



DIRECT WINE SHIPMENT

REPORT



Submitted to the Maryland General Assembly
by the Comptroller of Maryland

December 31, 2010



Peter Franchot
Comptroller

December 21, 2010

The Honorable Thomas V. Mike Miller
President of the Senate
H-107 State House
State Circle
Annapolis, MD 21401

The Honorable Michael E. Busch
Speaker of the House
H-101 State House
State Circle
Annapolis, MD 21401

Dear President Miller and Speaker Busch:

Senate Bill 858, which was passed by the General Assembly earlier this year and signed into law by the Governor, charged the Comptroller with submitting a report to the General Assembly *"on the viability and efficacy of instituting in Maryland the policy of permitting direct shipment of wine to consumers in the State."*

To that end, please find attached a report prepared for you and the members of the General Assembly about the direct shipment of wine in Maryland, one which addresses the specific issues enumerated in Senate Bill 858.

I hope you find this information useful. Should you have any questions or concerns, please do not hesitate to contact my office.

Sincerely,

Peter Franchot
Comptroller of Maryland

Acknowledgements

As required by Senate Bill 858, this Direct Wine Shipment Report is submitted to the Maryland General Assembly by the Comptroller of Maryland.

Joanne Tetlow, Esquire, Tax Consultant II of the Field Enforcement Division performed the research, writing, analysis, and management of this report under the supervision of Jeffrey A. Kelly, Director of the Field Enforcement Division. Jocelyn Aldworth, Assistant to the Assistant Director, managed and developed the survey software and provided other important support functions. Melanie Pyne, Intern, provided assistance in a variety of ways, including the research for the Wine & Spirits Study, and insight into the wine industry.

Gratitude is expressed to all who contributed to this report, including industry members and survey respondents.

Executive Summary

The three-tier distribution system has been the backbone of alcoholic beverages regulation in Maryland and nationwide since the repeal of Prohibition in 1933.

While three-tier distribution has been and continues to be the legal framework for the sale and distribution of alcoholic beverages in Maryland, this does not mean it is unalterable. Modifications have been made within the three-tier distribution system as established in Article 2B. However, the rise of direct wine shipment, which is the subject of this report, poses new and different challenges to the three-tier system. Rather than operating within the three-tiers, direct wine shipment is an “exception” to the three-tier distribution system. As such, the direct wine shipper bypasses the second-tier wholesaler and third-tier retailer by selling to the consumer as the end-user. When an out-of-state direct wine shipper and Maryland consumer transact a sale of wine, both act outside of the three-tier distribution system. Because of this, tax collection, compliance, and enforcement problems may arise, though states that have enacted direct wine shipping legislation have reported nominal problems. Senate Bill 858, which was passed by the General Assembly earlier this year and signed into law by the Governor, charged the Comptroller with examining these issues and others to determine the viability and efficacy of direct wine shipment in Maryland.

This direct wine shipment report makes evaluations and determinations pursuant to the seven criteria set forth in Senate Bill 858. The last section of this report (section 7) addresses these seven requirements using both qualitative and quantitative data discussed in prior sections. In order to render a legislative or public policy judgment about direct wine shipment, the regulatory context which gave rise to this phenomenon must be examined as well as the constitutional jurisprudence surrounding this issue and the Twenty-first Amendment to the United States Constitution. It is also important to understand how wine is regulated as an alcoholic beverage in Maryland as well as relevant federal laws (sections 4 & 5). A legislative history of direct wine shipment bills is furnished to assist lawmakers in understanding that context as well (section 6).

The general organization of the report begins with a description of the research design and methodology in section 1, which includes an explanation of the surveys and case study employed to obtain quantitative data. Surveys were sent by the Comptroller's Office to Maryland wineries, wholesalers, retailers, nonresident wineries, alcoholic beverage manufacturers, local Maryland liquor boards, consumers, and other state regulators. A case study was conducted using the model of the Virginia based McLean Study in the report issued by the Federal Trade Commission entitled, "*Possible Anticompetitive Barriers to E-Commerce: Wine*" (July 2003) ("FTC Report") to determine the benefits and costs of direct wine shipment to Maryland consumers. The top 50 restaurant wines selected by Wine & Spirits magazine for 2009 were used as a "sample" to compare prices between Maryland bricks-and-mortar retail stores, online wineries, and online retailers.

Section 2 attempts to describe the rise of the phenomenon of direct wine shipment, i.e., a convergence of small winery growth, direct-to-consumer sales, and consolidation of the wholesalers as a result of the United States Supreme Court decision, *California Retail Liquor Dealers Association v. Midcal Aluminum, Inc.*, 445 U.S. 97 (1980). Also, the impact of the national economic crisis in 2008 on the wine industry is briefly examined. Our assessment of the positive economic benefits of the wine industry is balanced by a subsection regarding the costs of alcohol-related injuries and illnesses. Included in this are studies about underage wine drinking. It appears from a report issued by the National Center on Addiction and Substance Abuse at Columbia University ("CASA") that compared to beer and distilled spirits, "wine" is not the drink of choice for underage drinkers, both pathological and non-pathological. Nevertheless, underage drinking is a documented national problem, so any additional access to wine by youth is undesirable.

Perhaps the most important consideration and the one that is central to this report is the United States Supreme Court decision in *Granholm v. Heald*, 544 U.S. 460 (2005), which set the legal parameters and logic of direct wine shipment and the Twenty-first Amendment. The analysis of this report uses *Granholm* as a benchmark to evaluate the issue of direct wine shipment and its implications for three-tier distribution in Maryland.

Section 3 of the report discusses pre-*Granholm* constitutional jurisprudence and Justice Kennedy's majority opinion in *Granholm* and his reliance on the FTC Report. Justice Stevens' and Justice Thomas' dissents in *Granholm* are also considered, and then post-*Granholm* statutory and legal developments. In many ways, the majority opinion in *Granholm* expresses the arguments made by those supporting direct wine shipment, and the dissenting opinions express the arguments made by those opposing direct wine shipment.

There is a tendency in this policy debate to conjoin considerations that should remain distinct. For example, a recent United States Court of Appeals Fifth Circuit case discussed in Section 7 – *Wine Country Gift Baskets.Com v. Steen*, 612 F.3d 809 (2010) – stands for the proposition that *Granholm* applies to out-of-state wineries, but not out-of-state retailers. The court in *Wine Country* distinguishes “out-of-state wineries” from “out-of-state retailers”: the former are an “exception” to the three-tier distribution system, while the latter are an integral part of the three-tier system itself. In-state retailers, as the third tier, are subject to state power under the Twenty-first Amendment. They are physically located in the state and proximate to consumers. By contrast, an out-of-state winery or producer, while acting as a first tier manufacturer, is by definition not located in the state creating a different relationship to state regulatory authority. Because of this, the court in *Wine Country* held that treating in-state retailers differently than out-of-state retailers was not *Granholm* discrimination. Under the Twenty-first Amendment, a state is not required to provide equal treatment between out-of-state retailers and in-state retailers.

Wine Country provides the insight that out-of-state wineries and out-of-state retailers cannot be merged together. They are separate and distinct in how they operate within the three-tiers, and in their unique relationship to state regulatory power. *Wine Country* is not the only case that has been decided in the post-*Granholm* world; but, it is one that makes the type of distinctions crucial to lawmaking and public policy analysis.

As a matter of logical inference, since direct wine shipment by out-of-state wineries is an “exception” to the three-tier distribution system, and direct wine shipment by out-of-state retailers relates to an integral part of the three-tiers itself, allowing direct wine shipment from out-of-state retailers is incompatible with existing alcoholic beverage laws in Maryland.

Having said that, the remaining part of this summary will outline the key findings made in section 7 of this report as required by Senate Bill 858:

(1) Evaluation of best practices used by 37 states and the District of Columbia where direct wine shipment to consumers is legal:

A. Establish a “Direct Wine Shipper’s Permit,” whether it be a revised expansion of the current Direct Wine Seller’s Permit or a newly created one to repeal and replace the Direct Wine Seller’s Permit.

B. Impose a \$100 permit fee, and \$100 for a renewal permit fee, which is consistent with Article 2B, § 2-101.

C. Allow direct wine shipment for in-state and out-of-state wineries, but not for out-of-state retailers.

D. Impose a quantity limit of 12 9-liter cases per consumer annually.

E. Include a “consent to jurisdiction” provision, which will facilitate the tax collection process.

F. Prohibit direct wine shipment to consumers on Sundays.

(2) Determination of best practices for preventing access by underage drinkers to wine shipped directly to consumers:

A. Require a permit for a common carrier delivering wine directly shipped to a consumer.

B. Require both the direct wine shipper and common carrier to affix a shipping label to the package with the following statement: “CONTAINS ALCOHOL; SIGNATURE OF PERSON AGE 21 OR OLDER REQUIRED FOR DELIVERY.”

C. Require a common carrier to obtain an adult signature using age verification procedures.

(3) Determination whether a significant increase or decrease in access to or demand for wine by underage drinkers that has been documented as the results of direct wine shipment laws:

There is no evidence that underage drinking has increased or decreased as a result of direct wine shipment. The reasons for this may be that:

A. “Wine” is not the drink of choice for youth.

B. Direct shipment of wine is costly and time-consuming.

(4) Determination of best practices for collecting tax revenues:

A. Require direct wine shipper to file “quarterly” tax returns.

B. Require common carrier permittee to file “quarterly” reports.

C. Require direct wine shipper to obtain a minimum \$1,000 tax bond, subject to adjustment.

D. Require records be kept in accordance with the state law of the direct wine shipper, or if there is no records requirement, then impose the 2-year records requirement as provided in Article 2B.

(5) Determination of benefits and costs to consumers:

Based on survey data, certain academic and industry literature, and the Comptroller's Wine & Spirits Study, the following inferences have been made:

A. The majority of wine brand and varietals are available for consumers to purchase in Maryland.

B. Direct wine shipment will benefit wine connoisseurs motivated more by brand than price, and who would purchase wine directly if it was unavailable from a local retailer.

C. Direct wine shipment could make economic sense if quantities exceeding one bottle are purchased, because of the savings in shipping costs related to economies of scale.

(6) Evaluation of related fiscal, tax, and other public policy and regulatory issues:

Though reported as nominal issues, the following problems are possible, because the direct wine shipper and consumer engage in a wine sales transaction outside of the three-tier distribution system:

- A. Tax reporting and collection.
- B. Regulatory compliance.
- C. Precedent for further "exceptions" to three-tier distribution.
- D. Temperance.

(7) Determination of effect of direct wine shipment laws on in-state alcoholic beverage licensees and other local businesses:

Based on survey data, certain academic and industry literature, and the Comptroller's Wine & Spirits Study, the following inferences have been made:

A. Direct wine shipment by **out-of-state wineries** to Maryland consumers would not have an overall negative effect on in-state licensees, because purchases from wineries are primarily motivated by “availability.”

B. Direct wine shipment by **out-of-state retailers** to Maryland consumers would have a negative effect on in-state licensees, because purchases from retailers are primarily motivated by “price.”

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DIRECT WINE SHIPMENT REPORT

Senate Bill 858 – Maryland Winery Modernization Act – was passed by the Maryland General Assembly and signed by Governor O’Malley on May 4, 2010. The purpose of the bill was to expand the scope of the Class 4 Limited Winery License; an amendment on the floor of the Senate added another objective—that the Comptroller of Maryland submit a report to the General Assembly by December 31, 2010 about the viability and efficacy of instituting direct wine shipment to consumers in Maryland.

This direct wine shipment report prepared by the Field Enforcement Division of the Comptroller of Maryland follows the criteria set forth in Senate Bill 858 as the foundation of its analysis. The constitutional issues of direct wine shipment are discussed as well as the legislative and legal background of Maryland’s experience with this question. An understanding of this broader context will assist legislators as they consider the viability and efficacy of direct wine shipment in Maryland.

Since this is a relatively new issue, there has been no previous study in Maryland on direct wine shipment, and there are few other studies available from other states on the subject.¹ The most influential study has been the Federal Trade Commission Report entitled, “Possible Anticompetitive Barriers to E-Commerce: Wine” (July 2003) (“FTC Report”), which was relied upon by Justice Kennedy in the United States Supreme Court decision *Granholm v. Heald*, 544 U.S. 460 (2005), a landmark case in Twenty-first Amendment jurisprudence, and which directly dealt with the issue of direct wine shipment laws in Michigan and New York.

Numerous law review articles and industry reports have been written since *Granholm*; yet, with the exception of the FTC Report, there is no comprehensive federal or state analysis of the impact of direct wine shipment to consumers on state regulatory, tax, and public policy objectives. By considering the “best practices” of the 37 states and the District of Columbia, and other data collected, this report will attempt to evaluate that impact.

¹ The most extensive report published by a state is the one prepared for the Florida Senate by the Committee on Regulated Industries entitled, “Direct Wine Shipment of Wine to Florida Consumers” (October 2005). In 1999, a report was issued by the Minnesota Office of Senate Counsel and Research and House Research Department entitled, “Direct Shipment of Alcoholic Beverages” (February 1999). In 2005, the Office of Legislative Research of the Connecticut General Assembly issued a brief report entitled, “Direct Shipment of Wine to Consumers,” analyzing the effect of the *Granholm* decision on Connecticut law. The Georgia Public Policy Foundation issued a general report entitled, “Alcohol Distribution Laws Bottle Up Options for Consumers and Retailers” (October 2002), a portion of which discussed direct wine shipment. There may be others.

I. INTRODUCTION: RESEARCH DESIGN & METHODOLOGY

A report within the discipline of political science may have various research designs and methods depending upon the subject matter and objectives. In contrast to biological science, political science is not conducted, tested, and analyzed in the controlled setting of a laboratory. Even if it was, background assumptions and hypotheses inform the methodology and analysis of any empirical data.

The research design and methodology of this report as explained in this section takes into account assumptions, hypotheses, and inferences that may be made about the data collected. Since data does not “speak for itself,” and is always interpreted and understood within a certain context of questions, concerns, and objectives, the methods used are those generally accepted as valid and reliable in political science. Senate Bill 858 has established the framework for the research design. All the information in this report is meant to relate one way or another to the seven criteria set forth in Senate Bill 858.

Stated differently, *direct wine shipment to consumers* is the “dependent variable” of this report. The question posed by the Maryland General Assembly is whether direct wine shipment to consumers could be viable and efficacious in Maryland. In order to make an assessment, a research design as an ordering framework is needed as well as a methodology that can test this dependent variable against independent variables, i.e., other state laws and regulations; regulatory, tax, and public policy objectives; and benefits and costs to in-state licensees and consumers.

The political and policy value of this report to the legislature rests on the research design and methodology, which includes both qualitative and quantitative data. While the research design is rooted in the criteria of Senate Bill 858, and methodologies used are common among political scientists, the findings in this report fall into the area of probabilities, not certainties. Because the data collected was not part of an experiment in a “direct wine shipment laboratory” where the presence of one independent variable could be tested against the absence of that same independent variable, it is not possible to determine causality. For example, it cannot be determined that direct wine shipment to consumers will necessarily “cause” increased underage access or the deterioration of the three-tier distribution system. Instead of causation which is very difficult to prove, and to which many unfounded claims are made, this report uses the data to make an assessment and judgment about “correlations” and logical relationships which, although probable, may be relied upon as a reasonable basis for lawmaking.

Research Design

In order to make the “evaluations” and “determinations” required by Senate Bill 858, data has been gathered from surveys, academic reports, law review articles, industry papers, and other sources. The literature on the subject is vast, and in no way does this report cover every nook and cranny. More recent materials were selected, and those which had the most direct bearing on the question at hand.

Senate Bill 858

Pursuant to section 3 of Senate Bill 858, the Comptroller’s report must include an evaluation of the:

- (1) Best practices used by the 37 states and the District of Columbia where direct wine shipment to consumers is legal; and
- (2) Related fiscal, tax, and other public policy and regulatory issues.

