside the State; requiring a person to  
6 be licensed before the person may engage in shipping wine directly to a resident  
7 in the State; requiring a direct wine shipper to perform certain actions;  
8 prohibiting a direct wine shipper from performing certain actions; providing for  
9 the qualifications and requirements of license applicants; providing for the fee  
10 and renewal of a license; specifying certain requirements and conditions to  
11 complete delivery of and to receive a direct shipment of wine; requiring a  
12 common carrier to take certain actions and prohibiting a common carrier from  
13 taking certain actions; authorizing the Office of the Comptroller to adopt certain  
14 regulations; prohibiting a person without a license from shipping wine directly  
15 to consumers in the State; providing a certain exception to a certain licensing  
16 provision; providing a certain penalty; defining certain terms; altering certain  
17 definitions; requiring the Comptroller to submit a certain report to the General  
18 Assembly on or before a certain date; requiring that the report include certain  
19 information; making the provisions of this Act severable; and generally relating  
20 to the establishment of a direct wine shipper’s license.

21 BY repealing

22 Article 2B – Alcoholic Beverages

23 Section 7.5–101 through 7.5–110 and the title “Title 7.5. Direct Wine Seller’s  
24 Permit”

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Annotated Code of Maryland  
2 (2005 Replacement Volume and 2010 Supplement)

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

8 BY adding to  
9 Article 2B – Alcoholic Beverages  
10 Section 2–101(y); and 7.5–101 through 7.5–114 to be under the new title “Title  
11 7.5. Direct Wine Shipper’s Permit”  
12 Annotated Code of Maryland  
13 (2005 Replacement Volume and 2010 Supplement)

14 BY repealing and reenacting, without amendments,  
15 Article – Tax – General  
16 Section 5–101(a)  
17 Annotated Code of Maryland  
18 (2010 Replacement Volume)

19 BY repealing and reenacting, with amendments,  
20 Article – Tax – General  
21 Section 5–101(f), 5–201(d), and 13–825(b)  
22 Annotated Code of Maryland  
23 (2010 Replacement Volume)

24 BY adding to  
25 Article – Tax – General  
26 Section 13–825(i)  
27 Annotated Code of Maryland  
28 (2010 Replacement Volume)

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

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

35 **Article 2B – Alcoholic Beverages**

36 2–101.

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

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

3                   2.     \$75 for a public storage permit, a public  
4 transportation permit, or an import and export permit;

5                   3.     \$200 for a public storage and transportation permit, a  
6 nonresident dealer's permit, a resident dealer's permit, or a bulk transfer permit;

7                   4.     \$400 for a family beer and wine facility permit; and

8                   5.     ~~[\$10]~~ **\$100** for a direct wine ~~[seller's permit]~~  
9 **SHIPPER'S PERMIT; AND**

10                  6.     **\$100 FOR A COMMON CARRIER PERMIT.**

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

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

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

18           **7.5-101.**

19           **(A) IN THIS TITLE THE FOLLOWING WORDS HAVE THE MEANINGS**  
20 **INDICATED.**

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

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

27           **(C) "DIRECT WINE SHIPPER" MEANS THE HOLDER OF A DIRECT WINE**  
28 **SHIPPER'S PERMIT ISSUED UNDER THIS TITLE.**

(D) "WINE" INCLUDES BRANDY THAT IS DISTILLED FROM THE PULPY RESIDUE OF THE WINE PRESS, INCLUDING THE SKINS, PIPS, AND STALKS OF GRAPES.

**7.5-102.**

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

**7.5-103.**

TO QUALIFY FOR A DIRECT WINE SHIPPER'S PERMIT, AN APPLICANT SHALL BE:

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

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

(3) A HOLDER OF A CLASS 3 MANUFACTURER'S LICENSE OR A CLASS 4 MANUFACTURER'S LICENSE ISSUED UNDER THIS ARTICLE.

**7.5-104.**

(A) AN APPLICANT FOR A DIRECT WINE SHIPPER'S PERMIT SHALL:

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

(2) PROVIDE TO THE OFFICE OF THE COMPTROLLER:

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

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

1. AN AUTHORIZED BRAND OWNER OF WINE;

2. A UNITED STATES IMPORTER OF WINE; OR

1                                   **3.     A DESIGNATED MARYLAND AGENT OF A BRAND**  
2 **OWNER; AND**

3                                   **(3)     PAY A FEE OF \$300.**

4                   **(B)     THE OFFICE OF THE COMPTROLLER SHALL ISSUE A DIRECT WINE**  
5 **SHIPPER'S PERMIT TO EACH APPLICANT WHO MEETS THE REQUIREMENTS OF**  
6 **THIS TITLE FOR THE PERMIT.**

