HB 1079

Department of Legislative Services

Maryland General Assembly
2011 Session

FISCAL AND POLICY NOTE

House Bill 1079 (Delegate Hucker, *et al.*)
Economic Matters

Alcoholic Beverages - Direct Wine Shipper's Permit

This bill repeals the direct wine seller's permit and establishes a direct wine shipper's permit and a common carrier permit to be issued by the Comptroller's Office. A person permitted as a direct wine shipper may engage in shipping wine directly to a resident in the State. The bill specifies the amounts of the initial permit fees for the direct wine shipper permit and the common carrier permit. The Comptroller must submit a specified report to the General Assembly by December 31, 2012.

If any provision of the bill or the application to any person or circumstance is held invalid for any reason in a court of competent jurisdiction, the invalidity does not affect other provisions or any other application of the bill which can be given effect without the invalid provision or application, and for this purpose the provisions of the bill are declared severable.

The bill takes effect July 1, 2011.

Fiscal Summary

State Effect: General fund revenues increase by $90,200 in FY 2012. Sales and excise tax revenues may increase by a significant amount beginning in FY 2012 depending on the increase in new wine sales. General fund expenditures increase by $32,900 in FY 2012. Future years reflect annualization and inflation.

(in dollars)	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016
GF Revenue	$90,200	$132,200	$164,400	$184,100	$192,200
GF Expenditure	$32,900	$36,900	$38,500	$40,100	$41,900
Net Effect	$57,300	$95,300	$125,900	$144,000	$150,300

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

Local Effect: The majority of counties indicated there would be no effect. However, Montgomery County indicated a significant loss of revenue based on the assumption that consumers will purchase wine from direct wine shippers instead of from the county dispensary.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: The bill requires that a person be permitted as a direct wine shipper by the Comptroller's Office before the person may engage in shipping wine directly to a personal consumer in the State. For the purposes of the bill, wine includes brandy that is distilled from the pulpy residue of the wine press, including the skins, pips, and stalks of grapes. A common carrier is a business entity that holds itself out as being available to the public to transport in interstate or foreign commerce for compensation any class of passenger or property.

To qualify for a direct wine shipper's permit the applicant must be (1) a person licensed outside of the State to engage in the manufacture of wine; (2) an authorized brand owner of wine, a U.S. importer of wine, or a designated Maryland agent of a brand owner or U.S. importer; or (3) a holder of a State issued Class 3 manufacturer's (winery) license or a Class 4 manufacturer's (limited winery) license.

The direct wine shipper must ensure that all containers of wine shipped directly to a consumer in the State are conspicuously labeled with: (1) the name of the direct wine shipper; (2) the name and address of the consumer who is the intended recipient; (3) the words "Contains Alcohol; Signature of Person at Least 21 Years of Age Required for Delivery" and the statement "An agent of a common carrier shall deliver this container only to a person who is at least 21 years old." An agent who violates this provision is guilty of a misdemeanor and on conviction is subject to imprisonment not exceeding two years or a fine not exceeding $3,000 or both. A direct wine shipper must also (1) report quarterly to the Comptroller's Office the total amount of wine, by type, shipped in the State, the price charged, and the name, address, and birth date of each purchaser; (2) file a quarterly alcoholic beverage tax return; (3) pay quarterly to the Comptroller's Office all sales and excise taxes due on sales to personal consumers in the State, calculating the amount of the taxes as if the sale was made at the delivery location; (4) allow the Comptroller's Office to audit the direct wine shipper's records on request; and (5) consent to the jurisdiction of the Comptroller's Office or other State unit and the State courts concerning enforcement. A direct wine shipper is prohibited from shipping more than 18 9-liter cases of wine annually to any one individual or delivering wine on Sunday to an address in the State.

The Comptroller's Office may adopt regulations for the issuance and enforcement of the provisions of this permit.

To receive a direct shipment of wine, a personal consumer in the State must be at least 21 years old. In addition, the bill stipulates that a wine shipment may be ordered or purchased through a computer network. A person who receives a wine shipment can only use the wine for personal consumption and not resell it.