And, a determination about the:

- (3) Best practices for preventing access by underage drinkers to wine shipped directly to consumers;
- (4) Whether a significant increase or decrease in access to or demand for wine by underage drinkers that has been documented as the result of direct wine shipment laws;
- (5) Best practices for collecting relevant tax revenues;
- (6) Benefits and costs to consumers; and
- (7) Effect of direct wine shipment laws on in-state alcoholic beverage licensees and other local businesses.

Methodology

The methodology of this report is analytical and empirical using qualitative and quantitative data.

A. Qualitative Data

The first six sections of the report discuss relevant qualitative data, such as United States constitutional jurisprudence, the development of state law regarding direct wine shipment, and government, academic, and industry reports. When considering the status of the wine industry, impact of the recession, and costs associated with alcoholic beverages, much of the literature includes quantitative data. There is not always a bright line between qualitative and quantitative data.

For purposes of this report, legal, regulatory, governmental, academic, and industry information are categorized as qualitative; and the surveys and case study conducted by the Comptroller are considered quantitative. This distinction is important in the sense that quantitative data is measured differently than qualitative data, and the former may be applied more generally, while the latter tends to focus on in-depth knowledge about a particular subject. Nevertheless, in the analysis section 7, both types of data are used to complement, validate, and challenge each other. It is believed that a combination of sources is more reliable, and more likely to present an accurate portrait of direct wine shipment.

Review of state laws, regulations, and forms were a major source for understanding the best practices used by the 37 states and the District of Columbia where direct wine shipment is legal, and related fiscal, tax, and other public policy and regulatory issues. The following chart shows the current status of direct wine shipment across the country.

Table 1			
Direct Wine Shipment to Consumers - United States			
	<u>License or Permit</u>	<u>Reciprocity</u>	<u>Prohibition</u>
Alaska	New Hampshire	New Mexico	Alabama
Arizona	New York		Arkansas
California	North Carolina		Delaware
Colorado	North Dakota		Kentucky
Connecticut	Ohio		Maryland
Florida	Oregon		Massachusetts
Georgia	Rhode Island		Mississippi
Hawaii	South Carolina		Montana
Idaho	Tennessee		New Jersey
Illinois	Texas		Oklahoma
Indiana	Vermont		Pennsylvania
Iowa	Virginia		South Dakota
Kansas	Washington		Utah
Louisiana	Washington, D.C.		
Maine	West Virginia		
Michigan	Wisconsin		
Minnesota	Wyoming		
Missouri			
Nebraska			
Nevada			

Even though a model direct wine shipment bill was approved in 1997 by the National Conference of State Legislatures, variation and difference exist among the states. Still, common requirements and practices can be identified among the states

in order to evaluate best practices and ways of addressing tax, policy, and regulatory concerns.

Thirteen of the 37 states are “control states,” which means that private economic firms are replaced by state government. Depending on the state, the beer, wine, or liquor business is “controlled” or owned by the state furnishing it all profits.² The other 24 states, including Washington, D.C., are “license” states, which means private enterprise engages in the alcohol business and its profits, not state government.³ There does not seem to be any correlation between whether a state is a “control” state or a “license” state and direct wine shipment laws, since 72% of the control states have enacted direct wine shipment laws. However, it is believed that license states are more likely to adopt reciprocity, because of private sector economic interests.⁴ As will be discussed later, since *Granholm*, states have opted for direct wine permit systems, not reciprocity, including license states.

Although the Second Circuit Court in *Bainbridge v. Turner*, 311 F.3d 1104 (2002) ruled that the Florida direct wine shipment law was unconstitutional because it allowed intrastate direct shipment, but not interstate direct shipment, the Florida legislature has not yet passed a bill creating the necessary license or permit to allow direct wine shipment to consumers.⁵ It is illegal to sell or distribute alcohol in Florida without a license or permit. Consequently, direct wine shipment is not technically legal in Florida, because there is no mechanism, i.e., a license or permit, for a direct wine seller to ship wine to Florida consumers.

In 2006, after *Bainbridge*, the Florida Department of Business & Professional Regulation announced that direct wine shipment to consumers was legal. In 2007, the Department declared that it did not have legal authority to collect taxes from, or enforce the law against, out-of-state wine sellers, and that legislation would be required. Currently, the state regulator is in the awkward position of having to allow direct wine shipments to Florida consumers *qua* *Bainbridge* without legal authority to require a license or permit or collect tax revenue from out-of-state direct shippers.

² According to the National Alcohol Beverage Control Association (“NABCA”), there are 18 control states in the country: Washington, Oregon, Idaho, Montana, Wyoming, Utah, Iowa, Michigan, Mississippi, Alabama, North Carolina, Virginia, West Virginia, Ohio, Pennsylvania, Vermont, New Hampshire, and Maine. Also, Montgomery County in Maryland is a control jurisdiction acting like a control state.

³ The 32 license states and Washington, D.C. are represented by the National Conference of State Liquor Administrators (“NCSLA”).

⁴ Gina M. Riekhof and Michael E. Sykuta, “Politics, Economics, and the Regulation of Direct Interstate Shipping in the Wine Industry,” CORI WORKING PAPER (March 2004), p. 25.

⁵ In the 2009 legislative session, two direct wine shipment proposals (Senate Bill 764/House Bill 245 and Senate Bill 272/House Bill 251) both died in committee. R. Corbin Houchins, Esquire, “Notes on Wine Distribution,” Release 32 (February 2, 2010), p. 28.

Direct wine shipment to consumers is not legal in the following 13 states: Alabama, Arkansas, Delaware,⁶ Kentucky, Maryland, Massachusetts, Mississippi, Montana, New Jersey,⁷ Oklahoma, Pennsylvania, South Dakota, and Utah.

B. Quantitative Data

Social scientists use descriptive statistics to explain political phenomena. Describing data in this way provides a basis for inference and generalized evaluations made in this report.

(1) Descriptive statistics have three elements:

- (a) Levels of Measurement;
- (b) Measures of Central Tendency; and
- (c) Measures of Spread.⁸

While this report does not purport to be scientific, the descriptive statistical tool of measures of central tendency is used to make a baseline judgment about the results of the survey data and case study. The three measures of central tendency are:

1. Mean;
2. Median; and
3. Mode.⁹

The “mean” is the arithmetical average, or a variable’s typical value. For example, one survey question is: *How likely is it that the brand and varietal you do not carry is available from a Maryland wholesaler?* The answers are: *Very likely, Likely, or Not Likely.* To determine the “mean,” the percentages for each answer are added and then divided by the number of categories of answers. Where appropriate, the “mean” value will appear in the various survey appendices. The “mode” is the most frequent value among all the response categories. For most of the survey questions “mode” can be determined by looking at the percentage response. For example, one of the survey questions is: *What type of financial effect do you believe allowing direct wine shipping by out-of-state wineries to consumers in Maryland will have on your business?* The

⁶ In May 2010, the legislature in Delaware rejected a direct wine shipment bill.

⁷ Direct wine shipment bills—Senate Bill 766 and Assembly Bill A1702—were introduced into the New Jersey Assembly in early 2010. Senate Bill 766, allowing direct wine shipment by in-state and out-of-state wineries, passed the New Jersey Senate on March 11, 2010, and was referred to the Assembly Regulatory Oversight and Gaming Committee. No action has been taken by the Assembly.

⁸ Peter Burnham, Karin Gilland Lutz, Wyn Grant, and Zig Layton-Henry, *Research Methods in Politics*, 2nd edition (New York: Palgrave Macmillan, 2008), p. 138.

⁹ *Ibid.*, p. 143.

three responses are: *positive (increase sales revenue)*; *no effect*; or *negative (decrease sales revenue)*. If seventy-five percent (75%) of the respondents answered “no effect,” then this value is the “mode” or measure of central tendency. Since the “mode” is obvious in the survey results, it is not separately specified.

The objective is to provide the “average” or “central” tendency of the representative sample, which then can be generalized to the whole population under consideration. It is believed that striking the balance between extremes is the most useful information for the legislature. By knowing the central tendencies, the contrasting poles can be intuitively determined.

(2) There are two types of inference-making in political science:

- (a) Descriptive; and
- (b) Causal.¹⁰

This report will make “descriptive” inferences, which is being able to say something about cases not studied based on those which have.¹¹ In other words, it is making a link between data collected and data not collected.

Three principles will be followed in making descriptive inferences in the analysis section. First, generalizations will be made from the sample to the population. For example, the random sample of Maryland wholesalers who responded to the survey will be generalized as representing all Maryland wholesalers. Second, generalizations will be made from observations to concepts. For example, an observation from the survey data is that the profile of a Maryland direct wine shipment consumer is most likely to purchase fine wines not available in retail stores, rather than inexpensive wines. This observation can be rendered into a concept more generally that direct ship wine consumers are a niche group in society who have particular tastes, motivations, and proclivities different from the average alcohol drinker.

Third, random and systematic elements will be distinguished. Certain factors in the data are more important (systematic) than others (random). An inference is made that systematic factors may be validly generalized in order to answer the legal, regulatory, and policy questions addressed in this report. An example of a systematic element is the whole idea of direct wine shipment to consumers itself, which is an “exception” to the three-tier distribution system. As an “exception,” direct wine shipment sales and shipments lose some of the accountability features embedded in the three-tier distribution system.

¹⁰ Ibid., p. 171.

¹¹ Ibid.

Random factors in the data are certain opinions and anecdotal comments by licensees and consumers that are part of the consideration, but do not relate to the core issues of direct wine shipment, such as an argument for economic freedom alone without taking into account the policy objectives of obedience to law, orderly distribution of alcohol, and temperance.

As mentioned, causal inferences are much more difficult to make. To determine causation, two situations must be compared, one with a certain factor present, and another with that same factor absent. If data was analyzed about a state before and after direct wine shipment was enacted to determine causative agents of change, conclusions drawn would be tentative, because the variables considered are open-ended and subject to contingencies that cannot be measured scientifically. This does not mean that studies are not reliable, important, and useful for providing knowledge about a subject, and giving legislators guidance on policymaking. It does mean, however, that understanding “correlations” between two phenomenon, and making “inferences” is a more accurate method for political science.

(3) Surveys

Each of seven requirements for the report under Senate Bill 858 is considered separately; however, the use of a “survey” as a data collection tool informs the analysis for the entire report.

The validity and reliability of the surveys depend upon the procedures used in obtaining the data and the structure of the survey itself. Ideally, the survey or questionnaire should be “understandable, unambiguous, unbiased, and relevant.”¹² The surveys contain both “open-ended” and “closed” questions, but more of the latter, since they are easier to interpret and can substantiate objective findings. On average, 66% of the questions are closed, and 34% are open-ended, including those asking for comments.

All surveys were self-administered, which infers that those who responded were motivated by some interest in the topic of direct wine shipment. Though the respondents are self-selected, this does not necessarily mean they have a bias for or against direct wine shipment to consumers. It does mean they have an interest in expressing an opinion about direct wine shipment to consumers in Maryland. Nevertheless, based on consumer comments, the sample population supported direct wine shipment. There were no comments against direct wine shipment. Based on this, there may be a level of “bias” supporting direct wine shipment in the

¹² Ibid., p. 111.

consumer sample. This bias needs to be taken into consideration when analyzing the results of the consumer surveys.

The following groups were each sent a different, but similar, survey about direct wine shipment in Maryland:

1. Maryland Wineries;
2. Maryland Wholesalers;
3. Maryland Retailers;
4. Maryland Alcoholic Beverages Manufacturers;
5. Nonresident Wineries;
6. Maryland Local Liquor Boards;
7. Maryland Consumers; and
8. State Regulators.

Except for the Maryland Retailer and Maryland Consumer survey populations, the other groups surveyed were known quantities since they are licensed by the Comptroller or are state regulators.

The purpose of the survey as a methodological tool is to “obtain accurate information about a population by obtaining a representative sample of that population and using the information from the sample to make generalizations about the whole population.”¹³ Each survey group is called a “cohort,” which means that they have similar characteristics or experiences.¹⁴ Since there was not a perfect response rate of 100% for each survey, the number of respondents are considered a “representative” sample of the whole cohort or population of that particular group. Inferences and extrapolations are then made from the representative samples.

Sampling procedures fall into two categories:

- (a) Probability or random sampling; and
- (b) Non-probability or non-random sampling.

Political scientists may use five main ways of designing a random sample, and two ways for designing a non-random sample. The method used in this report for the alcoholic beverage licensees or permittees—Maryland Wineries, Nonresident Wineries, Maryland Wholesalers, and Maryland Alcoholic Beverages Manufacturers—was “simple random sampling,” which means that the entire population of each group was known, identified, and sent the same survey. The sampling is “random” eliminating bias, because each licensee or permittee “has an

¹³ Ibid., p. 97.

¹⁴ Ibid., p. 61.

equal and independent chance of being included in the sample.”¹⁵ This method of simple random sampling applies to the Maryland Local Liquor Boards and the County Dispensaries, the latter were sent both a wholesaler and liquor board survey, since they act in both capacities.

Since the entire population of Maryland Alcoholic Beverage Retailers was not sent the survey, simple random sampling does not apply. The type of sampling used for the Maryland Retailers may be called “cluster” sampling in that certain sub-groups or clusters were sent the same survey. Those “clusters” were members of the Maryland State Licensed Beverage Association,¹⁶ and members of the Restaurant Association of Maryland, who have a liquor license.¹⁷ The sampling is random, because each member of the cohort had the opportunity to respond to the survey. Given the nominal number of respondents to the Maryland Retailer survey (response rate of 7%), conclusions drawn will be tentative.

The Maryland Consumer survey sent on behalf of the Comptroller by Marylanders for Better Beer & Wine Laws to its members is also a random “cluster” sampling. Throughout the report, this cluster sample is designated as Maryland Consumers “B”.¹⁸ The same consumer survey posted on the Comptroller’s website for any Maryland consumer to complete is a simple random sampling, since all Maryland consumers, except those in the Maryland Consumers “B” cohort, had the option of being a respondent. This targeted population is referred to throughout the report as Maryland Consumers “A”.

The technical difference between “simple” random sampling and “cluster” random sampling is important when making inferences and generalizations about the data. Simple random sampling is more representative of the targeted population than “cluster” sampling, which by definition measures a certain selected portion.

(4) Case Study

The case study is a common approach in the social sciences, because it allows a more in-depth analysis of a particular group or issue. Both qualitative and quantitative data can be gleaned from a case study. However, because the group or issue under study is unique and circumscribed, it is more difficult to make generalizations applicable to the whole population.

¹⁵ Ibid., p. 103.

¹⁶ The survey was sent via email by the Maryland State Licensed Beverage Association to 330 members.

¹⁷ The survey was sent via email by the Restaurant Association of Maryland to 401 members.

¹⁸ The survey was sent via email by Marylanders for Better Beer & Wine Laws to 10,000 of its members.

Modeled after the Virginia-based McLean Study in the FTC Report, the Comptroller conducted a Wine & Spirits Study (“W&S Study”) to determine under a cost-benefit analysis whether consumers would purchase a sample of 50 restaurant wines from a bricks-and-mortar Maryland retail store or online. The question considered was whether consumers would be more likely to purchase this sample of wines online or at a retail store when considering the factors of “price” and “availability.”

In summary, this introduction section is meant to map the territory to be explored, and to explain the research design and methodologies used. The report moves from the general to the specific. Thus, the sections on regulatory context, constitutional jurisprudence, federal and state regulation, and legislative history all precede and culminate in the analysis section at the end of the report.

II. REGULATORY CONTEXT

For better or worse, liquor is a part of the fabric of American history. George Washington sent troops to quell the Whiskey Rebellion of 1794 in western Pennsylvania, where an armed insurrection protested the first excise tax imposed on a domestic product by the federal government—a tax on whiskey. In addition to owning a distillery, it is known that in the election of 1758 when running for the Virginia Assembly, Washington purchased alcoholic beverages for voters to partake before or after entering the ballot box. Bribing voters with alcohol at election polls was commonplace at that time, and while alcohol is no longer served at election polls, its use pervades American society. Despite America’s Puritan foundation, alcoholic beverages have been manufactured, sold, and consumed by the American people for most of its history. The United States did experiment with outright prohibition of alcoholic beverages between 1920 and 1933, but this proved to be a failure. Because alcoholic beverages—beer, wine, and distilled spirits—are inherently dangerous if misused, America’s approach to liquor has been ambiguous. It is clear that Prohibition did not work, but neither does weak regulation, because of public policy and moral concerns. Since the repeal of Prohibition, America’s solution has been to legalize alcoholic beverages under vigorous regulation.

