

MAINE STATE LEGISLATURE

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124th MAINE LEGISLATURE

FIRST REGULAR SESSION-2009

Legislative Document

No. 1308

H.P. 911

House of Representatives, March 31, 2009

An Act To Allow the Importation of Wine into the State for Individuals through Specific Ports of Entry

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

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

Presented by Representative WEBSTER of Freeport.
Cosponsored by Senator BARTLETT of Cumberland and
Representatives: CORNELL du HOUX of Brunswick, DILL of Cape Elizabeth, Speaker
PINGREE of North Haven, STRANG BURGESS of Cumberland, STUCKEY of Portland,
TRINWARD of Waterville, Senators: MARRACHÉ of Kennebec, MILLS of Somerset.

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 holder of a farm winery license may accept orders for wine to be shipped to a
4 registered shipment outlet or licensee located within or outside the State by mail,
5 telephone, Internet or any electronic or other means. All wine orders shipped to
6 another state are subject to the laws and regulations of the receiving state. As used in
7 this paragraph, "outside the State" means any state other than Maine and any territory
8 or possession of the United States, 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 registered shipment
23 outlet, a direct shipper must file an application for a wine direct shipper license under
24 subsection 2 with the bureau on a form issued by the bureau along with a true copy of its
25 current alcoholic beverage license issued in this State or another state and a \$100
26 registration fee.

27 **4. Delivery to registered shipment outlet.** Wine shipped pursuant to this section
28 may be shipped only to a registered shipment outlet. A licensee may register with the
29 bureau as a registered shipment outlet in accordance with requirements and procedures
30 established by rule by the bureau. All containers used for shipment of wine under this
31 section must be conspicuously labeled by the direct shipper with the words "CONTAINS
32 ALCOHOL: SIGNATURE OF PERSON 21 YEARS OF AGE OR OLDER REQUIRED
33 FOR DELIVERY." A 3rd-party carrier contracted by a direct shipper shall register with
34 the bureau as a direct shipper carrier on a form provided by the bureau and shall include
35 on the form a description of the carrier's practice for verifying that recipients of alcoholic
36 beverage shipments are 21 years of age or older.

37 **5. Pick-up by consumer.** A registered shipment outlet may release a delivery from
38 a direct shipper only to a person 21 years of age or older for the recipient's personal use
39 only and not for resale. A registered shipment outlet may release a delivery from a direct

1 shipper only to the person listed on the invoice or an adult member of the household,
2 either of whom must provide a valid photo identification demonstrating proof of age.

3 6. **Bottle size and case limit.** A direct shipper may not ship a container of wine of
4 less than 750 milliliters and may ship no more than 12 cases, each of which may contain
5 no more than 9 liters or an equivalent volume, to any one recipient address in a calendar
6 year.

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

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

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

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

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

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

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

1 **1-A. Importation of malt liquor or wine into State.** A Except as provided in
2 section 1403-A, a person other than a wholesale licensee, small brewery licensee or farm
3 winery licensee may not transport or cause to be transported malt liquor or wine into the
4 State in a quantity greater than 3 gallons for malt liquor or 4 quarts for wine, unless it was
5 legally purchased in the State. The following penalties apply to violations of this
6 subsection.

7 A. A person who illegally transports into the State wine or malt liquor in a quantity
8 of less than 10 gallons commits a civil violation for which a fine of not more than
9 \$500 must be adjudged.

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

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

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

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

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

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

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

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

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

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

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

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

1 J. Every person that holds a wine direct shipper license under Title 28-A, section
2 1403-A.

3 **SUMMARY**

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