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Legislative Document

No. 1093

S.P. 354

In Senate, March 22, 2021

An Act To Expand the Options for Shipping Wine Directly to Customers

Received by the Secretary of the Senate on March 18, 2021. Referred to the Committee on Veterans and Legal Affairs pursuant to Joint Rule 308.2 and ordered printed.

A handwritten signature in black ink, appearing to read 'D M Grant'.

DAREK M. GRANT
Secretary of the Senate

Presented by Senator MIRAMANT of Knox.
Cosponsored by Representative PLUECKER of Warren and
Representatives: CUDDY of Winterport, DOUDERA of Camden, EVANGELOS of
Friendship, GEIGER of Rockland, McDONALD of Stonington, WHITE of Waterville.

1 **Be it enacted by the People of the State of Maine as follows:**

2 **Sec. 1. 28-A MRSA §1361, sub-§1**, as amended by PL 1997, c. 373, §115, is
3 further amended to read:

4 **1. Certificate of approval required.** ~~No~~ Except as otherwise authorized in section
5 1403-A, an out-of-state manufacturer or foreign out-of-state wholesaler of malt liquor or
6 wine may hold for sale, sell or offer for sale in intrastate commerce, or transport or cause
7 to be transported into the State for resale, any malt liquor or wine not engage in the
8 following activities unless the manufacturer or foreign wholesaler has obtained from the
9 bureau a certificate of approval from the bureau in accordance with this section:

10 A. Offer malt liquor or wine for sale in the State or sell malt liquor or wine in the State;
11 or

12 B. Transport into or cause to be transported into the State malt liquor or wine for sale
13 or resale in the State.

14 **Sec. 2. 28-A MRSA §1361, sub-§4**, as amended by PL 2019, c. 529, §7, is further
15 amended to read:

16 **4. No sales of malt liquor or wine to person without wholesale license.** ~~No~~ Except
17 as otherwise authorized in sections 1403-A, 2073 and 2077, a certificate of approval holder;
18 except a licensed small brewery or small winery authorized under section 1355-A to sell
19 its own products directly to retailers, may sell or cause to be transported into the State any
20 may not sell malt liquor or wine to any a person to whom a Maine wholesale license has
21 not been issued by the bureau. Malt liquor or wine must be delivered to the place of
22 business of the wholesaler as shown in the wholesaler's license, must be unloaded and
23 inventoried at the wholesaler's premises upon the wholesaler's receipt of the shipment and
24 must come to rest before delivery is made to any retailer to enable the bureau to inspect
25 and inventory wholesale warehouses for the purpose of verifying taxes that are required to
26 be paid on malt liquor and wine purchased by importers that is not a wholesale licensee or
27 cause malt liquor or wine to be transported into the State for sale to a person that is not a
28 wholesale licensee.

29 Malt liquor or wine must be delivered to the place of business of the wholesale licensee as
30 shown in the wholesale licensee's license, must be unloaded and inventoried at the
31 wholesale licensee's premises upon the wholesale licensee's receipt of the shipment and
32 must come to rest before delivery is made to any retailer to enable the bureau to inspect
33 and inventory the wholesale licensee's warehouses for the purpose of verifying taxes that
34 are required to be paid on imported malt liquor and wine.

35 This subsection does not apply to a licensed small brewery or small winery authorized
36 under section 1355-A to sell its own products directly to retailers.

37 **Sec. 3. 28-A MRSA §1401, sub-§9**, as enacted by PL 2013, c. 476, Pt. A, §30, is
38 amended to read:

39 **9. Sales to licensees only.** ~~A~~ Except as otherwise authorized in section 1403-A, a
40 licensee under this section may sell or distribute malt liquor, wine and fortified and wine
41 only to persons licensed for the retail sale of malt liquor, wine or fortified and wine for on-
42 premises or off-premises consumption on or off the licensed premises in accordance with
43 this Title.

1 **Sec. 4. 28-A MRSA §1403-A**, as amended by PL 2015, c. 166, §5, is further
2 amended to read:

3 **§1403-A. Direct shipment of wine**

4 **1. Definitions.** As used in this section, unless the context otherwise indicates, the
5 following terms have the following meanings.

6 A. "Direct shipper" means a small winery, winery, retailer licensed to sell wine for
7 off-premises consumption or wholesaler that has obtained a wine direct shipper license
8 under subsection 2.

9 B. "Outside the State" means any state other than Maine and any territory or possession
10 of the United States, but does not include a foreign country.

11 **2. Direct shipment of wine.** A small winery or other winery holding a federal basic
12 wine manufacturing permit located within or outside the State, retailer licensed in this State
13 or another state to sell wine for off-premises consumption or a wholesaler licensed in this
14 State or another state to sell wine may obtain a wine direct shipper license by filing with
15 the bureau an application in a form determined by the bureau accompanied by an
16 application fee of not more than \$200, a copy of the applicant's current federal basic wine
17 manufacturing permit, retailer license or wholesaler license and a list of wine labels to be
18 shipped in accordance with this section.

19 **3. Direct shipper application.** Before sending a shipment to a resident of this State,
20 a direct shipper must file an application for a wine direct shipper license under subsection
21 2 with the bureau on a form issued by the bureau along with a true copy of its current
22 alcoholic beverage winery, retailer or wholesaler license issued in this State or another state
23 and a \$100 registration fee.