Overall, alcoholic beverages have had a peculiar place in our legal and social history—it is the only subject that has generated two amendments to the United States Constitution: the Eighteenth Amendment (1919)¹⁹ and the Twenty-first Amendment (1933). Since the ratification of the Twenty-first Amendment, the three-tier distribution system has been the legal norm nationwide. Departures from three-tier distribution have always been difficult to achieve. With the recent invention of

¹⁹ The Eighteenth Amendment was ratified on January 16, 1919, but did not take effect until one year later on January 17, 1920.

the internet and “e-commerce” and growth in the wine industry, the question of direct wine shipment to consumers as an allowable exception to the three-tier distribution system has been an issue before many state legislatures.

A. Growth & Consolidation in the Wine Industry

The Wine Institute estimates that Americans consumed 753 million gallons of wine in 2008, or 2.46 gallons per resident, and 767 million gallons in 2009, or 2.50 gallons per resident.²⁰ According to the United Census Bureau, wine imports grew 74% in value and 53% in quantity between 2002 and 2007.²¹ Similar growth has occurred for small wineries, the most likely candidate for direct wine shipment to consumers. Wineries have grown from between 500-800 in 1975 to over 2,000 today, many of which produce less than 2,000 cases annually.²²

In Iowa, known for its corn crop, the wine industry has grown substantially in the last decade.²³ Almost half of America’s wineries are in California, which supplies 95% of all domestically-grown grapes crushed for wine. Washington, Oregon, and New York together account for 20% of the wineries and 4% of total grapes crushed for wine each year. The United States is the world’s fourth largest wine producer, yet is a net importer of wine as most domestic wine is consumed within the country.²⁴ Nevertheless, exports have increased significantly in the last twenty years.²⁵

New York is the leader in the Northeast region with 95% of the region’s production and almost half of the wineries.²⁶ Growth has also occurred in the Midwest and South. According to the American Association of Wine Economists (“AAWE”), in the Midwest and South, “There are now over 600 producing wineries

²⁰ Wine Institute, available from <http://www.wineinstitute.org> (accessed November 16, 2010).

²¹ Elliott R. Morss, Ph.D., “*The US Wine Market – A Global Economist’s Perspective (Part 1)*,” available from <http://www.wine-economics.org/wordpress/?p=7> (accessed August 4, 2010).

²² Staff of the Federal Trade Commission, “*Possible Anticompetitive Barriers to E-Commerce: Wine*” (July 2003), p. 6. (“FTC Report”) Large wineries produce over 300,000 cases annually.

²³ Between 1999 and 2006, the number of vineyards increased from 15 to more than 325; the number of wineries from 13 to 63; and the number of acres dedicated to grape-growing from 63 to more than 650. Jessica R. Reese, “*A Post-Granholm Analysis of Iowa’s Regulatory Framework for Wine Distribution*,” 94 Iowa Law Review 665, 2 (February 2009).

²⁴ Patrick Canning and Agnes Perez, “*Economic Geography of the U.S. Wine Industry*,” American Association of Wine Economists, Working Paper No. 22 (September 2008), p. 2. France, Italy, and Spain are the world’s largest wine producers (“Old World Producers”). According to this paper, U.S. imports have grown 8% since the 1990s, tripling in volume to 227.6 million gallons in 2007. Over 40% of imports come from Australia, Argentina, Chile, New Zealand, the Republic of South Africa, and Canada (“New World Producers”). While the U.S. imports more from Old World Producers – 56% in 2007, this figure is down from 90%. *Ibid.*, pp. 4-5.

²⁵ *Ibid.*, p. 5.

²⁶ *Ibid.*, p. 7.

in each of these regions, exceeding those in the Northeast.”²⁷ Michigan and Ohio are the leaders in the Midwest with Virginia, Florida, and Texas in the South. One industry research firm estimated that the impact of wine, grapes, and grape products on the economy in 2005 was \$162 billion.²⁸ According to Senator Dianne Feinstein in an August 5, 2010 statement for the Congressional Record, California’s wine industry contributes \$61.5 billion to the nation’s economy each year; however, she cited a lower figure of \$122 billion for the entire industry nationally.²⁹ In 2005, the number of bonded wineries had increased by 83% since 1999, from 2688 to 4929.³⁰ As of October 2010, there were approximately 7,259 bonded wineries in the country, 43% of which were in California, and 10% of which were in Washington.³¹

In contrast to the expansion of the wine industry, wine wholesalers have declined in number. According to the FTC Report, the decline is from several thousand wholesalers in the 1950s to a few hundred today.³² The statistic of decline from the Wine Institute is 1,200 wine distributors in 1998 to 600 distributors nationwide in 2008.³³ Another source states that thirty U.S. wine companies supply over 90% of the wine sold at retail, and the top three firms account for 60% of the volume.³⁴

It is this reverse trend between growth of small wineries and a decline in the number of wholesalers that has put additional pressure on state lawmakers to allow direct wine shipment to consumers. An argument can be made that the reduced number of wholesalers makes no difference, since large wholesalers can carry any and all brands of wine that small wineries want to produce; however, the need for

²⁷ Ibid., p. 8.

²⁸ MKF Research, *“The Impact of Wine, Grapes and Grape Products on the American Economy 2007: Family Businesses Building Value,”* MKF Research, LLC (2007), p. 5. The data in this report is for calendar year ending 2005.

²⁹ Senator Feinstein, Congressional Record of the Senate, Alcohol Regulatory Effectiveness Act, S6864 (August 5, 2010). The statistics cited were taken from data published by Stonebridge Research Group, LLC.

³⁰ MKF Research, *“The Impact of Wine, Grapes and Grape Products on the American Economy 2007,”* p. 6.

³¹ Alcohol and Tobacco Tax and Trade Bureau, United States Department of the Treasury, available from <http://www.ttb.gov> (accessed November 11, 2010). Of the 7,259 wine producers and blenders nationwide, 3,126 are located in California, and 729 are located in Washington.

³² FTC Report, p. 6.

³³ Written testimony of Tracy K. Genesen, Kirkland & Ellis, LLP, Wine Institute, to the Committee on the Judiciary, House of Representatives, United States Congress, Hearing on H.R. 5034, the “Comprehensive Alcohol Regulatory Effectiveness (CARE) Act of 2010” (September 29, 2010), p. 1.

³⁴ Jerry Ellig and Alan E. Wiseman, *“E-Commerce in Wine,”* 3 Journal of Law, Economics & Policy 275, 23 (Spring 2007). Ellig and Wiseman cite the following article for this statistic: Gina M. Riekhof and Michael E. Sykuta, *“Politics, Economics, and the Regulation of Direct Interstate Shipping in the Wine Industry,”* CORI WORKING PAPER (March 2004), p. 7, available from http://papers.ssrn.com/sol3/papers.cfm?abstract_id=48197 (last visited Aug. 21, 2007).

economy of scale prevents these distributors from wanting to invest in brands of wine that are boutique, provincial, and sold in small quantities.

This distributor consolidation trend has been attributed to the United States Supreme Court decision, *California Retail Liquor Dealers Association v. Midcal Aluminum, Inc.*, 445 U.S. 91 (1980), where the court ruled that a California post-and-hold law was unconstitutional, since it violated the Sherman Antitrust Act. Post-and-hold laws, common in the three-tier distribution system, prohibit wholesalers from selling alcoholic beverages to retailers at different prices than those posted with the state regulatory agency. This avoids price wars between wholesalers contributing to an orderly market, and encourages differentiation between wholesalers based on service rather than price. Post-and-hold laws are also intended to keep prices higher than in a normal competitive market in order to promote temperance.

One implication of *Midcal* was to consolidate the wholesaler tier. Scholars observed that, “When the Supreme Court found such laws in violation of the Sherman Act, distributors were freed to compete on price, thereby driving out less efficient distributors and spurring drastic consolidation.”³⁵ Abolition of post-and-hold pricing, which is designed to be anti-competitive, contributed to the reduction of wholesalers creating a problem for small wineries, who could not find distributors. As a result, small wineries turned to direct sales to consumers for a market and efficient method of distribution.

A longstanding case in Maryland—*TFWS, Inc. v. Franchot*—was recently finalized on July 15, 2009 to the United States Supreme Court.³⁶ In the original case, *TFWS, Inc. v. Schaefer*, a large Maryland retailer, TFWS, Inc., d/b/a Beltway Fine Wine and Spirits (“Trone”), brought an action against the Comptroller claiming that Maryland’s post-and-hold law and ban on volume discounts violated the Sherman Act.³⁷ After a series of judgments and reversals,³⁸ the Fourth Circuit in 2009 ruled that the United States District Court properly found that the State’s “post-and-hold” pricing law was not effective in serving its stated purpose of promoting temperance; because no reliable evidence was submitted by the State showing that this law increased prices.³⁹ The post-and-hold law and ban on volume discounts in Maryland

³⁵ Gina Riekhof and Michael Sykuta, “Politics, Economics and the Regulation of Direct Interstate Shipping in the Wine Industry,” p. 8.

³⁶ *TFWS v. Franchot*, 572 F.3d 186 (4th Cir. 2009)

³⁷ Maryland’s post-and-hold law is found in Article 2B, § 12-103(c). The Code of Maryland Regulations (“COMAR”) implementing this statutory provision is COMAR 03.02.01.05.

³⁸ See *TFWS, Inc. v. Franchot*, 572 F. 3d 186 (4th Cir. 2009) for a summary of the litigation.

³⁹ In 1998, the post-and-hold pricing law was determined by the Maryland Attorney General to be defensible under federal antitrust law and likely to withstand any challenge. However, the opinion noted inconsistent federal court decisions as to whether these types of laws were *per se* violations of the Sherman Antitrust Act, and advised that, “The State’s interests and legislative

has not been enforced since Judge Quarles of the United States District Court ruled on September 27, 2007 that these statutory provisions and accompanying regulations violated the Sherman Act. Since 2007, there is no substantial evidence of consolidation among wholesalers in Maryland.⁴⁰

To conclude, the combination of the growth and consolidation in the wine industry, the 1980 *Midcal* decision and subsequent change in constitutional jurisprudence, and the technological innovation of e-commerce all have made direct wine shipment to consumers a new phenomenon for state legislatures to deal with and has created a perceived threat to the three-tier distribution system.

Alongside the growth of the wine industry has been the rise of direct-to-consumer sales.

B. Direct-to-Consumer Wine Sales

Some industry researchers believe that direct wine shipment to consumers is essential for the survival of small wineries.⁴¹ Varying estimates are reported about the size and growth of direct-to-consumer sales, which is a broader category than direct wine shipment. Direct-to-consumer sales are both tasting room sales (on-site and off-site) and wine shipment sales. There is a correlation between tasting room sales and direct wine shipment as consumers who visit wineries and other sites to taste wine are more likely to request direct wine shipment. Thus, the growth of direct-to-consumer sales is correlative to the growth of direct wine shipment.

Since *Granholm* in 2005, “Interstate sale of wine in the United States rose from 6.2% of the market to about 10.4% in 2010.⁴² According to a VinterActive report (“VinQuest 2009 Report”), consumer direct sales grew 7% in the United States reaching \$3 billion in 2008.⁴³ Tasting room sales declined in 2008, because of less

findings expressing those interests are more likely to prevail if the State can document the effectiveness of the statute in accomplishing its objectives.” 83 Op. Att’y 3, 25-26 (1998). Maryland’s interests and objectives in enacting the post-and-hold pricing law were promoting temperance, and prohibiting price wars and price discrimination. The State did not prove with sufficient evidence the effectiveness of the post-and-hold pricing law in achieving its legislative objectives.

⁴⁰ The number of licensed wholesalers who are authorized to sell and distribute wine has not declined in the last three fiscal years: in FY2007–96; FY2008–102; FY2009–94. Comptroller of Maryland, Alcohol and Tobacco Annual Reports.

⁴¹ MFK Research, “*The Impact of Wine, Grapes and Grape Products on the American Economy 2007*,” p. 17. Although large in number, they only account for a modest share of wine sales in the United States.

⁴² John Dunham, Victor Fung Eng, and Peter Ronga, “*Direct Ship Blowout: How the Supreme Court’s Granholm Decision Has Led to a Flood of Non-Taxed Wine Shipments*,” American Association of Wine Economists, AAWE Working Paper No. 61 (June 2010), p. 1.

⁴³ “*VinQuest 2009: U.S. Consumer Direct Wine Sale Trends: Executive Summary*,” VinterActive, LLC (March 2009), p. 1.

traveling visitors, wine clubs, and internet orders.⁴⁴ Statistics in the VinQuest 2009 Report indicate that in 2008: 99% of U.S. wineries reported selling wine directly to consumers; an average U.S. winery sold \$1 million of wine directly to consumers; and 66% of wineries producing under 4,000 cases annually expect direct-to-consumer sales to be their fastest growing sales channel.⁴⁵ Further, the VinQuest 2009 Report states that, “More than 50% of total case sales at wineries producing up to 10,000 cases per year” are direct-to-consumer.⁴⁶

Recent figures published in VinQuest 2010: U.S. Consumer Direct Wine Sales Trends (“VinQuest 2010 Report”) show that U.S. wineries in 2009 maintained the same level of consumer direct sales as the year before: \$3 billion. An overall direct-to-consumer sales growth of 3% was reported, and an online wine sales growth of 29%, a 3% increase from 2008. Despite the economy, the U.S. wine industry forecasts 5% to 15% growth in direct-to-consumer wine sales for 2010.⁴⁷

Figures published in a recent study conducted by ShipCompliant, Inc. and Wine and Vines are more modest. According to “DtC Shipment Reporting,” direct-to-consumer (“DtC”) sales in 2009 accounted for only 2% of total wine produced in the United States, excluding exports. Of the 251 million cases (9L cases) produced, 6 million were sold DtC. Of the 6 million cases sold DtC, 2.6 million were “shipped” to consumers, the other 3.4 million cases were sold at on-site tasting rooms. Thus, direct wine shipment to consumers accounted for 1% of total wine sales in 2009.⁴⁸ See Appendix 1 for this report.

C. Impact of Recession on Wine Industry

The wine industry did not escape the widespread jolt of the 2008 financial crisis. With increased unemployment and less consumer spending inventories at restaurants, wholesalers, and retailers declined. The average consumer traded-down to lower-priced wines and made purchases at discounts. Nevertheless, analysts at the Wine Division of the Silicon Valley Bank, state that, “While the economy clearly matters, the industry is nonetheless recession-resistant. Why? Because the product is considered closer to “need” versus “want” status by all wine drinkers and in the case of fine wine, is sold to people of greater means who are less impacted by recessions.”⁴⁹

⁴⁴ Ibid.

⁴⁵ Ibid., p.2.

⁴⁶ Ibid., p.4.

⁴⁷ “*VinQuest 2010: U.S. Consumer Direct Wine Sale Trends: Executive Summary*,” VinterActive, LLC (April 2010), p. 1.

⁴⁸ ShipCompliant and Wines & Vines, “*DtC Shipment Reporting*” (March 2010), p. 2.

⁴⁹ Rob McMillan, “*2010-2011 State of the Wine Industry*,” Silicon Valley Bank Wine Division (April 2010), p. 11.

In its 2009-2010 report, the Wine Division of the Silicon Valley Bank (“2009 SVB Report”) accurately predicted that wine priced below \$35 would sell, but not those sold at prices between \$50 and \$125. In addition to an expectation of flat growth, the 2009 SVB Report also stated that the “Distribution has all but ended as a viable sales channel for small wineries.”⁵⁰

Perhaps unexpectedly, 70% of wineries did not lower the price of their most expensive wine after the financial crisis. According to a survey conducted by SVB, the average highest-priced wine “was \$56 before the crash and dropped only 4 percent after the crash.”⁵¹ Furthermore, among winery respondents, most did not change price or level of production in response to the recession. This confirms what the analysts of the 2009 SVB Report see as a consistent phenomenon: “The market for any given producer’s top brand is still doing well.”⁵² Thus, wineries are not lowering prices for their flagship brand of a wine. It is the higher-volume mid-priced wines where most of the discounting has occurred.

