



SPONSOR: Sen. Ennis
Sens. Hocker, Wilson; Reps. D. Short, Michael Smith,
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DELAWARE STATE SENATE
151st GENERAL ASSEMBLY

SENATE BILL NO. 285

AN ACT TO AMEND TITLE 4 OF THE DELAWARE CODE RELATING TO THE DISTRIBUTION OF ALCOHOL.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Three-fifths of all members elected to each house thereof concurring therein):

Section 1. Amend Chapter 5, Title 4 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 526. Direct purchasing of ~~wine and beer~~ wine, beer, and spirits.

(a) ~~Notwithstanding any other provision in this title, a natural person who is a Delaware resident may purchase sparkling wine, still wine and beer that is not readily available to consumers throughout the State directly from a manufacturer or retailer of such beverages domiciled outside of Delaware provided that the following apply:~~

(1) ~~The resident is 21 years of age or older;~~

(2) ~~The sparkling wine, still wine or beer is for the resident's personal consumption and not for resale;~~

(3) ~~The total amount of sparkling wine or still wine purchased in 1 calendar year by the resident may not exceed 60 750 milliliter bottles per calendar year;~~

(4) ~~The total amount of beer purchased in 1 calendar year by the resident may not exceed 6 cases of 12 ounce bottles or the equivalent;~~

(5) ~~The manufacturer or retailer engaging in such direct sales holds a valid manufacturer's or retailer's license issued by the state of its domicile;~~

(6) ~~The package in which the sparkling wine, still wine or beer is shipped is prominently labeled as containing alcoholic beverages;~~

(7) ~~The package in which such sparkling wine, still wine or beer is shipped is received by a person 21 years of age or older;~~

(8) ~~The package in which such sparkling wine, still wine or beer is shipped contains an invoice indicating the date of the shipment, providing a full and complete description of all items included in the shipment, and stating the price thereof.~~

(b) A person who is licensed in its state of domicile as an alcoholic beverage manufacturer, importer, wholesaler or licensee and who may legally ship alcoholic beverages out of state may apply to the Commissioner for a direct shipper license. Only a person holding a direct shipper license may accept an order for the purchase of sparkling wine, still wine and/or beer from a natural person who is a Delaware resident. The license fee for a direct shipper shall be determined by the Commissioner. The amount of the fee must approximate and reasonably reflect the costs necessary to defray the expenses of the Commissioner's service and activities in connection with this section.

(c) All persons licensed under this section to ship wine and beer shall pay a tax on all wine and beer sold to residents in this State at the rates set forth in § 581(d) of this title. Taxes levied by § 581(d) of this title shall be collected, as far as practical, from the direct shipper in the manner set forth by the Commissioner. If for any reason the direct shipper who first handles the taxable beer and wine to be shipped to Delaware has escaped payment of taxes, those taxes shall be collected from any person in whose hands the taxable beer and wine is found. In no case, however, shall there be a duplication.

(d) Direct shippers shall file invoices for each shipment with the Commissioner showing the retail price of the product, the quantity shipped, the customer's name and address and the tax collected and paid to the State. Such filings shall be quarterly and arrive at the Commissioner no later than the 10th of March, June, September and December. Direct shippers shall maintain the records for at least 3 years.

(e) Under no circumstance may the wine or beer be shipped directly to the resident. Direct shippers must deliver the wine and beer by common carrier to a Delaware wholesaler, who will in turn deliver the shipment to a holder of a Delaware off-premises retail license. The retail licensee must then deliver the wine or beer to the resident in a manner consistent with this title and as set forth by Commissioner rules. The direct shipper shall pay a handling fee in the amount of \$4 dollars per case or partial case of wine and \$2 dollars per case or partial case of beer to the wholesaler who receives the shipment on behalf of the Delaware resident. The wholesaler shall then remit to the retail licensee one-half of the total handling fee.