A shipment must be made by a common carrier and be accompanied by a shipping label that clearly indicates the name of the direct shipper and the name and address of the recipient. To complete delivery of a shipment, the common carrier must require the signature of the individual and photo identification demonstrating that the individual is at least 21 years old. A common carrier must be licensed in the State and pay a $100 permit fee.

The bill specifies that a holder of a direct wine shipper's permit may ship wine directly to a personal consumer in Montgomery County.

Under specified circumstances the holder of a direct wine shipper's permit must post security for the alcoholic beverage tax in an amount of at least $3,000.

A person who violates the laws associated with a direct wine shipper's permit would be guilty of a misdemeanor and subject to imprisonment of up to two years, a fine of up to $3,000, or both.

The Comptroller's Office must submit a report to the General Assembly by December 31, 2012 on the effects that the policy of allowing the direct shipment of wine has had on the State. The report must include: (1) an evaluation of the fiscal and tax impacts of direct wine shipment; (2) a study of whether access by underage drinkers to wine has been affected; (3) resulting benefits and costs to consumers; and (4) the impact that direct wine shipment has had on in-State wineries, alcoholic beverages licensees, and other local businesses.

Current Law: The Federal Liquor Law Repeal and Enforcement Act, also referred to as the Webb-Kenyon Act, prohibits the shipment of alcoholic beverages from one state into another state in violation of any law of the receiving state. Maryland law provides for a three-tier alcoholic beverage distribution system and prohibits wineries located inside or outside of the State from delivering wine directly to a resident of the State.

The Comptroller's Office is authorized to issue a direct wine seller's permit, for an annual fee of $10. A direct wine seller's permit can be issued to a person or entity that

(1) is domiciled outside of the State; (2) is engaged in the manufacture of wine, or is the brand owner, U.S. importer, or designated Maryland agent of the brand owner or U.S. importer of wine sold under this authority; (3) 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, and Firearms; and (4) does not hold any alcoholic beverages license or permit issued by the State within two years before the application, and is not owned, as a whole or in part, by another person or entity that holds another alcoholic beverages license or permit issued by the State or one of its political subdivisions within two years before the application.

A direct wine seller's permit authorizes a direct wine seller to sell wine to a personal consumer by receiving and filling orders that the personal consumer transmits by electronic or other means. A direct wine seller, however, may not sell a brand of wine in the State that (1) is distributed in the State by a wholesaler licensed in the State; or (2) was distributed in the State within two years before the application for the direct wine seller's permit is filed. During a permit year (November 1 to October 31), a direct wine seller may not sell in the State more than 900 liters of wine or more than 108 liters to a single personal consumer. A direct wine seller is required to file an annual tax return.

Wine shipped to a personal consumer must be shipped to a wholesaler licensed in the State that is designated by the federal Alcohol and Tobacco Tax and Trade Bureau, and then delivered by the wholesaler to a retail dealer. The wholesaler and retail dealer are solely facilitators in the shipping process and do not have title to the wine. The personal consumer must take personal delivery of the shipment at the licensed premises of the retail dealer promptly upon receiving notice from the dealer. The wholesaler may impose a service charge at a rate of $2 per bottle but no more than $4 per shipment, and the retail dealer may impose a service charge of $5 per bottle but no more than $10 per shipment when the consumer takes delivery.

Unless otherwise specified, in Montgomery County, no person, firm, or corporation may keep for sale any alcoholic beverage not purchased from the Montgomery County Department of Liquor Control. A holder of a Class 6 limited wine wholesaler's license or of a nonresident winery permit may sell or deliver wine directly to a county liquor dispensary, restaurant, or other retail dealer in Montgomery County. A county liquor dispensary, restaurant, or other retail dealer in Montgomery County may purchase wine directly from the holder of a Class 6 limited wine wholesaler's license or of a nonresident winery permit.

Background: In May 2005, the U.S. Supreme Court in *Granholm v. Heald* struck down laws in Michigan and New York that prohibited direct shipment of wine to consumers within the state from out-of-state businesses but permitted direct shipment to those consumers from in-state businesses. Thirty seven states and the District of Columbia have passed legislation authorizing the direct shipment of wine to consumers, including Virginia and West Virginia.