24 **4. Direct shipment requirements.** A direct shipper may only ship wine ~~that was~~
25 ~~produced by the direct shipper in accordance with the direct shipper's federal basic wine~~
26 ~~manufacturing permit~~ to a recipient in this State for personal use and not for resale. ~~A~~
27 ~~direct shipper may not ship wine products commonly known as "wine coolers."~~ A direct
28 shipper shall label each package to be shipped in accordance with this section so that it
29 conspicuously reads "CONTAINS ALCOHOL: SIGNATURE OF A PERSON 21 YEARS
30 OF AGE OR OLDER IS REQUIRED FOR DELIVERY."

31 **5. Common carrier.** Shipments made in accordance with this chapter must be made
32 by a common carrier and must be accompanied by a shipping label that clearly indicates
33 the name of the direct shipper and the name and address of the recipient. The common
34 carrier shall obtain the signature of a person 21 years of age or older at the address listed
35 on the shipping label prior to delivery of the shipment. The common carrier shall request
36 photographic identification from the person signing for the shipment and verify that the
37 person is 21 years of age or older.

38 **6. ~~Bottle size and case~~ Case limit.** A direct shipper may not ship ~~a container of wine~~
39 ~~of less than 750 milliliters and may ship no more than 12~~ 24 cases, each of which may
40 contain no more than 9 liters or an equivalent volume, to any one recipient address in a
41 calendar year.

42 **7. Prohibited shipping areas.** A direct shipper may not ship to any address in an area
43 identified by the bureau as a prohibited shipping area or a local option area.

1 **8. License renewal.** A direct shipper may annually renew its wine direct shipper
2 license with the bureau by paying a \$50 renewal fee and providing the bureau with a true
3 copy of its current ~~alcoholic beverage~~ winery, retailer or wholesaler license issued in this
4 State or another state.

5 **9. Sales tax registration and payment required.** As a condition of receiving a
6 ~~certificate of approval, a shipper located outside the~~ license under this section, an entity
7 that does not have a winery, retailer or wholesaler license issued in this State shall comply
8 with the provisions of Title 36, Part 3, including all requirements relating to registration as
9 a seller and the collection, reporting and remittance of the sales and use taxes of the State,
10 and shall agree to be subject to the jurisdiction of the State for purposes of the enforcement
11 of those obligations. The requirements of this subsection apply notwithstanding any other
12 provision of law of the State.

13 **10. Payment of excise taxes.** A direct shipper located outside the State shall annually
14 pay to the bureau all excise taxes due on sales to residents of the State in the preceding
15 year, the amount of such taxes to be calculated under section 1652 as if the sales were in
16 the State.

17 **11. Report.** A direct shipper shall submit a report to the bureau annually in a manner
18 and form prescribed by the bureau that includes the total number of cases of wine shipped
19 to recipients in the State and, for a direct shipper located in the State, shipments made
20 outside the State, the name and residence address of shipment recipients in the State, the
21 common carrier used to deliver the shipments and the date, quantity and purchase price of
22 each shipment.

23 **12. Audit.** The bureau may perform an audit of a direct shipper's records relevant to
24 compliance with this section. A direct shipper shall provide copies of any records requested
25 by the bureau within 10 business days of that request.

26 **13. Violation.** A person, including a common carrier, who knowingly causes a direct
27 shipment in violation of this section is subject to a fine up to \$500 for a first offense and
28 up to \$1,000 for any subsequent violation of this section. A direct shipper or common
29 carrier who knowingly delivers wine to a person under 21 years of age is subject to a fine
30 up to \$5,000. The bureau may suspend or revoke a wine direct shipper license for failure
31 to comply with the shipping limits and reporting requirements required by this section. The
32 bureau may accept payment of an offer in compromise in lieu of suspension; such payments
33 must be determined by rules adopted by the bureau.

34 **14. Jurisdiction.** A direct shipper, as a condition of licensure, is subject to the
35 jurisdiction and enforcement authority of the State for the purposes of enforcement of this
36 section.

37 ~~**15. Not subject to beverage container law.** Notwithstanding Title 38, chapter 33,~~
38 ~~wine shipped pursuant to this section does not require a refund value for beverage container~~
39 ~~control purposes.~~

40 **16. Rules.** The bureau shall adopt rules to carry out the purposes of this section. Rules
41 adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter
42 375, subchapter 2-A.

1 **SUMMARY**

2 Under current law, a winery or small winery located within this State or another state
3 may obtain a license from the Department of Administrative and Financial Services,
4 Bureau of Alcoholic Beverages and Lottery Operations to ship its products directly to
5 Maine customers. The bill expands the types of entities eligible to receive licenses from
6 the bureau for the direct shipment of wine to Maine customers to include retailers licensed
7 in this State or another state to sell wine for off-premises consumption as well as
8 wholesalers licensed in this State or another state. The bill also increases from 12 to 24 the
9 maximum number of 9-liter cases of wine that may be directly shipped by one entity to any
10 one recipient address and removes the prohibitions against the direct shipment of containers
11 of less than 750 milliliters of wine and of products commonly known as "wine coolers."
12 Finally, the bill removes the provision of current law that exempts from the State's beverage
13 container redemption law wine that is imported to the State by a licensed direct shipper.