(a) The Commissioner shall issue a direct shipper license under this section to a person who holds a valid license, permit, or other authorization in this State or any other state as a wine, beer, or spirits producer, or as a wine, beer, or spirits supplier. To qualify for a direct shipper license, any person applying as a supplier must hold a valid permit under the Federal Alcohol Administration Act and be the brand owner or its authorized agent.

(b) A person who obtains a direct shipper license under this section may ship up to 3 9-liter cases of wine, 6 cases of 12 ounces containers of beer, or 1 9-liter case of spirits or their equivalent, annually, directly to a resident of Delaware who is at least 21 years of age, and the wine, beer, or spirits must be for personal use and not for resale.

(c) An application for a direct shipper license must contain all of the following:

(1) The application materials required by the Commissioner.

(2) A biennial license fee of \$100.

(3) A true copy of the applicant's valid state license, permit, or other authorization as a wine, beer or spirits producer or supplier, and if a permit under the Federal Alcohol Administration Act is required to qualify for a direct shipper license under this section, a true copy of such permit. An in-state applicant may provide their state license number in lieu of a true copy of their in-state license.

(d) A direct shipper licensee is not required to obtain any additional license in this State in order to sell to residents of this State.

(e) On a biennial basis, a direct shipper licensee may renew its direct shipper license by paying the same fee and providing the same license and permit information required of a direct ship license applicant under paragraphs (c)(2) and (c)(3) herein.

(f) A direct shipper licensee may not:

(1) Ship wine, beer, or spirits to any person who is under the age of 21.

(2) Ship more than 3 9-liter cases of wine, 6 cases of 12 ounces containers of beer, or 1 9-liter case of spirits, or their equivalent, annually, directly to a resident of this State for personal use.

(3) Ship any wine, beer, or spirits for resale.

(g) A direct shipper licensee must:

(1) Deliver wine, beer, or spirits for shipment into this State only to a holder of a carrier permit issued by the Commissioner as provided in § 701A of this title.

(2) Notify the person placing the order that the shipment shall not be left unless the recipient of the shipment provides a valid identification document at the time verifying that the recipient is at least 21 years of age, and ensure that all containers of wine, beer, or spirits shipped directly to a resident of this State are conspicuously labeled with the words "CONTAINS ALCOHOL: SIGNATURE OF INDIVIDUAL AGE 21 OR OLDER REQUIRED FOR DELIVERY", or substantially similar language. Compliance with this paragraph is an affirmative defense in any prosecution for an offense under paragraph (f)(1) herein or §§ 561(c) and 708(a)(1) of this title.

(3)a. Report the following to the Commissioner, the Division of Alcohol and Tobacco Enforcement ("DATE"), and the Division of Revenue quarterly, or more frequently as required by rules promulgated by the Commissioner:

82 1. The total amount of wine, beer, or spirits shipped directly to residents of this State under this
83 section in the preceding quarter.

84 2. The name and address of the individuals to whom the wine, beer, or spirits was sold and the
85 amount of wine, beer, or spirits sold in each sale.

86 3. The purchase price of the wine, beer, or spirits sold and the amount of taxes charged to the
87 individual for the wine, beer, or spirits sold.

88 4. If a fulfillment center is utilized, the name and address of the fulfillment center.

89 5. The name and address of the common carrier.

90 6. The tracking number for each shipment.

91 b. Pay to the Division of Revenue quarterly, or more frequently as required by regulations promulgated
92 by the Director of the Division of Revenue, all excise taxes due at the rates set forth in § 581(d) of this title, on
93 direct sales to residents of this State in the preceding calendar quarter. The amount of such taxes must be
94 calculated as if the sale were in this State at the location where delivery is made.

95 c. Permit DATE or the Division of Revenue to perform an audit of the direct shipper licensee's records
96 upon request.

97 d. The information reported under paragraph (3)a. herein is exempt from the requirements of Chapter 100
98 of Title 29.

99 (h) A direct shipper licensee shall not be subject to §§ 501 to 505, 507, 508, 543, except paragraphs (b)(3) and
100 (b)(5) to (b)(7) of §§ 543, 561(b)(4), or 710 of this title.