In its 2010-2011 State of the Wine Industry Report (“2010 SVB Report”), SVB forecasts improved conditions in the fine wine business, but favors “large scale production of modestly priced wine given the National economy and consolidation in the chains and distributors.” Wines selling for more than \$50 will continue to experience difficulty. Also, this latest SVB Report states that, “We will see continued positive results and measure momentum in the adoption of direct-to-consumer sales tactics.”⁵³ This SVB Report also observes that,

“The available sales channels for a winery are firmly dictated by the size of the operation and gross margin of the wine sold. For most small brands, the best opportunities lie in developing direct marketing strategies, both to the trade and consumers.”⁵⁴

Free the Grapes! and the Coalition for Free Trade, both non-profit trade associations established in late 1990s, host an annual “Direct to Consumer Wine Symposium” where strategies and tactics are discussed about direct-to-consumer wine sales and marketing. The chief principle of these and other similar organizations is “consumer choice,” which is at odds with the purposes of the three-tier distribution system: (1) obedience to law; (2) orderly distribution of alcoholic beverages; and (3) temperance. Also, Specialty Wine Retailers Association has been

⁵⁰ Rob McMillan, “2009-2010 State of the Wine Industry,” Silicon Valley Bank Wine Division (April 2009), p. 2.

⁵¹ McMillan, “2010-2011 State of the Wine Industry,” p. 4.

⁵² Ibid.

⁵³ Ibid., p. 2.

⁵⁴ Ibid., p. 6.

active in seeking a national wine market by removal of state barriers to direct wine shipment. No anti-direct wine shipment trade associations have been identified.

The 2010 SVB Report expects the United States to be the number one wine-consuming nation in the world by 2011-2012. There is an expected 8-12% growth in fine wine sales based on improvement in the economy and restaurant sales. The outlook for small wineries is mixed “with success defined more by the business model, capitalization and professionalism of management.”⁵⁵

Given that the price elasticity of wine is -0.69,⁵⁶ and income elasticity of wine is .825, these projections of growth in the wine industry, and in particular direct-to-consumer sales are not surprising. Price elasticity measures the effect on consumer demand if the price of a product increases or decreases. A price elasticity of -0.69 means that consumption declines by almost 7% for every 10% increase in price. If the price elasticity was 1, then for every 10% price increase, consumption would decline 10%, an equal and proportionate response. Because alcohol is price inelastic, the price may increase without a proportionate drop in demand. And, since the recession has not significantly affected the “price” of wine, the level of consumer demand should remain constant.

Income elasticity measures the effect on consumer demand based on income levels. An income elasticity of less than one, or .825, means that for every 10% increase in income, there will be a 8.25% increase in wine consumption.⁵⁷ In contrast to price inelasticity for wine (lack of responsiveness to price), wine is income elastic. Quantity demanded by wine consumers will increase if their income increases.

The following table shows wine elasticities for adults and youth. Underage alcohol consumption will be discussed in the next subsection.

Table 2		
Wine Elasticities		
	<u>Adult</u>	<u>Youth</u>
Price Elasticity	-0.69	-1.69
Income Elasticity	.825	1.66 ⁵⁸

⁵⁵ Ibid., p. 19.

⁵⁶ A lower price elasticity mean of -0.55 is cited for the United States in a report which considers the changes in elasticity over the last 50 years. James Fogarty, “*The Demand for Beer, Wine and Spirits: Insights from a Meta-Analysis Approach*,” American Association of Wine Economists No. 31 (November 2010), p. 25.

⁵⁷ A higher income elasticity mean of 1.30 is cited for the United States in a report which considers the changes in elasticity over the last 50 years. Fogarty, Ibid.

⁵⁸ Wine income elasticities for youth are not readily available. This estimate of 1.66 was extrapolated from a report published by the National Center on Addiction and Substance Abuse at

The price elasticity of -1.69 for youth is an average of -1.26 for males and -2.11 for females ages 18-20.⁵⁹ A price elasticity of -1.69 means for every 10% increase in price, demand decreases by 16.9%. Thus, youths are more sensitive to price than adults, about 10% more sensitive.

To conclude, the statistics reported and analyzed by wine industry experts show that the wine industry has weathered the economic storm fairly well, and will continue to grow in many sectors, including direct-to-consumer wine sales. Based on this, the following general propositions will be working assumptions in this report:

1. That consumer demand for direct wine shipment is increasing;
2. That small wineries continue to grow and desire direct wine shipment;
3. That the wine industry has not experienced a significant decline since the recession; and
4. That wine is price “inelastic” and income “elastic,” because wine consumers have a tendency to tolerate price increases, and spend a certain portion of additional income on wine.

While the economics of this seems to be all good news, there is another aspect of wine production and consumption: alcohol-related injury and illness. This side of the equation must be taken into account by legislators when considering the issue of direct wine shipment to consumers.

D. Costs of Alcohol-related Injury and Illness

The Marin Institute, a non-profit organization that promotes policies to reduce alcohol consumption and social harms that result from its use stated in written testimony to the House Committee on the Judiciary on September 29, 2010, that in America alcohol is the third leading cause of preventable death, and that the economic costs of alcohol are estimated to have been \$220 billion in 2005, including healthcare costs of \$26 billion annually.⁶⁰ Another study reports that in 2009 the

Columbia University (August 2003), where it was stated that teens with \$25.00 or more a week in spending money are nearly twice as likely to get drunk. Based on this, an income elasticity of 2.00 was used to represent that a 10% increase in income would result in a 20% increase of demand for alcohol, and then this 2.00 figure was adjusted downward for wine to 1.66, which is 8.3% less, or the comparative percentage for demand for wine by underage non-pathological drinkers as shown in Table 3.

⁵⁹ David H. Jernigan, Ph.D. and Hugh Waters, Ph.D., “*The Effects of Alcohol Excise Tax Increases on Public Health in Maryland*,” Johns Hopkins Bloomberg School of Public Health (December 1, 2009), p. 5.

⁶⁰ Written statement of Michele Simon, JD, MPH, Research and Policy Director, Marin Institute, San Rafael, California, to the Committee on the Judiciary, House of Representatives, United States Congress, Hearing on H.R. 5034, the “Comprehensive Alcohol Regulatory Effectiveness

estimated total costs were \$277 billion nationwide, and \$5.2 billion in Maryland.⁶¹ Cost is typically divided into two categories: (1) direct costs, such as medical care, judicial and penal systems; and (2) indirect costs, such as lost wages, and pain and suffering. For underage drinkers, the total costs estimated in 2005 were \$60.3 billion nationwide, and \$1.25 billion in Maryland.⁶²

In a 2006 report entitled, "The Commercial Value of Underage and Pathological Drinking to the Alcohol Industry," the National Center on Addiction and Substance Abuse at Columbia University ("CASA") states that, "The alcohol industry depends on underage and pathological...drinking for a minimum of \$48.3 billion or 37.5 percent of total consumer expenditures for its products and as much as \$62.9 billion or 48.8 percent."⁶³ Using surveys administered by the Center for the Disease Control and Prevention ("CDC") and the Substance Abuse and Mental Health Services Administration ("SAMHSA"), CASA stated that among youth drinkers ages 12 to 20, 25.9 percent of the 47.1 percent are pathological drinkers; and among adult drinkers 21 and over, 9.6 percent of the 53.8 percent are pathological drinkers.⁶⁴ Thus, "Underage drinkers are 2.7 times likelier to meet the DSM-IV criteria for alcohol abuse or dependence than adult drinkers."⁶⁵

One factor in determining the commercial value to the alcohol industry of pathological drinking was the type of alcohol consumed: beer, wine, or distilled spirits. Using statistics from the 2001-2002 National Epidemiological Survey on Alcohol and Related Conditions ("NESARC"),⁶⁶ CASA reported the following about consumption:

(CARE) Act of 2010" (September 29, 2010, p. 3. According to Joseph Califano, Jr., Chairman and President of the National Center on Addiction and Substance Abuse at Columbia University ("CASA"), "Alcohol abuse and addiction cost the nation an estimated \$220 billion in 2005—more than cancer (\$196 billion) or obesity (\$133 billion)." *The Commercial Value of Underage and Pathological Drinking to the Alcohol Industry*, A CASA White Paper, The National Center on Addiction and Substance Abuse at Columbia University (May 2006), p. i.

⁶¹ David H. Jernigan, Ph.D. and Hugh Waters, Ph.D., *The Effects of Alcohol Excise Tax Increases on Public Health in Maryland*, p. 7.

⁶² *Ibid.*

⁶³ *The Commercial Value of Underage and Pathological Drinking to the Alcohol Industry*, A CASA White Paper, p. 1.

⁶⁴ *Ibid.*, pp. 2-3. CASA used the 2001 Youth Risk Behavior Survey administered by CDC to determine the percent of underage youth who are current drinkers, and the 2001 Behavioral Risk Factor Surveillance Survey, also administered by CDC, to determine the percent of adults who are current drinkers. To determine pathological drinkers, CASA used the 2001 National Household Survey on Drug Abuse administered by SAMSHA.

⁶⁵ *Ibid.*, p. 3

⁶⁶ This survey is administered by the National Institute on Alcohol Abuse and Alcoholism ("NIAAA"). *Ibid.*, p. 5.

Table 3
CASA Report - 2006

<u>Type of Drinker</u>	<u>% Beer</u>	<u>% Wine</u>	<u>% Distilled Spirits</u>
Adult pathological	70.8	10.9	18.3
Adult non-pathological	56.1	27.2	16.7
Underage pathological	79.6	2.9	17.5
Underage non-pathological	71.5	7.7	20.8

NESARC data shows that there is a definite problem of underage drinking in the United States – almost ½ of underage youth drink, and ¼ of those are pathological drinkers. According to a 2010 National Survey on Drug Use and Health (“NSDUH”) report, more than 25% of persons aged 12 to 20 drank alcohol in the past month.⁶⁷ Six of the 10 states with the highest rank were in the Northeast, while 6 of the 10 states with the lowest rank were in the South.⁶⁸ The study showed that 8.6% of past month drinkers purchased their own alcohol. The District of Columbia had one of highest rates of underage self-purchase of alcohol with 18.8%, while Maryland was one of the six states in the South falling within the top fifth in this category.⁶⁹

The NSDUH Report is published periodically by the Office of Applied Studies of SAMHSA. All findings in the report are annual averages based on the combined 2006 to 2008 NSDUH data, which shows that the majority (70%) of underage drinkers did not pay for the alcohol themselves. A specific study about underage purchases of alcohol online funded by a \$400,000, three-year grant from the Robert Wood Johnson Foundation is underway at the University of North Carolina-Chapel Hill.

From these studies, the data shows that “wine” is not the drink of choice for both adult (10.9%) and underage (2.9%) pathological drinkers. By far, “beer” is the type of alcohol consumed by adult (70.8%) and underage (79.6%) pathological drinkers, and all drinkers for that matter. Interestingly, more than twice as many adults (27.2%) than underage (7.7%) persons who are not pathological drink wine.

⁶⁷ “NSDUH Report: State Estimates of Underage Alcohol Use and Self-Purchase of Alcohol,” SAMHSA (April 2010), p. 2.

⁶⁸ The six states in the Northeast with the highest rates were Connecticut, Massachusetts, New Hampshire, New York, Rhode Island, and Vermont. The six states in the South with the lowest rates were Georgia, Mississippi, North Carolina, Oklahoma, South Carolina, and Tennessee. NSDUH Report, p. 2.

⁶⁹ The six states in the South in the top fifth were Alabama, Louisiana, Maryland, Mississippi, South Carolina, and the District of Columbia. NSDUH Report, p. 2.

It appears from this data that adult and underage pathological drinkers, and underage non-pathological drinkers, may not be adversely affected by direct wine shipment, since a small percentage choose “wine.” Still, any amount of wine shipped to a minor is problematic.

In 2006, Teenage Research Unlimited (“TRU”), commissioned by the Wine and Spirits Wholesalers of America, Inc., conducted a study about underage access to alcohol over the internet. Some of the key findings about minors ages 14-20 were: (1) 2% purchased alcohol online; (2) 12% had a friend who purchased alcohol online; (3) 3% consumed alcohol purchased by someone else either online or by phone; (4) 5% state they “probably will” purchase alcohol online; and (5) 75% state their parents are not able to control what they do on the internet.⁷⁰ While 37% of minors ages 14-20 believe it would be easy to purchase wine over the internet, slightly more than that (42%) believe the same thing about beer.⁷¹ The TRU report⁷² states consumption rates among minors ages 14-20 that are at odds with that reported by CASA for underage non-pathological drinkers. Table 4 compares data from the two reports:

Table 4		
TRU Report v. CASA Report		
TRU Report: Level of Consumption - “Sometimes” or “often”:		
<u>Beer</u>	<u>Wine</u>	<u>Distilled Spirits</u>
34%	26%	48%
CASA Report: Percentages by Non-Pathological Drinkers:		
<u>Beer</u>	<u>Wine</u>	<u>Distilled Spirits</u>
71.5%	7.7%	20.8%

In order to resolve this discrepancy, the methodology and purpose of each report must be examined. TRU conducted its study using a sample of 1,001 people ages 14-20 in order to determine underage alcohol access over the internet. The question asked in the TRU Report was: “How often would you say you drink each of the following alcoholic drinks? The possible answers were: “sometimes,” “often,” or “very often.”⁷³ When analyzing the results, the narrative states that 48% of distilled spirits falls within the “sometimes” or “often” categories; 26% of wine falls within the “sometimes” category, but then adds “or more frequently;” and the 34% beer

⁷⁰ “Underage Alcohol Access: The Internet – A New Frontier,” Teenage Research Unlimited (2006), pp. 2-3.

⁷¹ Ibid., p. 12.

⁷² Ibid., p. 18.

⁷³ Ibid., p. 18.

statistic is described as “periodic.” It is not clear from the narrative and its corresponding graph, which categorizes the results in gender and age categories only, whether the 26% wine consumption statistic means that number of minors consume wine “sometimes” or “often,” or both.⁷⁴

The CASA study relied on data from NESARC, a nationally representative survey administered by NIAAA, to measure alcohol consumption for underage drinkers from ages to 18-20. Unlike the TRU study, frequency of usage was not determined; however, given the sample size, historical experience and accuracy of results, and that NIAAA is a federal agency with extensive resources, it is believed that the CASA study is more valid and reliable. However, the TRU Report has the virtue of incorporating internet data, and the NESARC data is based on a somewhat outdated 2001-2002 survey.

Still, the level of wine consumption for non-pathological underage drinkers of 7.7% will be the baseline assumption in this report. Even though wine may be the least likely type of alcohol imbibed by minors, and may not present additional risks if direct wine shipment became legal, it is clear that any underage access to wine is undesirable.

One way to address the public health issues of alcohol consumption is taxation. In a recent report issued by Johns Hopkins Bloomberg School of Public Health entitled, “The Effects of Alcohol Excise Tax Increases on Public Health in Maryland,” David H. Jernigan and Hugh Waters write that alcohol-related harm costs Maryland more than \$5 billion each year.⁷⁵ Various statistics are cited in the report from the CDC about alcohol-related injury and illness in Maryland. According to the CDC, “Alcohol is directly responsible for one out of every three deaths among Marylanders between the ages of 15 and 20.”⁷⁶ Also, Jernigan and Waters reference the fact that youth are more sensitive to price and taxation, because they are less likely to be addicted to alcohol,⁷⁷ and have less disposable income.

Based on the evidence cited, the following general propositions will be working assumptions in this report:

⁷⁴ It seems clear from narrative, but not the graph (since it does not distinguish the percentages according to the answers to the question, i.e., “sometimes,” “often,” or “very often,”) that the 26% does not relate to “very often.”