Chapter 355 of 2010 required the Comptroller, on or before December 31, 2010, to submit a report to the General Assembly on the viability and efficacy of permitting the direct shipment of wine to consumers in the State. The report must include: (1) an evaluation of the best practices used by the states and the District of Columbia that allow direct wine shipment; (2) an evaluation of related fiscal, tax, and other public policy and regulatory issues; and (3) determinations regarding specified factors, including the benefits and costs to consumers and the best practices for preventing access by underage wine drinkers.

The Comptroller's Office issued its report in December 2010. The key findings to the mandated study questions include:

- establishing a "Direct Wine Shipper's Permit," whether it be a revised expansion of the current Direct Wine Seller's Permit or a newly created permit to repeal and replace the Direct Wine Seller's Permit;
- imposing a $100 permit fee, and $100 for a renewal permit fee, which is consistent with Article 2B, § 2-101;
- allowing direct wine shipment for in-State and out-of-state wineries, but not for out-of-state retailers;
- imposing a quantity limit of 12 9-liter cases per consumer annually;
- including a "consent to jurisdiction" provision, to facilitate the tax collection process;
- prohibiting direct wine shipment on Sundays;
- requiring a permit for a common carrier delivering wine directly shipped to a consumer;
- requiring both the direct wine shipper and common carrier to affix a shipping label to the package with the following statement: "CONTAINS ALCOHOL; SIGNATURE OF PERSON AGE 21 OR OLDER REQUIRED FOR DELIVERY";
- requiring a common carrier to obtain an adult signature using age verification procedures;
- concluding that there is no evidence that underage drinking has increased or decreased as a result of direct wine shipment. The reasons for this may be that wine is not the drink of choice for youth and direct shipment of wine is costly and time-consuming;
- requiring a direct wine shipper to file quarterly tax returns;

- requiring common carriers to file quarterly reports;
- requiring a direct wine shipper to obtain a minimum $1,000 tax bond, subject to adjustment;
- requiring that records be kept in accordance with the state law of the direct wine shipper, or if there is no records requirement, then imposing the two-year records requirement as provided in Article 2B; and
- based on survey data, certain academic and industry literature, and the Comptroller's Wine & Spirits Study, the following inferences have been made: (1) the majority of wine brand and varietals are available for consumers to purchase in Maryland; (2) direct wine shipment will benefit wine connoisseurs motivated more by brand than price, and who would purchase wine directly if it was unavailable from a local retailer; and (3) direct wine shipment could make economic sense if quantities exceeding one bottle are purchased, because of the savings in shipping costs related to economies of scale.

The report also notes that "though reported as nominal issues, the following problems are possible, because the direct wine shipper and consumer engage in a wine sales transaction outside of the three-tier distribution system: (1) tax reporting and collection; (2) regulatory compliance; (3) precedent for further "exceptions" to three-tier distribution; and (4) temperance."

Finally, the report notes that "based on survey data, certain academic and industry literature, and the Comptroller's Wine & Spirits Study, the following inferences have been made: (1) direct wine shipment by out-of-state wineries to Maryland consumers would not have an overall negative effect on in-state licensees, because purchases from wineries are primarily motivated by availability; and (2) direct wine shipment by out-of-state retailers to Maryland consumers would have a negative effect on in-state licensees, because purchases from retailers are primarily motivated by price.

State Revenues: According to the *Alcohol and Tobacco Tax Annual Report*, the Comptroller's Office issued two direct wine seller's permits in fiscal 2010. The Comptroller's Office advises that it generally charges a $200 application fee for new alcoholic beverage licenses it issues and a $30 application fee for each license it renews. However, the Comptroller's Office advises that these fees would not be applicable to the permits issued under the bill.

Revenues from Permits Issued

It is uncertain as to how many of the 7,259 federally licensed wine manufacturers would apply for a direct wine shipper's permit in Maryland. **Exhibit 1** illustrates potential revenues from the issuance of permits.