7     **7.5-105.**

8                   **A DIRECT WINE SHIPPER'S PERMIT ENTITLES THE HOLDER TO SELL WINE**  
9 **THROUGH A HOLDER OF A COMMON CARRIER PERMIT TO A CONSUMER BY**  
10 **RECEIVING AND FILLING ORDERS THAT THE CONSUMER TRANSMITS BY**  
11 **ELECTRONIC OR OTHER MEANS.**

12     **7.5-106.**

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

15     **7.5-107.**

16                   **(A)     A DIRECT WINE SHIPPER SHALL:**

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

19   **(I)     THE NAME OF THE DIRECT WINE SHIPPER;**

20   **(II)    THE NAME AND ADDRESS OF THE CONSUMER WHO IS**  
21 **THE INTENDED RECIPIENT;**

22   **(III)   THE WORDS "CONTAINS ALCOHOL: SIGNATURE OF**  
23 **PERSON AT LEAST 21 YEARS OF AGE REQUIRED FOR DELIVERY"; AND**

24   **(IV)   THE STATEMENT "AN AGENT OF A COMMON CARRIER**  
25 **SHALL DELIVER THIS CONTAINER ONLY TO A PERSON WHO IS AT LEAST 21**  
26 **YEARS OLD. AN AGENT WHO VIOLATES THIS PROVISION IS GUILTY OF A**  
27 **MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT**  
28 **EXCEEDING 2 YEARS OR A FINE NOT EXCEEDING \$3,000 OR BOTH.";**

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, ADDRESS, AND BIRTH DATE 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 18 9-LITER CASES OF WINE ANNUALLY TO  
17 ANY ONE CONSUMER;

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

20                   (3)    SHIP LESS THAN ONE 9-LITER CASE OF WINE IN A SINGLE  
21 DELIVERY TO AN ADDRESS.

22   7.5-108.

23           (A)    A DIRECT WINE SHIPPER MAY ANNUALLY RENEW ITS PERMIT IF THE  
24 DIRECT WINE SHIPPER:

25                   (1)    IS OTHERWISE ENTITLED TO HAVE A DIRECT WINE SHIPPER'S  
26 PERMIT;

27                   (2)    PROVIDES TO THE OFFICE OF THE COMPTROLLER A COPY OF  
28 ITS CURRENT PERMIT; AND

29                   (3)    PAYS TO THE OFFICE OF THE COMPTROLLER A RENEWAL FEE  
30 OF \$200.

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

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

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

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

**7.5-109.**

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

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

**7.5-110.**

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

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

(1) THE SIGNATURE OF THE CONSUMER; AND

(2) PHOTOGRAPHIC IDENTIFICATION THAT:

(I) SHOWS THAT THE CONSUMER IS AT LEAST 21 YEARS OLD; AND

(II) IS A CURRENT AND VALID:

1. UNITED STATES PASSPORT OR UNITED STATES PASSPORT CARD;

2. PERMANENT RESIDENT CARD OR ALIEN REGISTRATION RECEIPT CARD (FORM 1551);

1                               **3.     EMPLOYMENT AUTHORIZATION DOCUMENT THAT**  
2 **CONTAINS A PHOTOGRAPH (FORM I-766); OR**

3                               **4.     DRIVER'S LICENSE OR IDENTIFICATION CARD**  
4 **THAT CONTAINS A PHOTOGRAPH AND IS A STATE, POSSESSION, OR**  
5 **COMMONWEALTH OF THE UNITED STATES OR THE DISTRICT OF COLUMBIA.**

6               **(C)    A COMMON CARRIER:**

7                       **(1)    SHALL REFUSE DELIVERY WHEN THE INTENDED RECEIVING**  
8 **CONSUMER APPEARS TO BE UNDER 21 YEARS OLD OR REFUSES TO PRESENT**  
9 **VALID IDENTIFICATION;**

10                      **(2)    SHALL REQUIRE THAT EACH SUPERVISOR OF ITS AGENTS OR**  
11 **EMPLOYEES WHO MAKE DELIVERIES TO CONSUMERS UNDER THIS TITLE**  
12 **COMPLETE TRAINING IN AN ALCOHOL AWARENESS PROGRAM UNDER TITLE 13**  
13 **OF THIS ARTICLE OR A COMPARABLE PROGRAM THAT THE STATE**  
14 **COMPTROLLER APPROVES;**

15                      **(3)    MAY NOT DELIVER A SHIPMENT IN THE STATE TO A POST**  
16 **OFFICE BOX OR AN ELEMENTARY SCHOOL, SECONDARY SCHOOL, COLLEGE, OR**  
17 **UNIVERSITY; AND**