⁷⁵ Jernigan and Waters, *“The Effects of Alcohol Excise Tax Increases on Public Health in Maryland,”* p. 1.

⁷⁶ *Ibid.*, p. 2.

⁷⁷ The CASA Report mentioned in section 2 contradicts this statement by indicating that underage drinkers are 2.7 times likelier than adults to become addicted to alcohol.

1. There is an underage drinking problem in America;
2. Wine is not the drink of choice for underage drinkers;
3. A minority of underage drinkers self-purchase alcohol, but Maryland has a higher than average rate of self-purchase; and
4. Underage youth have a higher price elasticity than adults, because they are more sensitive to price.

To conclude, this section serves as general background to public policy issues surrounding direct wine shipment to consumers—growth of the wine industry, particularly small wineries; e-commerce and direct-to-consumer sales; and underage access and consumption.

The next area to tackle is legal. What follows is a brief sketch of the legal history of alcoholic beverages regulation during the twentieth century leading up to the United States Supreme Court decision in *Granholm v. Heald*, 544 U.S. 460 (2005), which had a direct impact on state direct wine shipment laws nationwide. This historical, legal, and constitutional background is important as a context for understanding the issues surrounding direct wine shipment laws.

III. STATE REGULATION OF ALCOHOLIC BEVERAGES & THE UNITED STATES CONSTITUTION

A. Pre-Granholm Constitutional Jurisprudence

Prior to Prohibition and the ratification of the Eighteenth Amendment to the United States Constitution, Congress passed the Wilson Act in 1890 to overturn the “original package” doctrine established by the Supreme Court in *Leisy v. Hardin*, 135 U.S. 100 (1890).⁷⁸ The “original package” doctrine meant that alcohol in its original package was an article of interstate commerce outside the scope of state law. As a result, a state with “dry” jurisdictions could not prevent alcoholic beverages from being imported into those areas. The Wilson Act remedied this problem by stating that all alcoholic beverages sold in a state were subject to state law under its police powers.⁷⁹ Subsequent United States Supreme Court jurisprudence interpreted the Wilson Act as only authorizing states to regulate the resale of imported liquor, and did not permit discriminatory barriers to legal importation of out-of-state alcoholic

⁷⁸ The Wilson Act states: “All fermented, distilled, or other intoxicating liquors or liquids transported into any State or Territory or remaining therein for use, consumption, sale or storage therein, shall upon arrival in such State or Territory be subject to the operation and effect of the laws of such State or Territory enacted in the exercise of its police powers, to the same extent and in the same manner as though such liquids or liquors had been produced in such State or Territory, and shall not be exempt therefrom by reason of being introduced therein in original packages or otherwise.” 27 U.S.C. § 121 (2006).

⁷⁹ Rachel M. Perkins, “Wine Wars: How We Have Painted Ourselves Into a Regulatory Corner,” 12 V and J. Ent. & Tech. L. 397, 4 (2010).

beverages. In other words, a state law could not prevent the transportation of alcoholic beverages across state borders. In response to this interpretation of the Wilson Act, Congress passed the Webb-Kenyon Act in 1913 allowing “dry” states to prohibit the importation of alcoholic beverages.⁸⁰

From 1920 to 1933, the era of Prohibition, constitutional debate about alcoholic beverages regulation went through a hiatus. When Prohibition was repealed in 1933, § 2 of the Twenty-first Amendment gave states power to regulate alcoholic beverages previously granted under the Wilson Act and Webb-Kenyon Act. In fact, the language of the Webb-Kenyon Act and § 2 of the Twenty-first Amendment are substantially similar.

The constitutional jurisprudence which followed for the next fifty years gave states broad authority under the Twenty-first Amendment to regulate alcoholic beverages. This plenary state power under the Twenty-first Amendment began to be challenged when the court in *United States v. Frankfort Distilleries*, 324 U.S. 293 (1945) held that state power under the Twenty-first Amendment was subject to the Sherman Antitrust Act.⁸¹ Also, later in *Hosteller v. Idlewild Bon Voyage Liquor Corporation*, 377 U.S. 324 (1964), the court held that the Twenty-first Amendment must be read in light of the rest of the Constitution, including the Commerce Clause.⁸²

But, it was not until the 1980s that the Supreme Court directly limited state regulatory power under the Twenty-first Amendment when it ruled in *California Retail Liquor Dealers Association v. Midcal Aluminum, Inc.*, 445 U.S. 97 (1980) that a uniform minimum price schedule was a restraint of trade in violation of the Sherman Antitrust Act.⁸³ The constitutional test became whether the state’s interests in regulating alcoholic beverages were so closely related to the powers granted in the Twenty-first Amendment that it would prevail over direct conflict with other federal policies, e.g., free flow of interstate commerce.⁸⁴ In general, as long as states

⁸⁰ The Webb-Kenyon Act states: “The shipment or transportation, in any manner or by any means whatsoever, of any spirituous, vinous, malted, fermented, or other intoxicating liquor of any kind from one State, Territory, or District of the United States, or place noncontiguous to but subject to the jurisdiction thereof, or from any foreign country into any State, Territory, or District of the United States, or place noncontiguous to but subject to the jurisdiction thereof, which said spirituous, vinous, malted, fermented, or other intoxicating liquor is intended, by any person interested therein, to be received, possessed, sold, or in any manner used, either in the original package or otherwise, in violation of any law of such State, Territory, or District of the United States, or place noncontiguous to but subject to the jurisdiction thereof, is prohibited.” 27 U.S.C. § 122 (2006).

⁸¹ Rachel M. Perkins, “Wine Wars: How We Have Painted Ourselves Into a Regulatory Corner,” at 6.

⁸² *Ibid.*

⁸³ *Ibid.*

⁸⁴ *Ibid.* See the following cases where the Supreme Court has held that state regulation of alcohol may not violate the nondiscrimination principle of the Commerce Clause: *Bacchus Imports*,

could show that barriers to interstate commerce served an important policy objective laws were not struck down as unconstitutional.

No Supreme Court decision has questioned the constitutionality of the three-tier distribution system enacted by states pursuant to authority granted under the Twenty-first Amendment. Adopted in some form by all states, the three-tier system requires alcoholic beverages to be sold and distributed from a manufacturer to a wholesaler, and then to a retailer before reaching the consumer. Despite arguments that three-tier distribution is an economic barrier to free trade, increases prices, and creates bureaucratic inefficiencies, there has not been any significant desire to eliminate this method of distribution. However, as mentioned, there has been interest in allowing more exceptions to the three-tier distribution system. The inherent tension between the Twenty-first Amendment, which gives the states exclusive power to regulate alcoholic beverages, and the dormant Commerce Clause,⁸⁵ which prohibits discrimination between states in interstate commerce, has become more strained by the introduction and widespread use of “e-commerce” and the growth of small domestic wineries, who desire for economic reasons to avoid second-tier wholesalers.

This constitutional tension between the Twenty-first Amendment and the Commerce Clause was the occasion for the United States Supreme Court to grant certiorari in the case *Granholm v. Heald*, 544 U.S. 460 (2005), which involved “challenges to state laws regulating the sale of wine from out-of-state wineries to consumers in Michigan and New York.”⁸⁶ *Granholm* is a threshold decision in Twenty-first Amendment jurisprudence; it had a significant effect on state alcoholic beverages law.

In addition to changing the landscape of direct wine shipment laws across the nation, the majority and dissenting opinions in the closely decided (5-4) case of *Granholm* delineate some of the arguments for and against direct wine shipment to

Ltd. v. Dias, 468 U.S. 263 (1984); *Brown-Forman Distillers Corp. v. New York State Liquor Authority*, 476 U.S. 573 (1986); *Healy v. Beer Institute*, 491 U.S. 324 (1989). *Granholm*, at 24.

⁸⁵ The dormant Commerce Clause refers to the application of the Commerce Clause to the States. Whether a state law violates the dormant Commerce Clause is determined under a two-part constitutional test: (1) Does the state law affirmatively discriminate against interstate commerce or burden such commerce only incidentally? (2) If the state law does discriminate against interstate commerce on its face or in practical effect, then the burden falls on the state to demonstrate the state law serves a legitimate local purpose that could not be served by any other nondiscriminatory means. If the state law discriminates against interstate commerce only incidentally, a violation of Commerce Clause occurs if the imposition is excessive in relation to the local benefits gained. Perkins, “*Wine Wars*” at 4.

⁸⁶ *Granholm v. Heald*, 544 U.S. 460, 1 (2005). Michigan and New York cases were combined, because they dealt with same constitutional issue. The arguments were heard on December 7, 2004, and the United States Supreme Court issued its opinion on May 16, 2005.

consumers. Both the majority and dissenting opinions are important as they illuminate the constitutional reasoning and analysis of direct wine shipment.

It is important to keep in mind that Granholm does not require states to enact direct wine shipment laws, but it does prohibit states who have enacted direct wine shipment laws from discriminating between in-state and out-of-state wine producers unless legitimate State justifications can be demonstrated. Maryland's prohibition of direct wine shipment to consumers is consistent with *Granholm*, since both out-of-state wineries and in-state wineries are treated equally.

Also, it is important to distinguish between "out-of-state wineries" and "out-of-state retailers." As will be discussed in section 7, a recent Fifth Circuit case, *Wine Country Gift Baskets.Com v. Steen* (July 2010) held that *Granholm* applies only to "out-of-state wineries," not "out-of-state retailers."

B. *Granholm v. Heald*, 544 U.S. 460 (2005)

The Supreme Court held in *Granholm* that both Michigan and New York's regulatory schemes discriminated against interstate commerce in violation of the Commerce Clause, Article I, § 8, clause 3, and were not authorized under the Twenty-first Amendment.⁸⁷

Justice Kennedy, writing for the majority, relied on the FTC Report for concrete evidence of the effect of state direct wine shipment laws on interstate commerce. Statistics in the FTC Report about the growth of small wineries, increase of direct wine shipments, and reduction in the number of wholesalers, among other facts, were cited in the opinion. The parties in the case were small wineries without access to markets in Michigan and New York, because of direct wine shipment laws. Michigan's in-state wineries could ship wine direct to consumers, but out-of-state wineries had to sell wine through the three-tier system of in-state wholesaler to in-state retailer before reaching the consumer. In New York, in-state wineries could direct wine ship to consumers if the wine was produced from New York grapes. An out-of-state winery could direct ship to consumers only if it became a licensed New York winery, which required establishing "a brand factory, office or storeroom within the state of New York."⁸⁸ Both Michigan and New York's statutory schemes violated the Commerce Clause, and the Twenty-first Amendment did not save them. According to Justice Kennedy, § 2 of the Twenty-first Amendment "restored to the States the powers they had under the Wilson and Webb-Kenyon Acts,"⁸⁹ both of

⁸⁷ It was a 5-4 decision not split along traditional philosophical lines. Justice Kennedy's majority opinion was joined by Justices Scalia, Souter, Ginsberg, and Breyer. Justice Stevens' dissenting opinion was joined by Justice O'Connor, and Justice Thomas' dissenting opinion was joined by Chief Justice Rehnquist and Justices Stevens and O'Connor.

⁸⁸ *Granholm v. Heald*, 544 U.S. 460, 6 (2005).

⁸⁹ *Ibid.*, at 21..

which had the purpose of prohibiting discrimination between in-state and out-of-state alcoholic beverage producers. This is the point that the dissent fundamentally disagreed with. According to Justice Thomas, the purpose of this federal legislation was not to prohibit discriminatory state alcoholic beverage laws, but to take state power under the Twenty-first Amendment out of the reach of any Commerce Clause discrimination analysis.

Although the majority struck down the Michigan and New York laws as unconstitutional, *Granholm* affirmed the proposition of *North Dakota v. United States*, 495 U.S. 423 (1990) that the three-tier distribution system under the Twenty-first Amendment is “unquestionably legitimate.”⁹⁰ Nevertheless, the Twenty-first Amendment “does not supersede other provisions of the Constitution and, in particular, does not displace the rule that States may not give a discriminatory preference to their own producers.”⁹¹ The Twenty-first Amendment did not save Michigan and New York’s regulatory laws, because, according to Justice Kennedy, “Without demonstrating the need for discrimination, New York and Michigan have enacted regulations that disadvantage out-of-state wine producers.” Thus, “If a State chooses to allow direct shipment of wine, it must do so on evenhanded terms.”⁹²

When Justice Kennedy refers to demonstrating the need for discrimination, he means that although a statute may be discriminatory, the analysis does not end there. Such a statute could be upheld as constitutional if there are no other nondiscriminatory alternatives for a state to achieve its legitimate objectives. In *Granholm*, the state justifications for prohibiting direct wine shipment to consumers by out-of-wineries were:

- (1) underage access; and
- (2) tax collections.

On both points, Justice Kennedy looked to Michigan and New York, and the FTC Report for evidence. Since the states did not provide sufficient evidence that the purchase of wine over the internet by minors was a problem, Justice Kennedy relied on the FTC Report, which indicated that no state had problems with increased underage access to wine.⁹³ The reasons for this as cited in the FTC Report were also noted by Justice Kennedy, namely, that minors are less likely to consume wine, more likely to purchase alcohol directly at a retail store, and less likely to wait until wine is shipped through a common carrier.⁹⁴ Even granting the states’ claim that direct wine shipment increases underage access, Justice Kennedy stated that discrimination would be impermissible, because minors would be as likely to have

⁹⁰ *Ibid.*, at 26.

⁹¹ *Ibid.*, at 23.

⁹² *Ibid.*, at 30.

⁹³ *Ibid.*, at 26-7.

⁹⁴ *Ibid.*, at 27.

wine directly shipped by in-state wineries as out-of-state ones. Also, Justice Kennedy noted that the threat of a license suspension or revocation for selling to minors is an effective deterrent on out-of-state wineries, and the adult signature requirement is a further safeguard.⁹⁵

The second justification for the states' direct wine shipment laws was tax collection. Justice Kennedy referred to nondiscriminatory alternatives of requiring out-of-state wineries to obtain a license or permit, submit regular reports, and pay taxes. Again, reference is made to the FTC Report, which indicated that states had no problems with tax collection.⁹⁶ Also, additional protection is provided by federal law. Wineries must obtain a federal permit issued by the Alcohol and Tax and Trade Bureau ("TTB") of the United States Department of Treasury, which may be revoked for violating state law. Wineries may also be sued in federal court by states' attorney generals under the Twenty-first Amendment Enforcement Act for violation of state law.⁹⁷

Once the direct wine shipment laws in Michigan and New York were determined to discriminate against interstate commerce, "The burden is on the State to show that 'the *discrimination* is demonstrably justified.'"⁹⁸ The majority ruled in *Granholm* that the States did not provide concrete evidence proving that discrimination against out-of-state wineries was necessary to achieve the important state objectives of preventing underage access to minors and tax evasion.

Part of this direct wine shipment report will address both of these state regulatory objectives—underage access and tax collection—because they have been the two major concerns of the Maryland General Assembly, when considering whether to enact a law allowing direct wine shipment to consumers.

Dissenting Opinions – Justice Stevens and Justice Thomas

Justice Stevens wrote a brief dissent and then joined Justice Thomas' dissenting opinion. In his dissent, Justice Stevens focused on the unique nature of alcohol—it is different than other products in interstate commerce, which is why it warranted two constitutional amendments. When the Eighteenth Amendment and Twenty-first Amendment were ratified, the latter being the only amendment ratified by the people in state conventions rather than by state legislatures, alcohol was not viewed as any other ordinary article of commerce. The following quote by Justice Jackson captures the sentiments of the American public about liquor in 1941:

⁹⁵ Ibid.

⁹⁶ Ibid., at 28.

⁹⁷ Ibid., at 28-9.

⁹⁸ Ibid., at 29. The case cited is *Chemical Waste Management, Inc. v. Hunt*, 504 U.S. 334, 344 (1992) (emphasis in original).