Exhibit 1
Potential Revenues from Direct Wine Shipper's Permits

	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016
New Permits Issued	300	250	200	150	100
Permits Renewed	-	285	521	695	810
Total Number of Permits	300	535	721	845	910
Common Carrier Permit	2	2	2	2	2
Total Revenue	**$90,200**	**$132,200**	**$164,400**	**$184,100**	**$192,200**

This estimate is based on the experience of other states, including North Carolina, Ohio, and Virginia, and includes the $300 original permit (the bill indicates both a $100 fee and a $300 fee) and $200 renewal fee when applicable. This estimate assumes that 5% of permits issued would not be renewed. In addition, it assumed that United Parcel Service and Federal Express will each obtain a common carrier permit at $100 per permit. These permits are assumed to renew annually. As a point of reference, there are 1,058 active in and out of state wine shipper's licenses in Virginia.

Sales and Excise Taxes

The majority of wine that would be sold by holders of a direct wine shipper's permit would have otherwise been sold at a retail location in the State. To the extent that consumer access to additional brands of wine, lower prices offered from nationwide Internet wine retailers, and the convenience of home delivery would result in an increase in per-capita wine consumption, State sales and excise tax would increase. Current wine excise taxes are imposed at $0.40 per gallon, which equates to $0.08 per 750 ml bottle and $0.96 per 9-liter (12 750 ml bottles) case.

For illustrative purposes only, if sales of wine consumed at home were to increase by 123,000 gallons, total sales and excise tax revenues may increase by approximately $1.3 million annually, assuming an average per case cost of $394.80 ($32.90 per bottle). The estimate of gallons sold and average price are derived from data from other states including North Carolina, Ohio, and Virginia. This estimate also assumes 100% compliance with sales and excise tax requirements.

A 9-liter case of wine, which includes 12 bottles of 750 milliliters of wine sold at $32.90 per bottle, is taxed at a rate of $24.65 per case. For each case of wine, this tax consists of $0.96 in State excise tax and $23.69 in sales tax.

State Expenditures: Due to an expected increase in the volume of direct wine sales and the number of direct wine shippers, the cost of ensuring compliance with State tax laws is expected to increase. Based on the experience of other states in implementing the sale of wine directly to consumers, general fund expenditures for the Comptroller's Office will increase by approximately $32,900 in fiscal 2012, which reflects a 90-day start-up delay. This estimate reflects the cost of hiring one *contractual revenue examiner* to review the records of direct wine shippers, ensure that the appropriate taxes are being paid, and that the shippers are not selling more than the allowed limits to any one individual; and one *part-time field auditor trainee* to perform desk audits of direct wine shipper tax returns and common carrier reports. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses. Future year expenditures reflect full salaries with 4.4% annual increases and 1% annual increases in ongoing operating expenses.

Small Business Effect: Authorizing the shipment of wine directly to consumers from outside the State may result in a decline in sales for certain retailers and wholesalers of alcoholic beverages in the State. To the extent that direct wine shipper's permits are obtained by wineries and retailers in Maryland, these small businesses could be positively impacted by a potential increase in sales.

Additional Comments: The bill lists the initial direct wine shipper's permit fee as both $100 and $300.

Additional Information

Prior Introductions: HB 716 of 2010 received an unfavorable report from the House Economic Matters Committee. Its cross file, SB 566, had a hearing in the Senate Education, Health, and Environmental Affairs Committee but no further action was taken. HB 1262 of 2009 received an unfavorable report from the House Economic Matters Committee. Its cross file, SB 338, received a hearing in the Senate Education, Health, and Environmental Affairs Committee, but no further action was taken. SB 616 of 2008 received an unfavorable report from the Senate Education, Health, and Environmental Affairs Committee. Its cross file, HB 1260, received an unfavorable report from the House Economic Matters Committee.

Cross File: None.

Information Source(s): Comptroller's Office, Judiciary (Administrative Office of the Courts), Department of Public Safety and Correctional Services, Department of Legislative Services

Fiscal Note History: First Reader - March 3, 2011
ncs/jrb

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