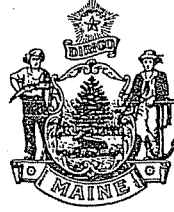


MAINE STATE LEGISLATURE

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124th MAINE LEGISLATURE

FIRST REGULAR SESSION-2009

Legislative Document

No. 1008

H.P. 696

House of Representatives, March 12, 2009

An Act To Increase Consumer Choice for Wine

Reference to the Committee on Legal and Veterans Affairs suggested and ordered printed.

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

Presented by Representative WALSH INNES of Yarmouth.
Cosponsored by Representatives: FITTS of Pittsfield, McKANE of Newcastle and
Representatives: CAIN of Orono, CORNELL du HOUX of Brunswick, PIOTTI of Unity,
RUSSELL of Portland, STRANG BURGESS of Cumberland.

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

2 **Sec. 1. 28-A MRSA §1355, sub-§3, ¶E** is enacted to read:

3 E. A farm winery may accept orders for wine to be shipped to a consumer or licensee
4 located within or outside the State by mail, telephone, Internet or any electronic or
5 other means. All wine orders shipped to another state are subject to the laws and
6 regulations of the receiving state. As used in this paragraph, "outside the State"
7 means any state other than Maine and any territory or possession of the United States,
8 but does not include a foreign country.

9 **Sec. 2. 28-A MRSA §1403-A** is enacted to read:

10 **§1403-A. Direct shipment of wine**

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

13 A. "Direct shipper" means a winery that has obtained a wine direct shipper license
14 under subsection 2.

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

17 **2. Direct shipment of wine.** A winery holding a federal basic wine manufacturing
18 permit located within or outside the State may obtain a wine direct shipper license by
19 filing with the Liquor Licensing and Tax Division an application in a form determined by
20 the bureau accompanied by an application fee of not more than \$100 and a copy of the
21 applicant's current federal basic wine manufacturing permit.

22 **3. Direct shipper application.** Before sending a shipment to a resident of this State,
23 a direct shipper must file an application for a wine direct shipper license under subsection
24 2 with the bureau on a form issued by the bureau along with a true copy of its current
25 alcoholic beverage license issued in this State or another state and a \$100 registration fee.

26 **4. Delivery to person 21 years of age or older.** Wine shipped pursuant to this
27 section may be shipped only to a person 21 years of age or older and must be for the
28 recipient's personal use only and not for resale. A direct shipper or 3rd-party carrier
29 contracted by the direct shipper may deliver wine only to the person listed on the invoice
30 or an adult member of the household, either of whom must provide a valid photo
31 identification demonstrating proof of age. All containers used for shipment of wine under
32 this section must be conspicuously labeled by the direct shipper with the words
33 "CONTAINS ALCOHOL: SIGNATURE OF PERSON 21 YEARS OF AGE OR
34 OLDER REQUIRED FOR DELIVERY." A 3rd-party carrier contracted by a direct
35 shipper shall register with the bureau as a direct shipper carrier on a form provided by the
36 bureau and shall include on the form a description of the carrier's practice for verifying
37 that recipients of alcoholic beverage shipments are 21 years of age or older.

38 **5. Bottle size and case limit.** A direct shipper may not ship a container of wine of
39 less than 750 milliliters and may ship no more than 12 cases, each of which may contain

1 no more than 9 liters or an equivalent volume, to any one recipient address in a calendar
2 year.

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

5 7. License renewal. A direct shipper may annually renew its wine direct shipper
6 license with the bureau by paying a \$50 renewal fee and providing the bureau with a true
7 copy of its current alcoholic beverage license issued in this State or another state.

8 8. Payment of state taxes. A direct shipper located outside of this State shall
9 quarterly pay to the bureau all excise and premium taxes and to the Department of
10 Administrative and Financial Services, Bureau of Revenue Services all sales taxes due on
11 sales to residents of the State in the preceding quarter, the amount of such taxes to be
12 calculated as if the sale were in the State.

13 9. Report. A direct shipper shall report to the bureau twice a year beginning January
14 1st of each year the name and address of each recipient of wine in the State, the total
15 number of bottles shipped to any one address during the reporting period, the value of
16 each shipment and the 3rd-party carrier used to deliver shipments of wine. Reports
17 required by this subsection must be submitted on forms provided by the bureau.