101 (i) A direct shipper licensee is deemed to have consented to the jurisdiction of the Commissioner or any other state
102 agency and the courts of this State concerning enforcement of this section and any related laws, rules, or regulations.

103 (j) The Commissioner and the Division of Revenue may establish rules and regulations necessary for the
104 implementation of this section.

105 (k) DATE may enforce the requirements of this section by administrative proceedings before the Commissioner,
106 who has the authority to approve, deny, fine, suspend, and revoke a direct shipper license.

107 Section 2. Amend Chapter 7, Title 4 of the Delaware Code by making deletions as shown by strike through and
108 insertions as shown by underline as follows:

109 § 701A. Carrier permit.

110 (a) Any person who desires to transport wine, beer, or spirits from a direct shipper licensed under § 526 of this title
111 to a resident of this state shall apply to the Commissioner for a carrier permit.

(b) The Commissioner shall grant a carrier permit to a common carrier operating under a certificate issued by the Interstate Commerce Commission or such other applicant the Commissioner finds consistent with the purposes of this section, unless the applicant or persons associated with the applicant have had a carrier permit suspended or revoked by the Commissioner, in which case the Commissioner may refuse to grant a new carrier permit.

(c) A carrier permit holder shall do the following:

(1) Biennially renew their license with the Commissioner by providing the Commissioner with such information as reasonably required by the Commissioner.

(2) After receiving notice from the Commissioner or DATE that an entity has previously shipped wine, beer, or spirits to a resident of this State without obtaining a direct shipper license, provide notice to that entity that it must obtain a direct shipper license before tendering packages to the carrier permit holder for delivery to this State.

(3) Provide the Commissioner, DATE, and the Division of Revenue a quarterly report containing the following:

a. The names and addresses of the consignor for whom the carrier permit holder made wine, beer, or spirits deliveries.

b. The name and address of the consignee to whom the wine, beer, or spirits was addressed.

c. The tracking number for each shipment made under this section.

d. The information reported under this paragraph (3) is exempt from the requirements of Chapter 100 of Title 29.

(4) Deliver the wine, beer, or spirits to the address as instructed by the direct shipper, but may not deliver the wine, beer, or spirits unless, in the presence of the individual delivering the wine, beer, or spirits, an individual 21 years of age or older signs for the shipment.

(5) At the time of delivery, the recipient of the shipment shall present to the individual delivering the package a valid identification document. Prior to transferring possession of the package, the individual delivering the package shall visually inspect the document and verify the identity of the recipient and, by visual examination or by using age verification technology, that the recipient is at least 21 years of age. Before transferring possession of the package, the individual delivering the package shall obtain the signature of the recipient of the shipment. The recipient is not required to be the consumer who purchased the wine, beer, or spirits.

(d) A carrier permit holder is deemed to have consented to the jurisdiction of the Commissioner or any other state agency and the courts of this State concerning enforcement of this section and any related laws, rules, or regulations.

(e) The Commissioner shall provide a person accused of violating any provision of this section with a hearing. A person found by the Commissioner to have violated any provision of this section is responsible for a fine and subject to the suspension of the person's carrier permit. The Commissioner may revoke a carrier permit after a person is found to have committed repeated or continuous violations. The Commissioner may not impose a fine under this section in excess of 10% of the average gross monthly fees earned by a carrier permit holder from utilizing its carrier permit in this State or \$250, whichever is greater. The Commissioner may suspend all or any part of the fine at the request of a carrier permit holder for good cause shown by a carrier permit holder.

§ 716. Transportation of spirits, wines or beer.

No person shall transport spirits, wines or beer in this State, except:

(6) As permitted by the holder of a direct shipper license under § 526 of this title or a common carrier license under § 701A of this title.

SYNOPSIS

This Act allows licensed distributors to apply for a shippers license to provide direct shipments of wine, beer, and spirits to consumers.

Author: Senator Ennis