

MAINE STATE LEGISLATURE

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Date: 06-08-07

(Filing No. S- 245)

LEGAL AND VETERANS AFFAIRS

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STATE OF MAINE

SENATE

123RD LEGISLATURE

FIRST REGULAR SESSION

Minority

COMMITTEE AMENDMENT "A" to S.P. 54, L.D. 143, Bill, "An Act To Allow Direct-to-consumer Wine and Malt Liquor Sales"

Amend the bill by striking out the title and substituting the following:

'An Act To Allow Direct-to-consumer Wine Sales'

Amend the bill by striking out all of section 1 and inserting the following:

'Sec. 1. 28-A MRSA §1403-A is enacted to read:

§1403-A. Purchase of wine by mail

1. Direct shipment of wine to residents. A person currently licensed in another state as an alcoholic beverage producer, supplier, importer, wholesaler, distributor or retailer who obtains a certificate of approval as provided in section 1351 and a nonresident shipper's license as provided in this section may ship wine directly to a resident of this State who is 21 years of age or older for that resident's personal use.

2. Nonresident shipper application. Before sending a shipment to a resident of this State, a nonresident shipper must hold a certificate of approval as provided in section 1351 and file an application for a license with the bureau on a form issued by the bureau along with a true copy of its current alcoholic beverage license issued in another state and a \$100 registration fee.

3. Delivery to resident 21 years of age or older. Wine shipped pursuant to this section may be shipped only to a resident 21 years of age or older and must be for the recipient's personal use only and not for resale. A shipment must be subject to in-person delivery to the resident who has ordered the shipment or a person residing at the resident's household who is 21 years of age or older. All containers used for shipment of wine under this section must be conspicuously labeled with the words "CONTAINS ALCOHOL: SIGNATURE OF PERSON 21 YEARS OF AGE OR OLDER REQUIRED FOR DELIVERY."

COMMITTEE AMENDMENT

1 4. Prohibited shipping areas. A nonresident shipper may not ship to any address
2 in an area identified by the bureau as a prohibited shipping area or a local option area.

3 5. License renewal. A nonresident shipper may annually renew its license with the
4 bureau by paying a \$100 renewal fee and providing the bureau with a true copy of its
5 current alcoholic beverage license issued in another state.

6 6. Payment of state taxes. As a condition of receiving a certificate of approval as
7 provided in section 1351, a nonresident shipper shall comply with Title 36, Parts 1 and 3,
8 specifically including, without limitation, all requirements relating to registration as a
9 seller and the collecting, reporting and remittance of Maine sales and use taxes, and shall
10 agree to be subject to the jurisdiction of this State for purposes of the enforcement of
11 those obligations. The requirements of this subsection shall apply notwithstanding any
12 other provision of state law.

13 7. Annual report. A nonresident shipper shall report to the bureau annually by
14 January 1st of each year the total number of bottles of wine shipped into the State in the
15 preceding calendar year.

16 8. Audit. The bureau may perform an audit of a nonresident shipper's records at
17 any time.

18 9. Violation. Violation of this section is a Class D crime. A violation of this
19 section constitutes a violation of the Maine Unfair Trade Practices Act. The bureau may
20 enforce the requirements of this section by administrative proceedings to suspend or
21 revoke a nonresident shipper's license. The bureau may accept payment of an offer in
22 compromise in lieu of suspension; such payments must be determined by rule adopted by
23 the bureau.

24 10. Adoption of rules. The bureau shall adopt rules to carry out the purposes of
25 this section, including but not limited to rules requiring specific labeling and registration
26 requirements for nonresident shippers in order to ensure compliance with the laws
27 governing alcoholic beverage containers in Title 32, chapter 28. Rules adopted pursuant
28 to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter
29 2-A.'

30 Amend the bill in section 2 in subsection 1 in the 2nd line (page 2, line 10 in L.D.) by
31 striking the following: "or malt liquor"

32 Amend the bill by inserting after section 2 the following:

33 'Sec. 3. 36 MRSA §1754-B, sub-§1, ¶G, as amended by PL 2005, c. 218, §20, is
34 further amended to read:

35 G. Every seller of tangible personal property or taxable services that has a
36 substantial physical presence in this State sufficient to satisfy the requirements of the
37 due process and commerce clauses of the United States Constitution. The following
38 activities do not constitute a substantial physical presence for the purpose of this
39 paragraph:

COMMITTEE AMENDMENT "A" to S.P. 54, L.D. 143

- 1 (1) Solicitation of business in this State through catalogs, flyers, telephone or
2 electronic media when delivery of ordered goods is effected by the United States
3 mail or by an interstate 3rd-party common carrier;
- 4 (2) Attending trade shows, seminars or conventions in this State;
- 5 (3) Holding a meeting of a corporate board of directors or shareholders or
6 holding a company retreat or recreational event in this State;
- 7 (4) Maintaining a bank account or banking relationship in this State; or
- 8 (5) Using a vendor in this State for printing, drop shipping or telemarketing
9 services; ~~and~~

10 **Sec. 4. 36 MRSA §1754-B, sub-§1, ¶H**, as enacted by PL 2005, c. 218, §21, is
11 amended to read:

12 H. Every person that makes retail sales in this State of tangible personal property or
13 taxable services on behalf of the owner of that property or the provider of those
14 services; and

15 **Sec. 5. 36 MRSA §1754-B, sub-§1, ¶I** is enacted to read:

16 I. Every person that holds a nonresident shipper's license under Title 28-A, section
17 1403-A.

18 **SUMMARY**

19 This amendment is the minority report. This amendment changes the bill so that a
20 nonresident shipper's license applies only to wine. The amendment requires the
21 Department of Public Safety, Division of Liquor Licensing and Tax Division to adopt
22 rules, including rules to ensure nonresident shipper compliance with bottle deposit laws.

FISCAL NOTE REQUIRED
(See attached)

COMMITTEE AMENDMENT



123rd MAINE LEGISLATURE

LD 143

LR 164(02)

An Act To Allow Direct-to-consumer Wine and Malt Liquor Sales

Fiscal Note for Bill as Amended by Committee Amendment "A"

Committee: Legal and Veterans Affairs

Fiscal Note Required: Yes

Fiscal Note

Current biennium revenue increase - General Fund

Minor cost increase - General Fund

Correctional and Judicial Impact Statements

Establishes new Class D crimes under the Maine Unfair Trade Practices Act.

Fiscal Detail and Notes

Authorizing a registration fee to be paid by out-of-state shippers will increase General Fund revenue collected by the Department of Public Safety; the amounts will depend on the number of out-of-state wine shippers who register and cannot be determined at this time.