SPONSOR: Rep. Michael Smith & Rep. Spiegelman & Sen. Pettyjohn
Reps. Gray, Minor-Brown, D. Short, K. Williams,
Yearick, Snyder-Hall; Sens. Poore, Walsh

HOUSE OF REPRESENTATIVES
153rd GENERAL ASSEMBLY

HOUSE BILL NO. 187

AN ACT TO AMEND TITLE 4 OF THE DELAWARE CODE RELATING TO DIRECT PURCHASING AND SHIPMENT OF WINE.

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 § 526, 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.

~~(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) For purposes of this section, "wine producer" shall mean an individual or entity that cultivates and grows grapes or other fermentable substances and then produces and bottles wine.

(b) A person who holds a valid license in this State or any other state as a wine producer who obtains a wine direct shipper license under this section may ship up to 3 9-liter cases of wine annually to a household located in this State if a member of the household is at least 21 years of age and the wine is for the household's personal use and not for resale. Upon delivery the carrier delivery person shall be required to scan, and retain as proof of age verification, the required State issued driver's license or State issued identification card.

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

(1) The application materials required by the Commissioner.

(2) A $100 application fee.

(3) A true copy of the applicant's valid state license as a wine producer.

(d) A wine direct shipper licensee shall pay the Commissioner $400 biennially for a license to ship up to 200 cases annually to residents of this State or $3,600 biennially to ship more than 200 cases annually to residents of this State. A wine direct shipper licensee must renew the license biennially by paying the fee required by this subsection and providing a true copy of the wine direct shipper licensee's valid state license as a wine producer.

(e) A wine direct shipper licensee may not:

(1) Ship wine to any person who is under the age of 21. Upon delivery the carrier delivery person shall be required to scan, and retain as proof of age verification, the required State issued driver's license or State issued identification card. In any prosecution for an offense under this subsection, it is an affirmative defense if the Commissioner finds that the licensee has made reasonable efforts to ascertain the age of the purchaser.

(2) Ship more than 3 9-liter cases of wine annually to any household for the household's personal use.

(3) Ship any wine for resale.

(4) Ship more than 1,800 9-liter cases into this State per year under this section. A direct-to-consumer shipper that achieves 1,800 9-liter cases in 1 year shall be required to go through the Three-Tier-System via a licensed Delaware Wholesaler.

(5) Ship wine if they are currently represented in the State by a licensed Delaware Wholesaler. This shall include wineries that are a subsidiary of a larger wine producer or supplier that is listed in the current publication designated by the Commissioner for sale by Importers in this State to retailers in this State.

(f) A wine direct shipper licensee must:

(1) Deliver wine for shipment into this State only to a shipper who has a carrier permit issued by the Commissioner as provided in § 701A of this title.

(2) Ensure that all containers of wine 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". Upon delivery the carrier delivery person shall be required to scan, and retain as proof of age verification, the required State issued driver's license or State issued identification card.

(3)a. If located outside of this State:

1. Report the following to the Commissioner and the Division of Alcohol and Tobacco Enforcement ("DATE") quarterly, or more frequently as required by rules promulgated by the Commissioner that are based upon quantity of product shipped:

A. The total amount of wine shipped into this State in the preceding quarter.

B. The name and address of the individuals to whom the wine was sold and the amount of wine sold in each sale.

C. The tracking number for each shipment.

2. Pay to the Division of Revenue quarterly, or more frequently as required by regulations promulgated by the Director of the Division of Revenue that are based upon quantity or value of product shipped, all excise taxes due on sales to residents of this State in the preceding calendar quarter. The amount of such taxes must be calculated as if the sale were in this State at the location where delivery is made.

b. The information reported under paragraph (3)a.1. of this section is exempt from the requirements of Chapter 100 of Title 29.

(4)a. If located within this State, provide the Division of Revenue, DATE, and the Commissioner any additional information deemed necessary beyond that already required for retail sales from a wine producer to ensure compliance with this section including the following:

1. The total amount of wine shipped under this section in the preceding quarter.

2. The name and address of the individuals to whom the wine was sold and the amount of wine sold in each sale.

3. The tracking number for each shipment.

b. The information reported under paragraph (4)a. of this section is exempt from the requirements of Chapter 100 of Title 29.

(5) Permit DATE or the Division of Revenue to perform an audit of the wine direct shipper licensee's records upon request.

(g) A wine direct shipper licensee 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.

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

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

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

§ 701A. Carrier permit.

(a) Any person who desires to transport wine from a wine direct shipper to a household in this State shall apply to the Commissioner for a carrier permit and pay an application fee of $500.

(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 has had its 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 its license with the Commissioner by paying a $500 renewal fee and 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 to a resident of this State without obtaining a wine direct shipper license, provide notice to that entity that it must obtain a wine direct shipper license before tendering packages to the carrier permit 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 wine direct shippers for whom the carrier permit holder made deliveries.

b. The name and address of the individuals to whom the wine was delivered.

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 to the address as instructed by the wine direct shipper but may not deliver the wine unless, in the presence of the individual delivering the wine, an individual 21 years of age or older signs for the shipment. Upon delivery the carrier delivery person shall be required to scan, and retain as proof of age verification, the required State issued driver's license or State issued identification card.

(5) All delivery personnel shall be required to have received server training via an approved course tailored to provide instruction on direct-to-consumer shipments before making deliveries.

(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 $1,000, 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.

Section 3. The Commissioner shall study the impact of this Act on wine retailers located in this State and submit the results of such study to the Governor and each member of the General Assembly by June 1, 2026.

SYNOPSIS

This Act permits wine producers holding a valid license within this State or another state to obtain a license and ship wine directly to Delaware consumers so long as it is done through a common carrier with a carrier permit. This Act requires that wine producers pay the taxes normally due for wines; limits the amount of wine that a direct shipper of wine can sell to a single household to 3 9-liter cases per year; and limits the total amount of wine that the direct shipper of wine can ship directly to Delaware consumers to 1,800 9-liter cases annually. This Act requires the signature of a person 21 years of age or older before delivery of the wine and to receive training regarding how to deliver wine responsibly