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

21 11. Violation. A direct shipper or 3rd-party carrier who delivers or causes to be
22 delivered wine to a person who has not attained 21 years of age in violation of subsection
23 3 commits a Class D crime. Direct shipment of wine without a wine direct shipper license
24 under subsection 2 constitutes a violation of the Maine Unfair Trade Practices Act. The
25 bureau may suspend a wine direct shipper license for failure to comply with the shipment
26 limits and reporting requirements required by this section. The bureau may revoke a
27 wine direct shipper license for subsequent failure to comply with the shipment limits and
28 reporting requirements. The bureau may accept payment of an offer in compromise in
29 lieu of suspension; such payments must be determined by rule adopted by the bureau.

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

35 **Sec. 3. 28-A MRSA §2077, sub-§1-A,** as enacted by PL 2003, c. 452, Pt. P, §7
36 and affected by Pt. X, §2, is amended to read:

37 **1-A. Importation of malt liquor or wine into State.** ~~A~~ Except as provided in
38 section 1403-A, a person other than a wholesale licensee, small brewery licensee or farm
39 winery licensee may not transport or cause to be transported malt liquor or wine into the
40 State in a quantity greater than 3 gallons for malt liquor or 4 quarts for wine, unless it was

1 legally purchased in the State. The following penalties apply to violations of this
2 subsection.

3 A. A person who illegally transports into the State wine or malt liquor in a quantity
4 of less than 10 gallons commits a civil violation for which a fine of not more than
5 \$500 must be adjudged.

6 B. A person who illegally transports into the State wine or malt liquor in a quantity
7 of 10 or more gallons commits a Class E crime, which is a strict liability crime as
8 defined in Title 17-A, section 34, subsection 4-A.

9 **Sec. 4. 28-A MRSA §2077, sub-§2**, as amended by PL 2003, c. 452, Pt. P, §7
10 and affected by Pt. X, §2, is further amended to read:

11 **2. Transportation of malt liquor and wine within State.** ~~A- Except as provided in~~
12 section 1403-A, a person other than a licensee may not transport malt liquor, in a quantity
13 greater than 3 gallons, or wine, in a quantity greater than 4 quarts, within the State unless
14 it was purchased from an off-premise retail licensee.

15 A. A person who illegally transports within the State wine or malt liquor in a
16 quantity of less than 10 gallons commits a civil violation for which a fine of not more
17 than \$500 must be adjudged.

18 B. A person who illegally transports within the State wine or malt liquor in a
19 quantity of 10 or more gallons commits a Class E crime, which is a strict liability
20 crime as defined in Title 17-A, section 34, subsection 4-A.

21 **Sec. 5. 28-A MRSA §2077-B, sub-§1**, as enacted by PL 1997, c. 501, §6, is
22 amended to read:

23 **1. Prohibition.** ~~A- Except as provided in section 1403-A~~, a person may not sell,
24 furnish, deliver or purchase liquor from an out-of-state company by mail order.

25 **Sec. 6. 36 MRSA §1754-B, sub-§1, ¶H**, as amended by PL 2007, c. 328, §6, is
26 further amended to read:

27 H. Every person that makes retail sales in this State of tangible personal property or
28 taxable services on behalf of the owner of that property or the provider of those
29 services; ~~and~~

30 **Sec. 7. 36 MRSA §1754-B, sub-§1, ¶I**, as enacted by PL 2007, c. 328, §7, is
31 amended to read:

32 I. Every person not otherwise required to be registered that sells tangible personal
33 property to the State and is required to register as a condition of doing business with
34 the State pursuant to Title 5, section 1825-B; ~~and~~

35 **Sec. 8. 36 MRSA §1754-B, sub-§1, ¶J** is enacted to read:

36 J. Every person that holds a wine direct shipper license under Title 28-A, section
37 1403-A.

SUMMARY

1
2 This bill establishes a license to allow for the direct shipment of wine. The license
3 allows certain in-state and out-of-state wineries to ship up to 12 cases of wine annually to
4 recipients who are 21 years of age or older. The direct shipper or 3rd-party carrier
5 contracted by the shipper must be shown proof of age in order to make a delivery. Wine
6 shipments must be conspicuously labeled that they contain alcohol and may be delivered
7 only to a person 21 years of age or older. The bill requires that a direct shipper is
8 required to pay all applicable taxes, including excise and premium taxes on wine. The
9 bill establishes reporting requirements for direct shippers and lists specific penalties for
10 specific violations of laws governing the direct shipment of wine.