18                      **(4)    MAY NOT ACCEPT CASH OR A MONEY ORDER AS PAYMENT.**

19 **7.5-111.**

20               **A COMMON CARRIER SHALL REPORT QUARTERLY TO THE OFFICE OF THE**  
21 **COMPTROLLER:**

22                      **(1)    THE DATE OF EACH DELIVERY OF WINE IN THE STATE; AND**

23                      **(2)    THE NAME AND ADDRESS OF THE DIRECT WINE SHIPPER AND**  
24 **THE NAME, ADDRESS, AND BIRTH DATE OF THE RECEIVING CONSUMER OF EACH**  
25 **DELIVERY.**

26 **7.5-112.**

27               **THE OFFICE OF THE COMPTROLLER MAY ADOPT REGULATIONS TO CARRY**  
28 **OUT THIS TITLE.**

29 **7.5-113.**



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

3       **7.5-114.**

4       **A PERSON WHO VIOLATES THIS TITLE IS GUILTY OF A MISDEMEANOR AND**  
5       **ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 2 YEARS OR A**  
6       **FINE NOT EXCEEDING \$3,000 OR BOTH.**

7       **9-102.**

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

17       **15-204.**

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

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

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

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

32               **(II) A HOLDER OF A DIRECT WINE SHIPPER'S PERMIT MAY**  
33       **SHIP WINE DIRECTLY TO A CONSUMER IN MONTGOMERY COUNTY.**

1 5–101.

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

3 (f) “Direct wine [seller] **SHIPPER**” has the meaning stated in Article 2B, §  
4 7.5–101 of the Code.

5 5–201.

6 (d) [(1)] A person who is a direct wine [seller] **SHIPPER** shall file with the  
7 Office of the Comptroller [an annual] **A QUARTERLY** tax return.

8 [(2)] The annual tax return shall be due no later than October 15 of  
9 each year covering the previous 12 calendar months ending September 30.]

10 13–825.

11 (b) The Comptroller shall require:

12 (1) a manufacturer, wholesaler, or nonresident winery permit holder  
13 who sells or delivers beer or wine to retailers in the State to post security for the  
14 alcoholic beverage tax:

15 (i) in an amount not less than:

16 1. \$1,000 for beer; and

17 2. \$1,000 for wine; and

18 (ii) if the alcoholic beverage tax on beer and wine paid in any 1  
19 month exceeds \$1,000, in an additional amount at least equal to the excess; [and]

20 (2) a manufacturer or wholesaler who sells or delivers any distilled  
21 spirits or any wine and distilled spirits in the State to post a security for the alcoholic  
22 beverage tax:

23 (i) in an amount not less than \$5,000; and

24 (ii) in an additional amount:

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

28 2. if the information for the preceding calendar year is  
29 not available or cannot be provided, equal to the amount that the Comptroller  
30 requires; **AND**

1           **(3) EXCEPT AS PROVIDED IN SUBSECTION (I) OF THIS SECTION, A**  
2 **HOLDER OF A DIRECT WINE SHIPPER'S PERMIT TO POST SECURITY FOR THE**  
3 **ALCOHOLIC BEVERAGE TAX IN AN AMOUNT NOT LESS THAN \$3,000.**

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

6           **(1) THE PERSON IS A MANUFACTURER OR WHOLESALE THAT**  
7 **HAS POSTED SECURITY UNDER SUBSECTION (B)(2) OF THIS SECTION; OR**

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

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

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

13           SECTION 3. AND BE IT FURTHER ENACTED, That:

14           (a) On or before December 31, 2012, the Comptroller shall submit a report to  
15 the General Assembly, in accordance with § 2-1246 of the State Government Article,  
16 on the effects that the policy of allowing the direct shipment of wine, as enacted by  
17 this Act, has had in the State.

18           (b) The report shall include:

19           (1) an evaluation of the fiscal and tax impacts of direct wine shipment;

20           (2) a study of whether access by underage drinkers to wine has been  
21 affected;

22           (3) the resulting benefits and costs to consumers; and

23           (4) the impact that direct wine shipment has had on in-state wineries,  
24 alcoholic beverages licensees, and other local businesses.

25           SECTION 4. AND BE IT FURTHER ENACTED, That if any provision of this  
26 Act or the application thereof to any person or circumstance is held invalid for any  
27 reason in a court of competent jurisdiction, the invalidity does not affect other  
28 provisions or any other application of this Act which can be given effect without the  
29 invalid provision or application, and for this purpose the provisions of this Act are  
30 declared severable.

1           SECTION 5. AND BE IT FURTHER ENACTED, That this Act shall take effect  
2   July 1, 2011.