“The people of the United States knew that liquor is a lawlessness unto itself. They determined that it should be governed by a specific and particular Constitutional provision. They did not leave it to the courts to devise special distortions of the general rules as to interstate commerce to curb liquor’s ‘tendency to get out of legal bounds.’ It was their unsatisfactory experience with that method that resulted in giving liquor an exclusive place in constitutional law as a commodity whose transportation is governed by a special, constitutional provision.”⁹⁹

According to Justice Stevens, since Michigan and New York’s direct wine shipment laws were exercises of state power fully granted by the Twenty-first Amendment, “they are exempt from dormant Commerce Clause scrutiny.”¹⁰⁰

The dissent written by Justice Thomas explains why state laws regulating alcoholic beverages are exempt from the negative Commerce Clause.¹⁰¹ The bottom line of Justice Thomas’ well-reasoned canvas of constitutional jurisprudence is that as Justice Stevens wrote, alcoholic beverages have a special status in the Constitution, and the intent of the Webb-Kenyon Act and § 2 of the Twenty-first Amendment were to ensure that state regulatory power would not be subject to Commerce Clause scrutiny. In other words, because alcohol is unique, unlike other articles of commerce, it cannot be considered and constitutionally analyzed in light of the Commerce Clause—the whole point of the Twenty-first Amendment was to take alcohol out of the reach of the Commerce Clause. As Justice Thomas writes, “*Clark Distilling* recognized that the Webb-Kenyon Act took ‘the protection of interstate commerce away from *all receipt and possession of liquor prohibited by state law.*”¹⁰² According to Thomas, the *Clark Distilling* case, which the majority relied upon for the proposition that the Webb-Kenyon Act did not protect discriminatory state laws, confirmed that the Webb-Kenyon Act extended the Wilson Act “by completely immunizing all state laws regulating liquor imports from negative Commerce Clause restraints.”^[4]¹⁰³ Therefore, Michigan and New York’s direct wine

⁹⁹ *Ibid.*, at 2-3, n. 1. For Jackson’s words, see *Duckworth v. Arkansas*, 314 U.S. 390, 398-399 (1941) (opinion concurring in result). *Ibid.*, at 5. Stevens quotes Justice Black’s dissent in *Hostetter v. Idlewild Bon Voyage Liquor Corp.*, 377 U.S. 324, 338 (1964), where referring to the intent of § 2 of the Twenty-first Amendment, wrote that it was to return “‘absolute control’ of liquor traffic to the States, free of all restrictions which the Commerce Clause might before that time have imposed.” *Ibid.*, at 4, n.2.

⁹⁵ *Ibid.*, at 5. Justice O’Connor joined Justice Stevens’ dissent.

¹⁰¹ The “negative” Commerce Clause is synonymous with the “dormant” Commerce Clause. See *supra*, n. 84.

¹⁰² *Ibid.*, at 7. See *Clark Distilling Co. v. Western Maryland R. Co.*, 242 U.S. 311, 325 (1917) (emphasis added).

¹⁰³ [4] The Court also opines that, quite apart from the Webb-Kenyon Act, the Wilson Act “expressly precludes States from discriminating.” *Ante*, at 19. It does not. The Wilson Act “precludes” States from nothing. Instead, it authorizes them to regulate liquor free of negative Commerce Clause restraints by “subject[ing]” imported liquor “to the operation” of state law, taking state law as it finds

shipment laws, even if discriminatory, were a proper exercise of state power under the Twenty-first Amendment. And, according to Justice Thomas, while state power to regulate alcohol under the Twenty-first Amendment is exempt from the Commerce Clause, it is not “unhampered by other constitutional restraints, like the First Amendment and the Equal Protection Clause.”¹⁰⁴

This is the crux of the argument of those against direct wine shipment to consumers: it violates the intent of the Twenty-first Amendment by transforming alcoholic beverages into an ordinary commodity. If alcohol was like soap and coffee, there would be no argument that discrimination was a violation of the Commerce Clause, but as the dissent writes in *Granholm*, direct wine shipment laws, whether discriminatory or not, are not subject to Commerce Clause nondiscrimination provisions.

C. Post-Granholm State Laws & Legal Developments

Even before *Granholm*, 26 states permitted some form of direct wine shipment to consumers. In 1986, California passed its reciprocity law hoping to breakdown out-of-state barriers to direct wine shipment. At that time, Alaska and Rhode Island were the only other states permitting direct wine shipment.¹⁰⁵ In a 2004 paper entitled, “*Politics, Economics and the Regulation of Direct Interstate Shipping in the Wine Industry*,” Gina Riekhof and Michael Sykuta state that,

“In the first seven years following California’s move, 11 states adopted reciprocity direct shipment legislation, thereby opening their borders to California wines. In the next ten years, 18 states enacted new legislation regarding direct wine shipment. Of those, only two adopted simple reciprocity laws. Ten states moved to allow direct shipment, but require some form of permitting on the part of the consumer, the winery, or both prior to shipping.”¹⁰⁶

After *Granholm*, states which had reciprocity laws, or where in-state, but not out-of-state direct wine shipment to consumers was permitted, enacted direct wine shipping statutes to conform to the majority ruling of *Granholm* – both out-of-state wineries and in-state wineries must be allowed to ship wine directly to consumers under equal terms and conditions.

it. 27 U.S.C. § 121. Even if, as the Court suggests, the Wilson Act does not authorize States to discriminate, *ante*, at 15, the Webb-Kenyon Act extends that authorization to cover discriminatory state laws. The only question here is the scope of the broader, more inclusive Webb-Kenyon Act. The Court’s argument therefore adds nothing to the analysis.] (Thomas’ note). *Ibid.*, at 7.

¹⁰⁴ *Ibid.*, at 32.

¹⁰⁵ Gina Riekhof and Michael Sykuta, “*Politics, Economics and the Regulation of Direct Interstate Shipping in the Wine Industry*,” p. 2.

¹⁰⁶ *Ibid.*, p. 11.

Thirteen of the twenty-six states at the time of *Granholm* had reciprocity laws.¹⁰⁷ Since *Granholm*, twelve state legislatures changed their reciprocity laws to direct wine shipment laws, because reciprocity laws have been interpreted as constitutionally suspect under *Granholm* in light of the following statement by Justice Kennedy: “The perceived necessity for reciprocal sales privileges risks generating the trade rivalries and animosities, the alliances, and exclusivity, that the Constitution and, in particular the Commerce Clause were designed to avoid.”¹⁰⁸ After referring to California, the first state to enact a reciprocity law in 1986,¹⁰⁹ he further states that, “The current patchwork of laws with some States banning direct shipments altogether, others doing so only for out-of-state wineries, and still others requiring reciprocity—is essentially the product of an ongoing, low-level trade war.”¹¹⁰ These statements by Justice Kennedy are considered “*dicta*,” which means they are not binding, since the constitutionality of reciprocity laws was not before the court in *Granholm*; nevertheless, there was sufficient concern that the court indirectly placed direct wine shipment reciprocity laws under the same scrutiny of similar laws for other products, such as milk, which have been struck down as discriminatory under the Commerce Clause,¹¹¹ because reciprocity laws discriminate against producers in non-reciprocal states.

Consequently, when Iowa’s new direct wine shipment law went into effect on July 1, 2010, New Mexico became the only remaining reciprocity state. Iowa changed its law, because it had both a direct wine shipment reciprocity statute and a native-wine direct shipping statute, which together created constitutionality concerns.¹¹²

The following table 5 shows that, except for New Mexico, all reciprocity states at the time of *Granholm* have switched to a license or permit system. Also, since *Granholm*, almost 50% of the states that had prohibited direct wine shipment in 2005 passed legislation to allow it.

¹⁰⁷ Reciprocity statutes allowed out-of-state wine shipments provided the state of origin granted that same right on a nondiscriminatory basis.

¹⁰⁸ *Granholm*, at 9.

¹⁰⁹ The purpose of this law was to place its in-state wineries on an equal footing with out-of-state wineries. Prior to 1986, out-of-state wineries could direct ship to California consumers without qualification.

¹¹⁰ *Granholm*, at 9-10.

¹¹¹ Jessica R. Reese, “A Post-*Granholm* Analysis of Iowa’s Regulatory Framework for Wine Distribution,” p. 9. The case *Great Atlantic & Pacific Tea Co. v. Cottrell*, 424 U.S. 366 (1976) is cited where the Supreme Court held that a Mississippi reciprocity law for milk was unconstitutional.

¹¹² See Reese, “A Post-*Granholm* Analysis,” p. 2.

Table 5
Direct Wine Shipment to Consumers - United States
Pre-Granholm to Post-Granholm

<u>License or Permit</u>	<u>Reciprocity</u>	<u>Prohibition</u>
Alaska	California	Connecticut
Arizona	Colorado	Florida
Georgia	Hawaii	Indiana
Louisiana	Idaho	Kansas
Nebraska	Illinois	Maine
Nevada	Iowa	Michigan
New Hampshire	Minnesota	New York
North Carolina	Missouri	Ohio
North Dakota	Oregon	Tennessee
	Washington	Texas
	West Virginia	Vermont
	Wisconsin	
	New Mexico	Alabama
		Arkansas
		Delaware
		Kentucky
		Maryland
		Massachusetts
		Mississippi
		Montana
		New Jersey
		Oklahoma
		Pennsylvania
		South Dakota
		Utah

As of yet, it is not clear what the regulatory implications are of this shift. Although states do not report tax collection problems, at least one study supports the possibility that tax leakages have occurred since *Granholm*.

In Maryland, after *Granholm*, Governor Robert Ehrlich created the Maryland Wine and Grape Advisory Commission to promote the growth of wineries, and as stated in the preamble to Senate Bill 812, passed in 2006, it is a State policy “that former tobacco farms be converted to vineyards to provide a new value-added agricultural product.”¹¹³ One of the fifty-three recommendations in a report issued by the Maryland Wine and Grape Advisory Committee on January 1, 2005 was to “Enable wineries to ship wine directly to consumers within the State and remove the obstacles to Maryland becoming a reciprocal state, which would allow Maryland wineries to ship to out-of-state consumers.”¹¹⁴ Despite this recommendation, which was issued prior to *Granholm*, all the legislative proposals to the Maryland General Assembly have been direct wine shipment bills, not ones establishing reciprocity.

Still, a reciprocity statute exists in California, by far the largest wine producer in the country, and New York, a top producer in the East, has reciprocity provisions

¹¹³ Senate Bill 812, introduced in 2006 by Senators Middleton, Astle, Brinkley, Dyson, Garagiola, Jacobs, Kittleman, Munson, Pipkin, Teitelbaum, Hafer, and Hogan, and referred to the Senate Education, Health, and Environmental Matters Committee, p. 4.

¹¹⁴ Report by the Maryland Wine & Grape Advisory Committee, *Maryland Wine: The Next Vintage* (January 2005), p. 20.

in its law.¹¹⁵ California responded to *Granholm* by creating a wine direct shipper permit that allows out-of-state wineries to direct ship wine to California residents.¹¹⁶ However, also effective January 1, 2006, a reciprocity statute was enacted allowing an out-of-state retailer to ship two cases of wine per month to a California resident, provided that same privilege of direct wine shipment is given to California retailers.¹¹⁷ Maryland wineries may obtain a wine direct shipper permit and ship wine directly to California residents, even though Maryland prohibits California wineries from exercising that same privilege; but under the reciprocity statute, since Maryland law does not allow California retailers to direct ship wine to Maryland residents, Maryland retailers may not ship wine directly to California residents.

In the wake of *Granholm*, constitutional law on direct wine shipment is far from settled. Federal court decisions about direct wine shipment laws have yielded inconsistent results.¹¹⁸ The Seventh Circuit upheld an Indiana law requiring a face-to-face transaction for direct wine shipment, while the Sixth Circuit “held that an in-person requirement is discriminatory.”¹¹⁹ Also, the “gallonage cap exception,” has been the subject of litigation with differing outcomes. In *Black Star Farms, LLC v. Oliver*, 544 F. Supp. 2d 913 (D. Arizona 2008), a federal district court upheld a law, which permitted wineries producing less than 20,000 gallons of wine per year to ship directly to Arizona consumers,¹²⁰ even though 26 of Arizona’s 27 wineries fell within the cap, while any out-of-state winery producing more than 20,000 gallons would not.

In contrast, on January 14, 2010, the First Circuit Court in *Family Winemakers of California v. Jenkins*, 592 F.3d 1 (1st Cir. 2010) struck down as unconstitutional a 2005 law that prohibited direct wine shipment by both in-state and out-of-state wineries that produce more than 30,000 gallons of wine annually. Even though the Massachusetts law was not discriminatory on its face, because it allowed both in-state and out-of-state wineries who produced less than 30,000 gallons to ship

¹¹⁵ The recommendation by the Maryland Wine and Grape Advisory Committee may have had New York in mind, where reciprocity has been sought by Maryland wineries. Under New York law, an out-of-state winery may obtain a direct wine shipper license provided “the state in which such out-of-state winery is located affords to New York state winery and farm winery licensees reciprocal shipping privileges, meaning shipping privileges that are substantially similar to the requirements in this section.” Alcoholic Beverage Control Law, § 79-c.(1).

¹¹⁶ California Business and Professions Code, § 23661.3.

¹¹⁷ *Ibid.*, § 23661.2.

¹¹⁸ Federal courts held that direct wine shipment laws in Michigan, Texas, North Carolina, and Virginia were unconstitutional violations of the Commerce Clause. In contrast, the Second Circuit upheld New York’s discriminatory direct wine shipment ban in *Swedenburg v. Kelly*, 358 F.3d 223 (2nd Cir. 2003). Texas, North Carolina, and Virginia changed their laws to comply with the court ruling. Jerry Ellig and Alan E. Wiseman, “*The Economics of Direct Wine Shipping*,” 3 *Journal of Law, Economics & Policy* 255, 3 (2007)

¹¹⁹ Perkins, “*Wine Wars*,” at 9.

¹²⁰ *Ibid.*, n. 143. Perkins notes this case is on appeal to the Ninth Circuit.

directly to consumers, its effect was to discriminate against wineries who produced more than 30,000 gallons. The court held that the Massachusetts “small winery license” violated “the Commerce Clause because the effect of its particular gallonage cap is to change the competitive balance between in-state and out-of-state wineries in a way that benefits Massachusetts’ wineries and significantly burdens out-of-state competitors.”¹²¹ No legitimate local purpose was found for the distinction between a “small winery license” and a “large winery license” that could not be furthered by a nondiscriminatory alternative. Thus, although this law complied with *Granholm*, because it did not facially discriminate, the effect was determined to be discriminatory, because all of Massachusetts’ in-state wineries produced less than 30,000 gallons.¹²²

Since *Granholm*, court decisions are perceived by some as further eroding state power under the Twenty-first Amendment. This is one of the reasons why the “Comprehensive Alcohol Regulatory Effectiveness (CARE) Act of 2010” was introduced in the House of Representatives as H.R. 5034. The Care Act of 2010 will be discussed below as well as other aspects of federal regulation which have a bearing on direct wine shipment.

IV. FEDERAL LAW AND REGULATION OF ALCOHOLIC BEVERAGES

Alcoholic beverages are federally regulated. The power granted to states under the Twenty-first Amendment does not mean Congress may not enact alcohol laws and regulations. In fact, many states have followed federal law and regulations in the areas of labeling, advertising, and trade practices.

A. Alcohol and Tobacco Tax and Trade Bureau (“TTB”)

The Alcohol and Tobacco Tax and Trade Bureau (“TTB”) of the United States Department of Treasury regulates beer, wine, and distilled spirits at the federal level. The Federal Alcohol Administration Act (“FAA Act”), 27 U.S.C. § 203, requires that a federal basic permit be obtained by a wine manufacturer or wholesaler in order to manufacture, sell, or distribute wine in any state. Retailers are not required to obtain a federal basic permit. The Comptroller of Maryland requires that an applicant for a manufacturer or wholesaler license or permit have a federal basic permit.

Federal excise taxes are imposed on wine gallons at the following rates by the Internal Revenue Service under 26 U.S.C. § 5041(b):

Not over 14% alcohol	\$ 1.07*
Over 14% but not over 21% alcohol	\$ 1.57*

¹²¹ *Family Winemakers of California v. Jenkins*, 592 F.3d 1, 5-6 (1st Cir. 2010).

