

SPONSOR: Rep. Michael Smith & Rep. Spiegelman & Sen. Pettyjohn
Reps. Gray, Minor-Brown, D. Short, K. Williams, Yearick; Sens. Hansen, Poore, Walsh, Hocker, Huxtable, Lockman, Pinkney, Wilson

HOUSE OF REPRESENTATIVES
153rd GENERAL ASSEMBLY

HOUSE SUBSTITUTE NO. 2
FOR
HOUSE BILL NO. 187
AS AMENDED BY
HOUSE AMENDMENT NO. 2

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 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~~ <u>shipping</u> 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;~~

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~~(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) Notwithstanding §501 of this title, upon proper application and subject to the applicable provisions, restrictions and prohibitions of this title, the Commissioner may grant a wine direct shipper license to any person who is a farm winery as defined by §512A of this Title or a manufacturer, as determined by the Commissioner, that would qualify for a license under §512A of this Title if the manufacturer were physically located in the State.

(b) A person who is licensed as a wine direct shipper 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.

(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 true copy of the applicant's state-issued alcohol license and Federal Basic Permit.

(d) A wine direct shipper licensee may not:

(1) Ship wine to any person who is under the age of 21. In any prosecution for an offense under this subsection, it is an affirmative defense if the individual, who has not reached the age of 21 years, presented to the accused identification, with a photograph of such individual affixed thereon, which identification sets forth information which would lead a reasonable person to believe such individual was 21 years of age or older.

(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 shipper licensee that ships into Delaware 1,800 9-liter cases in 1 year will have its direct shipper license cancelled by the Commissioner and must apply for a supplier license pursuant to §501 of this Title.

(5) Ship wine if they are currently represented in the State by a licensed importer/wholesaler. This shall include wineries that are a subsidiary of a larger wine manufacturer or a supplier licensed pursuant to §501 of this Title that is listed in a licensed importer/wholesaler's current price publication designated by the Commissioner. All licensed importers/wholesalers shall provide in the manner and timing as required by the Commissioner, monthly price lists that include the manufacturers, names of the products, and any identifying SKU numbers. The Commissioner will remove proprietary price information before posting the importer/wholesaler's monthly lists on the Office of the Alcoholic Beverage Control Commissioner's publicly available webpage.

(e) A wine direct shipper licensee must:

(1) Deliver wine for shipment into this State only to a common carrier who has a common carrier license issued by the Commissioner as provided in § 527 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") monthly, 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.

D. The name and license number of the common carrier to whom the order was sent for delivery.

2. Pay to the Division of Revenue monthly, or as otherwise required by regulations promulgated by the Commissioner, all excise taxes due on sales to residents of this State at the rate set forth in § 581(d) of this Title. The amount of such taxes must be calculated as if the sale were in the 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, pay to the Division of Revenue monthly, or as otherwise required by regulations promulgated by the Commissioner, all excise taxes due on sales to residents of this State as required by Section 581(b) of this title and provide the Division of Revenue, DATE, and the Commissioner any additional information deemed necessary beyond that already required for retail sales from a farm winery 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.

4. The name and license number of the common carrier to whom the order was sent for delivery.

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, the Commissioner, or the Division of Revenue to perform an audit of the wine direct shipper licensee's records upon request.

(f) 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.

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

Section 2 Amend Chapter 5, Title 4 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline as follows:

§ 527. ~~Substantive changes to licenses or licensed property [Repealed]~~ Common Carrier license.

(a) For the purposes of this Title, "Common Carrier" means a business entity that:

(1) Holds itself out as being available to the public to transport in interstate or foreign commerce for compensation any class of passenger or property; and

(2) Holds a common carrier permit issued under this section.

(3) "Common carrier" does not include a business entity that transports only property the business entity owns or that is consigned to the business entity.

(b) Upon proper application and subject to the applicable provisions, restrictions and prohibits of this title, the Commissioner may grant a common carrier license to approved persons. Upon approval, the person shall pay the license as set forth in § 554.

(c) A common carrier permit licensee shall do all the following:

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

a. The names and addresses of the consignor of the shipment.

b. The name and address of the consignee of the shipment.

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.

(2) Deliver wine only on behalf of a wine direct shipper licensed by the Commissioner. The employee or independent contractor of the licensed common carrier shall deliver the wine to the address provided by the wine direct shipper licensee 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.

a. In any proceeding for an offense under this subsection, it is an affirmative defense if the individual, who has not reached the age of 21 years, presented to the accused identification, with a photograph of such individual affixed thereon, which identification sets forth information which would lead a reasonable person to believe such individual was 21 years of age or older.

b. To ensure effective age verification for deliveries, a common carrier licensee shall provide its employees and independent contractors with age verification training approved by the Commissioner.

(d) At least once a year, in a manner acceptable to the Commissioner, a holder of a common carrier license shall verify that the shipper of wine into this State holds a valid direct wine shipper's license issued by the Commissioner.

(e) A common carrier 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.

(f) The Commissioner shall provide the common carrier licensee charged with violating any provision of this section with a hearing. The Commissioner may suspend or cancel a common carrier license if the common carrier license if the common carrier licensee is found to have committed three or more violations. The Commissioner may impose a suspension or monetary fine against a common carrier licensee but may not impose a fine under this section greater than $5,000. Failure to pay such fine and costs may result in an automatic license suspension until such fines and costs are paid.

Section 3. Amend Chapter 5, Title 4 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline as follows:

§554. License fees.

(jj) For a license as a "direct shipper" as provided in §526 of ~~Title 4~~ this title, the biennial license fee shall be ~~$100~~ $400, unless the direct shipper licensee ships more than 200 cases annually to residents of this State, in which case the biennial license fee shall be $3600.

(tt) For a common carrier license to transport wine from a wine direct shipper licensee to a household in this State, the biennial license fee shall be $500.

Section 4. Amend Chapter 9, Title 4 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline as follows:

§ 904. Offenses concerning certain persons.

(p) ~~[Expired.]~~ Whoever fails to request identification for age verification, pursuant to § 527(c)(2) of this Title shall, in addition to the payment of costs, be fined not less than $250 nor more than $500 for the first offense. Failure to pay such fines and costs may result in imprisonment for no more than 10 days.

Section 5. This Act shall become effective 365 days after enactment into law.

Section 6. 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, 2028.

Section 7. This Act expires 5 years after its enactment into law, unless otherwise provided by a subsequent act of the General Assembly.