¹²² Perkins, “*Wine Wars*,” p. 9.

Over 21% but not over 24% alcohol	\$ 3.15*
Artificially Carbonated Wine	\$ 3.30*
Sparkling Wine	\$ 3.40
Hard Cider **	\$.226*

(* A tax credit which reduces these rates by as much as \$.90 per gallon is available to certain producers for a portion of the company's taxable removals each calendar year)

(** Hard Cider is a still—not effervescent—apple wine product that contains less than 7% alcohol by volume. Credit of as much as \$.056 per gallon is available to certain producers of hard cider. See 27 CFR 24.10)¹²³

There is no federal prohibition on direct wine shipment; however, the Bureau of Alcohol, Tobacco and Firearms (“ATF”), predecessor to TTB, issued a ruling in 2000, that was substantially similar to an earlier Industry Circular issued in 1996,¹²⁴ concerning the following question posed by states: Whether direct shipment of alcohol by out-of-state sellers to consumers in a state violated the Webb-Kenyon Act (27 U.S.C. § 122), and if so, whether ATF would take enforcement action? The ATF 2000 Ruling stated that one of the conditions for a federal basic permit under the FAA Act, 27 U.S.C. § 204(d), is compliance with the Twenty-first Amendment. Thus, because the Webb-Kenyon Act is a law which enforces the Twenty-first Amendment, a violation of that Act may be a cause for suspension or revocation of a federal basic permit. The Ruling further stated that the ATF would intervene and enforce the Webb-Kenyon Act by taking action against a federal basic permittee if the conduct of the out-of-state seller was continuing, and had a material, adverse impact on the affected state. Since an out-of-state retailer is not issued a federal basic permit, no action can be taken against that type of seller.¹²⁵

¹²³ Alcohol and Tobacco Tax and Trade Bureau, United States Department of the Treasury, 2010 TTB Compliance Seminar for Bonded Wine Premises, Trade Investigations Division, TTB P 5120.001, February 2010, p. 64.

¹²⁴ United States Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, “Direct Shipment Sales of Alcohol Beverages,” Industry Circular, Number: 96-3, February 11, 1996. The federal excise tax on beer is \$18 per barrel (31 gallons), which is the equivalent of 5 cents per 12 ounce can. There is a reduced rate for beer of \$7 on the first 60,000 barrels for a brewer who produces less than 2 million barrels, which is the equivalent of 2 cents per 12 ounce can. The \$18 per barrel applies after the first 60,000 barrels. For distilled spirits, the federal excise tax is \$13.50 per proof gallon less any credit for wine and flavor content, which is the equivalent of \$2.14 for a 750ml bottle (80 proof). A proof gallon is a gallon of liquid that is 100 proof, or 50% alcohol. The tax is adjusted, depending on the percentage of alcohol of the product, available from http://www.ttb.gov/tax_audit/atftaxes.shtml (accessed December 6, 2010). The Maryland tax rate for beer is 9 cents per gallon, which is the equivalent of .008 cents per 12 ounce can, or 8/10 of 1 cent. The tax rate for distilled spirits in Maryland is \$1.50 per gallon (100 proof), which is the equivalent of 29.7 cents for a 750ml bottle. There is an additional tax for each 1 proof over 100 proof of 1.5 cents per gallon. Tax-General Article, § 5-105, Annotated Code of Maryland.

¹²⁵ United States Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, “Direct Shipment Sales of Alcohol Beverages,” ATF Ruling 2000-1.

There had been uncertainty whether ATF could intervene against a violation of a state direct shipment law when the Twenty-first Amendment was determined by the Eleventh Circuit Court of Appeals in 1997 not to provide a federal cause of action. It was not clear whether ATF had legal authority to enforce a state law that prohibited direct shipment of alcohol.¹²⁶

In 1999, prior to this ATF Ruling, the Twenty-First Amendment Enforcement Act was introduced into Congress to amend the Webb-Kenyon Act in order to authorize a state attorney general to bring an injunctive action in federal court to enforce state law. In 2000, Congress passed the Twenty-First Amendment Enforcement Act (“Enforcement Act”), which amended the Webb-Kenyon Act by adding 27 U.S.C. § 122a.¹²⁷

B. Twenty-First Amendment Enforcement Act

The Enforcement Act gives the Attorney General of each state the power to bring a civil action in federal court for injunctive relief against an out-of-state supplier who violates state alcohol laws.¹²⁸ Under 27 U.S.C. § 122a(b), if a state attorney general has reasonable cause to believe that a person is violating a state’s direct wine shipment law, a civil action for an injunction may be brought. Under 27 U.S.C. § 122a(d), a successful action will depend upon whether the state can show by a preponderance of evidence that a state law was violated, and provide evidence that if an injunction is not issued, there is probability of irreparable injury, and provide further evidence supporting the probability of success on the merits.

In addition to state law enforcement power, Justice Kennedy in *Granholtm* referred to both the Enforcement Act and the ability of TTB to suspend or revoke a federal basic permit as nondiscriminatory alternatives to ensuring that state objectives of tax collection and prevention of underage access are achieved.

C. Federal On-Site Shipping

In November 2002, the Federal On-Site Shipping law was passed as part of the 21st Century Department of Justice Appropriations Authorization Act and codified as 27 U.S.C. § 124. If this law is violated, similar to the Enforcement Act, a state attorney general may seek injunctive relief in federal court. The law restricts direct wine shipment only when the Federal Aviation Administration “has in effect restrictions on airline passengers to ensure safety.” In that situation, limited direct

¹²⁶ John Foust, “State Power to Regulate Alcohol under the Twenty-first Amendment: The Constitutional Implications of the Twenty-first Amendment Enforcement Act,” 41 B.C.L. Rev. 659 (May 2000), at 668-670.

¹²⁷ The Twenty-First Amendment Enforcement Act was § 2004 of the Victims of Trafficking and Violence Protection Act of 2000.

¹²⁸ John Foust, “State Power to Regulate Alcohol under the Twenty-first Amendment,” p. 6.

shipping to a consumer is allowed in certain circumstances, i.e., the consumer was on-site at the winery when the wine was purchased, and an adult signature was obtained at time of purchase. However, direct ship is permissible only if the consumer could have brought the wine into the destination state, which means that state law would have allowed the consumer to carry the wine home on an airplane if the Federal Aviation Administration had not prohibited liquids in carry-ons.¹²⁹ This requirement eliminated nine states. Of the thirteen states which prohibit direct wine shipment, four allow an exception for Federal On-Site Shipping: Delaware (no limit), New Jersey (up to 1 gallon), Oklahoma (up to 1 liter), and South Dakota (up to 1 gallon).¹³⁰

The last federal legislation to mention is a bill recently introduced to Congress with the purpose of ensuring that state regulatory power under the Twenty-first Amendment would not be undermined by Commerce Clause analysis.

D. Comprehensive Alcohol Regulatory Effectiveness (CARE) Act of 2010

On April 15, 2010, the “Comprehensive Alcohol Regulatory Effectiveness (CARE) Act of 2010” was introduced in the House of Representatives as H.R. 5034.¹³¹ The bill’s stated purposes are to: “(1) recognize that alcohol is different from other consumer products and that it should be regulated effectively by the States according to the laws thereof; and (2) reaffirm and protect the primary authority of States to regulate alcoholic beverages.”¹³² The CARE Act of 2010 (“CARE Act”), which is a House resolution and slightly over three pages in length, amends both the Wilson Act and Webb-Kenyon Act.

The Webb-Kenyon Act is amended by § 3, which adds language about judicial interpretation and evidentiary standards. Section 3(b) of the CARE Act seems to affirm *Granholm* by prohibiting facial discrimination without justification between out-of-state and in-state alcoholic beverages producers. But, it requires Congressional silence or inaction in the regulation of alcoholic beverages to not be interpreted under the Commerce Clause as undermining State authority. In other words, if Congress has not enacted a law regulating alcoholic beverages, courts must not determine that the reason for this silence or inaction is because such federal regulation would violate the Commerce Clause, and that is why Congress has not acted. Congressional inaction in regulating alcoholic beverages must not be

¹²⁹ Ibid., See n. 83.

¹³⁰ Wine Institute, Direct Shipment Laws by State for Wineries (July 1, 2010), available from <http://www.wineinstitute.org> (accessed October 31, 2010).

¹³¹ The bill was introduced by Mr. Delahunt, Mr. Coble, Mr. Chaffetz, and Mr. Quigley, and referred to the Committee on the Judiciary.

¹³² H.R. 5034, “Comprehensive Alcohol Regulatory Effectiveness (CARE) Act of 2010,” pp. 1-2.

construed by the courts against State regulation, because as indicated in the CARE Act, each State has primary authority to regulate alcoholic beverages.

Also, § 3(c) of the CARE Act specifies the evidentiary standard courts should use when considering challenges under the Commerce Clause to State regulation of alcoholic beverages. In order to successfully challenge a state regulatory law, a party must show by clear and convincing evidence that the law has no effect on any of the following: “Promotion of temperance, the establishment or maintenance of orderly alcoholic beverage markets, the collection of alcoholic beverage taxes, the structure of the state alcoholic beverage distribution system, or the restriction of access to alcoholic beverages by those under the legal drinking age.”¹³³ This is a list of the legislative and policy objectives of most state laws, which have been part of the balancing test of constitutional analysis since the Supreme Court ruled that the Twenty-first Amendment does not give States authority to regulate alcoholic beverages without regard to the rest of the Constitution.

Section 4 of the CARE Act amends the Wilson Act by striking language that requires out-of-state alcoholic beverages to be treated in the same manner as if they had been produced in-state.¹³⁴ This change may be interpreted as removing the equal treatment of alcohol regardless of its origin, and allowing states to discriminate against out-of-state alcohol interests under its police powers.

Supported by the National Beer Wholesalers Association and the Wine & Distilled Spirits Wholesalers of America, the CARE Act is seen as a way to prevent future courts from striking down laws which protect the three-tier system. The belief is that if state laws regulating alcohol pursuant to the Twenty-first Amendment are scrutinized under the Commerce Clause, then it is only a matter of time until the three-tier distribution system is entirely eviscerated.

In a joint letter opposing H.R. 5034, the Wine Institute and WineAmerica state that the CARE Act “would allow states, at the urging of the wholesalers, to eliminate direct-to-consumer wine shipping in 37 states and the District of Columbia.”¹³⁵ It is not entirely clear this could happen, since the CARE Act supports *Granholm* by affirming that a state may not facially discriminate against out-of-state producers;

¹³³ *Ibid.*, p. 3.

¹³⁴ The amended language to the Wilson Act would read: “All fermented, distilled, or other intoxicating liquors or liquids transported into any State or Territory or remaining therein for use, consumption, sale or storage therein, shall upon arrival in such State or Territory be subject to the operation and effect of the laws of such State or Territory enacted in the exercise of its police powers, ~~to the same extent and in the same manner as though such liquids or liquors had been produced in such State or Territory,~~ and shall not be exempt therefrom by reason of being introduced therein in original package or otherwise.” 27 U.S.C. § 121.

¹³⁵ Written testimony submitted by the Wine Institute and WineAmerica to the Committee on the Judiciary, House of Representatives, United States Congress, Hearing on H.R. 5034, p. 2.

however, the use of the term “facial” discrimination may suggest that less explicit discrimination would be legal if justified. In that sense, and with the amendments of the Webb-Kenyon Act and Wilson Act, it appears that the CARE Act may be a legislative move to stop the trend and substance of Twenty-first Amendment jurisprudence. In his written testimony supporting H.R. 5034, Professor Stephen Diamond agrees that Congress cannot alter judicial interpretation of the Twenty-first Amendment, but that it can under the Commerce Clause define when state alcohol regulatory laws are immune from dormant Commerce Clause challenge.¹³⁶

Senator Dianne Feinstein (D-CA) noted on the Congressional Record that the California State Legislature passed a joint resolution (S.J. Res. 34) urging Congress to reject H.R. 5034 as it would seriously harm winemakers in California.¹³⁷ In the Congressional Record for the Senate dated September 27, 2010, Senator Feinstein submitted the text of the California Senate Joint Resolution No. 34 passed on August 2, 2010 as a petition and memorial (POM-142). The economic benefits of California’s wine industry and direct wine shipment are cited, among other positive facts, in the twenty-nine “whereas” clauses of S.J. Res. 34. Also mentioned is that H.R. 5034 would reverse decades of constitutional jurisprudence which balanced the objectives of the Twenty-first Amendment with the Commerce Clause; and that it would sanction discriminatory state laws by changing evidentiary rules for Commerce Clause legal challenges.¹³⁸

V. MARYLAND REGULATION OF ALCOHOLIC BEVERAGES

Since the repeal of Prohibition in 1933, alcoholic beverages in Maryland have been regulated and taxed under a three-tier distribution system.¹³⁹ After the abuses of bootlegging, crime, manipulation of retailers by manufacturers, and so on, which occurred during Prohibition, the three-tier regulatory framework was implemented to achieve the goals of temperance, orderly sale of alcoholic beverages, and respect

¹³⁶ Written testimony submitted by Professor Stephen M. Diamond to the, Hearing on H.R. 5034, p. 15.

¹³⁷ Senator Feinstein, Alcohol Regulatory Effectiveness Committee on the Judiciary, House of Representatives, United States Congress Act, Congressional Record of the Senate, S6863-S6864 (August 5, 2010).

¹³⁸ Petitions and Memorials, POM-142, Congressional Record of the Senate, p. 7505-7506 (September 27, 2010).

¹³⁹ The 18th Amendment to the United States Constitution, ratified on January 16, 1919, was repealed by § 1 of the 21st Amendment, ratified on December 5, 1933, some nine months after Franklin Roosevelt was sworn-in as the 32nd President of the United States. Section 2 of the 21st Amendment states that, “The transportation or importation into any State, Territory, or possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited.” During a Special Session in 1933, the Maryland General Assembly passed into law Article 2B, the alcoholic beverages laws.

and obedience to law.¹⁴⁰ Moreover, because alcoholic beverages are potentially harmful to the general welfare, whether by injury or illness, the laws and regulations governing their purchase, sale, and distribution are more comprehensive and stringent than other goods sold in commerce. In fact, the Maryland General Assembly declared that laws regulating alcoholic beverages were authorized even if they had an anticompetitive effect.¹⁴¹ The State has preempted local jurisdictions of all power to regulate and tax alcoholic beverages under Article 2B of the Annotated Code of Maryland.¹⁴²

Maryland is a license state, not a control state. With the exception of county dispensaries, all alcoholic beverages are purchased, sold, and distributed through private sector for-profit businesses (manufacturers, wholesalers, and retailers), who are licensed and must comply with state laws and regulations. Thus, except for county dispensaries, profits from the sale of alcoholic beverages go directly to the licensees as in any other business. To the extent that Article 2B allows, licensees are rational actors in the free market. This is the fundamental philosophical issue at the heart of the direct wine shipment debate. Proponents of direct wine shipment focus on the free market and interstate commerce, while opponents focus on the unique nature of alcohol, state regulatory objectives, and the Twenty-first Amendment.

As the tax collector for the State, the Comptroller of Maryland is in charge of administering the laws for the alcoholic beverages tax, and ensuring compliance and enforcement of Article 2B. Powers governing retail licenses have been delegated by the Maryland General Assembly in Article 2B to the local liquor boards of the 23 counties, Baltimore City, and the City of Annapolis.

¹⁴⁰ Article 2B, § 1-101(a)(1) states two of the legislative objectives of promoting temperance and respect and obedience to law, and also refers to the 21st Amendment's delegation of regulatory authority to the states by indicating the necessity of Maryland to regulate and control the transportation of alcoholic beverages into and out of the State.

¹⁴¹ Pursuant to Article 2B, § 1-101(b)(1), the State exercises power and authority for the purpose of "displacing or limiting economic competition by regulating or engaging in the sale or distribution of alcoholic beverages or both in order to obtain respect and obedience to law, to foster and promote temperance, to prevent deceptive, destructive, and unethical business practices, and to promote the general welfare of its citizens by controlling the sale and distribution of alcoholic beverages." Article 2B, § 1-101(b) was added in 1983 to prevent constitutional challenges to state law as a violation of the Commerce Clause. Although intended to achieve its legislative objectives, Article 2B regulatory laws had the effect of restricting competition. Given the importance of regulating alcoholic beverages and the authority granted to the states by the 21st Amendment, the legislature deemed this a constitutionally permissible trade-off.

¹⁴² Article 2B, § 1-101(a)(4). See *Montgomery County v. Board of Supervisors*, 53 Md. App. 123, 451 A.2d 1279 (1982), where the court held that since the State has preempted the regulation and control of alcoholic beverages, only the State, not the voters of a county, may not remove the authority of the county Board of License Commissioners.

A. Comptroller of Maryland

In Article 2B, § 1-102(a)(2)(i), the general term “alcoholic beverages” means alcohol, brandy, whiskey, rum, gin, cordial, beer, ale, porter, stout, wine, cider, and any other spirituous, vinous, malt or fermented liquor, liquid, or compound, by whatever name called, which contains one-half of 1% or more of alcohol by volume fit for beverage purposes.¹⁴³ Wine and beer are specifically defined in Article 2B,¹⁴⁴ but there is no specific definition for distilled spirits.¹⁴⁵

The Comptroller of Maryland collects the alcoholic beverages tax on the sale of beer, wine, and distilled spirits in Maryland,¹⁴⁶ and issues statewide manufacturer and wholesaler licenses.¹⁴⁷ As mentioned, the State has preempted the taxation and regulation of alcoholic beverages. Accordingly, under Tax-General Article, § 5-102(c)(1), a county, municipality, or other local jurisdiction may not impose an alcoholic beverages tax.

Beer supplier-wholesaler distribution is governed by the Beer Franchise Fair Dealing Act under Title 17 and § 21-103 of Article 2B. Wine and distilled spirits distributorships are regulated and enforced by the Comptroller. In addition to appointing a county dispensary acting as a wholesaler, a wine and distilled spirits supplier may appoint one other wholesaler to sell and distribute a brand of wine or distilled spirits for the rest of the State.¹⁴⁸ The purpose of this regulation is to prevent price wars among wine and distilled spirits wholesalers.

In addition to issuing alcoholic beverages manufacturer licenses for distilleries, wineries, and breweries, and wholesaler licenses for the distribution of beer, wine, and distilled spirits, the Comptroller issues various permits to out-of-state and in-state businesses under Article 2B, § 2-101. The nonresident winery permit and direct wine seller’s permit will be discussed in the next section. An out-of-state winery that produces more than 27,500 gallons annually may not apply for a nonresident winery permit, which is intended for a small winery, but may apply for

¹⁴³ Article 2B, § 1-102(a)(2)(i).

¹⁴⁴ Under Article 2B, § 1-102(a)(28), wine is defined as any fermented beverage, including light wines, and wines the alcoholic content of which has been fortified by the addition of alcohol, spirits or other ingredients. In Tax-General Article, § 5-101(o), wine includes carbonated, flavored, imitation, sparkling or still wine, champagne, cider, fortified wine, perry, sake, and vermouth.

Beer is defined as any brewed alcoholic beverage, and includes beer, ale, porter, and stout. Article 2B, § 1-102(a)(3)(i). Hard cider is also considered beer.

¹⁴⁵ Distilled spirits is defined in Tax-General Article, § 5-101(g) as a distilled alcoholic beverage including alcohol, brandy, cordials, gin, liqueur, rum, vodka, whiskey, and solutions or mixtures of distilled spirits except fortified wines.

¹⁴⁶ Tax-General Article, § 2-101(2), Annotated Code of Maryland.

¹⁴⁷ Title 2 and Title 3 of Article 2B, Annotated Code of Maryland.

¹⁴⁸ See Code of Maryland Regulations (COMAR) 03.02.0.12.

a nonresident dealer permit authorizing it to sell alcoholic beverages to a Maryland licensed wholesaler.

All legislative bills introduced to the Maryland General Assembly to authorize direct wine shipment to consumers have created a direct wine shipper's license, not a permit. As a matter of regulatory law, permits have been issued to out-of-state persons, who the State is "permitting" to do business in Maryland, and licenses have been issued to in-state persons, who are given the privilege or license to engage in certain activities. In Article 2B, a "license holder" or "licensee" is defined in § 1-102(a)(15)(i) to include any person issued a permit.

A direct wine shipper license would be the first "license" issued by the Comptroller to an out-of-state person. Because of this, there are concerns about tax collection, compliance audits, and enforcement, which will be discussed in section 7.

The tax bond requirement in Tax-General Article, § 13-825(b) is not limited to licensees, but is related to who pays the alcoholic beverages tax. Maryland wholesaler licensees who sell wine and distilled spirits must obtain a tax bond, because they are the in-state persons responsible to pay the alcoholic beverages tax. Because the tax on beer is prepaid before it enters Maryland, the nonresident dealer permittee must obtain a tax bond, and because nonresident winery permittees are responsible to pay the tax on wine sold to Maryland retailers, they must obtain a bond.

There is precedent for requiring a tax bond for a direct wine shipper who is responsible to pay the alcoholic beverages tax on wine sold to consumers, whether the law requires a license or permit. Legislative bills introduced thus far have not required the direct wine shipper licensee to obtain a tax bond. An explanation for this may be that the anticipated amount of taxes paid by a direct wine shipper licensee will be far less than what is paid by other licensees and permittees who are required to have a bond.

The Comptroller also collects the sales tax at the rate of 6% pursuant to Tax-General Article, § 11-102(a)(2), that would be imposed on the sale of wine by the direct wine shipper. Under the latest legislative proposal in 2010, both the alcoholic beverages tax and sales tax would be reported and paid by the direct wine shipper on a monthly basis.

B. Local Boards of License Commissioners & County Liquor Dispensaries

Article 2B, § 15-101(a)(1) authorizes the Governor with the advice and consent of the Senate to appoint three persons to a Board of License Commissioners for each county and Baltimore City. The City of Annapolis also has a liquor board pursuant

to Article 2B, § 15-107. These local liquor boards issue various types of retail licenses, and are responsible for enforcing laws in Article 2B applicable to retail licensees. Each liquor board conducts hearings on the approval, suspension, revocation, or restriction of the retail licenses issued. A local licensing board decision may be appealed to the circuit court.

Direct wine shipment removes local liquor boards as regulatory actors for retail wine sales. By circumventing in-state retailers, direct wine shipment prevents the local liquor boards from exercising their statutory authority over retail sales in Maryland.

It is the local liquor boards who enforce the provisions of Article 2B, § 12-108, which prohibits the sale of alcoholic beverages to minors and intoxicated persons. Since the illegal sale to minors and intoxicated persons occurs at the retail level, and the local liquor boards issue the retail licenses, it is the liquor boards who primarily enforce this law. Under the direct wine shipper license proposals, the Comptroller as the issuing authority would be responsible to enforce Article 2B, § 12-108.

Under Article 2B, § 13-101, all licensed retailers are required to complete training in an alcohol awareness training program approved by the Comptroller. With direct wine shipment, the common carrier is not required to have this type of training. The alcohol awareness programs must include instruction on how alcohol affects a person's body and behavior; the dangers of drinking and driving; and effective methods for minimizing the chance of intoxication and determining if a customer is underage. While a direct wine shipment delivery to a consumer is a very different setting than a customer drinking at a bar, opponents of direct wine shipment are concerned about the loss of this regulatory check.

Under Article 2B, § 15-201, a liquor control board is established in each county, which may maintain stores known as "county liquor dispensaries." In Montgomery County, the Department of Liquor Control is a department of county government under the supervision of the County Executive. In general, members of the liquor control boards are appointed by the Governor with advice and consent of the Senate; however, there are exceptions, particularly Montgomery County where the director of the Department of Liquor Control is appointed by the County Executive with the approval of the County Council.¹⁴⁹ Article 2B, § 15-204(a) gives each county liquor control board "an absolute monopoly of the sale and distribution of the particular alcoholic beverages...it is empowered to sell."

¹⁴⁹ Article 2B, § 15-201(c)(7) provides for a five-member advisory board in Montgomery County appointed by the County Executive with approval of the County Council.

County liquor dispensaries may sell sparkling or fortified wine and any other alcoholic beverage containing more than 14 percent of alcohol by volume in sealed packages or containers for off-premise consumption. Currently, there are liquor dispensaries operating in following counties: Montgomery, Somerset, Wicomico, and Worcester.¹⁵⁰ Although county liquor dispensaries are included in the definition of “license holder” or “licensee” in Article 2B, § 1-102(a)(15)(i), the Comptroller does not actually issue a license to the dispensaries. County dispensaries are included in both the definition of a “retailer” under Article 2B, § 1-102(a)(23), and a “wholesaler” under Article 2B, § 1-102(a)(27)(ii).¹⁵¹

Acting as a “wholesaler,” the county dispensaries may purchase alcoholic beverages they are authorized to sell from licensed manufacturers and wholesalers tax-paid, and also purchase from nonresident dealer permittees alcoholic beverages not tax-paid so long as the alcoholic beverages tax is paid before sale. In Montgomery County, the general rule is that all alcoholic beverages must be purchased from the Department of Liquor Control.¹⁵² As a complement to Senate Bill 812 (an emergency bill which created the nonresident winery permit and limited wine wholesaler license in 2007 in order to comply with *Granholtm*), House Bill 614, also an emergency bill and passed on the same day as Senate Bill 812, added Article 2B, § 15-204(b)(2) allowing a Class 6 limited wine wholesaler or nonresident winery permittee to sell or deliver wine directly to a county dispensary store or retailer in Montgomery County. Since it is only in Montgomery County where all alcoholic beverages must be purchased from the Department of Liquor Control, this exception under Article 2B, § 15-204(b)(2) was necessary so that the nonresident winery permittee and Class 6 limited wine wholesaler had the same privileges statewide. As will be noted in the next section, providing an exception in Montgomery County for direct wine shipment to consumers was included in the 2010 version of the direct wine shipper license bill.

¹⁵⁰ In Montgomery County, the county dispensaries may sell all alcoholic beverages; in Somerset and Worcester Counties, any alcoholic beverage may be sold, except beer; and in Wicomico County, beer, wine, liquor, ice, and bottled water may be sold. See Article 2B, § 15-204(a)(2)-(3) and (e-1).

¹⁵¹ Whether acting as a wholesaler or a retailer when sales are made at county dispensary stores, the county dispensaries like other wholesalers or retailers are subject to the alcoholic beverages regulations, including rules governing trade practices: COMAR 03.02.01, 03.02.04, and 03.02.05.

¹⁵² A Class “F” licensee (airplane), and the following wholesalers: Class 1 beer, wine and liquor, Class 2 wine and liquor, Class 3 beer and wine, Class 4 beer, or Class 5 wine, are all exceptions to this rule, which means they may keep for sale alcoholic beverages not purchased from the Department of Liquor Control; however, they must sell and deliver those alcoholic beverages to a county dispensary store. Article 2B, § 15-204(b)(1).

VI. DIRECT WINE SHIPMENT IN MARYLAND

In Maryland, direct wine shipment to consumers by in-state or out-of-state manufacturers, wholesalers, or retailers is not legal.¹⁵³ Since Article 2B prohibits both out-of-state wineries and in-state wineries from shipping wine directly to consumers, Maryland law is constitutional under the *Granholm* decision. However, after *Granholm* and in response to *Bushnell v. Ehrlich* (2005),¹⁵⁴ a law was passed by the Maryland General Assembly creating a nonresident winery permit, which allows out-of-state “limited” wineries to sell directly to Maryland retailers, the same privilege afforded in-state “limited” wineries.¹⁵⁵ In *Granholm*, it was not the three-tier distribution system that violated the Commerce Clause, since the states have the constitutional right to regulate alcoholic beverages within their borders, but the “discrimination” between out-of-state and in-state wineries that unduly burdened interstate commerce.

Maryland’s nonresident winery permit recognizes an “exception” to three-tier distribution for small wineries, who could neither afford nor have the opportunity to sell wine through a wholesaler. Given the significant increase in the number of small out-of-state wineries, the nonresident winery permit allowed those brands of wine to enter into the Maryland market by direct sale from the first-tier manufacturers (small out-of-state wineries) to third-tier Maryland retailers, skipping second-tier Maryland wholesalers. The corresponding Class 6 limited wine wholesaler license issued to Maryland limited wineries keeping them on par with

¹⁵³ Article 2B, § 2-401(b) prohibits a manufacturer or wholesaler licensee from selling or delivering alcohol beverages to any person who is not a licensee or permit holder. Under Article 2B, § 16-506.1, a person shipping alcoholic beverages to a consumer in Maryland without the proper license or permit is subject to a felony charge and a fine up to \$1,000 or imprisonment of up to 2 years or both.

¹⁵⁴ This was an action brought by a Pennsylvania winery challenging the constitutionality of provisions in Article 2B, which permitted Maryland wineries to sell wine directly to retailers. Out-of-state wineries had to obtain a nonresident dealer permit and sell to Maryland retailers through a wholesaler. The complaint by plaintiffs was filed in the United States District Court of Maryland in late 2005 and voluntarily dismissed on April 28, 2006.

¹⁵⁵ Senate Bill 812 was passed by the Maryland General Assembly and signed by Governor Ehrlich on April 25, 2006 as Emergency Legislation in response to the *Granholm* decision. The preamble states that the purpose of the law is to provide out-of-state wineries the same privileges given to Maryland wineries since 1951, namely, to sell and deliver wine directly to Maryland retailers. The Nonresident Winery Permit under Article 2B, § 2-101(v) allows an out-of-state winery that produces no more than 27,500 gallons of wine annually to sell its wine directly to a Maryland retailer. Senate Bill 812 also created a Class 6 limited wine wholesaler’s license for an in-state winery that produces no more than 27,500 gallons, which under Article 2B, § 2-301(b)(2) similarly allows it to sell and deliver its wine directly to a Maryland retailer. Prior to this law, an in-state winery could sell and deliver wine directly to a Maryland retailer without a wholesaler license. Article 2B, § 15-204(b)(2) was added in 2007 to permit a nonresident winery permittee and a Class 6 limited wine wholesaler licensee, in addition to selling to the county liquor dispensary, to also sell and deliver wine directly to retailers in Montgomery County. See House Bill 614.

out-of-state wineries had the explicit legislative objective of promoting the growth of Maryland wineries, the same goal of the Governor's Advisory Commission on Wine Making and Grape Growing.¹⁵⁶ There were 22 Maryland limited wineries in 2006, the majority of which produced less than 27,500 gallons annually, and thus were eligible for the Class 6 limited wine wholesaler license. The number of Maryland limited wineries has increased to 44 in 2010.

Since *Granholm*, legislative bills to make direct wine shipment to consumers legal in Maryland have been introduced in four sessions: 2006, 2008, 2009, and 2010. While no bill has passed, legislative and public support has grown over the last five years. This increased popularity may be explained by the number of states which have passed direct wine shipment laws, consumer demand for wine, and confidence in "e-commerce." Even before the rise of the internet, Marylanders who wanted to purchase out-of-state wines on-site to be shipped back to Maryland were unable to do so. To address the issue of consumer demand for out-of-state wine, the Maryland General Assembly created a Direct Wine Seller's Permit in 2002 allowing a consumer to purchase wine directly from an out-of-state winery so long as the wine is distributed through the three-tiers. An out-of-state winery obtains a Direct Wine Seller's Permit from the Comptroller, and then ships the consumer-ordered wine to a Maryland wholesaler who delivers it to a retail dealer for consumer pick-up.

A. Direct Wine Seller's Permit

Under Article 2B, Title 7.5, an out-of-state wine manufacturer, brand owner, or United States Importer may obtain a Direct Wine Seller's Permit for an annual fee of \$10. As mentioned above, the consumer who orders the wine from an out-of-state wine seller must pick-up the wine at a retail store after it has been distributed through a Maryland wholesaler. Restrictions apply, such as annual quantity limits – 900 liters for each wine seller and 108 liters for each consumer – and a brand of wine may not be sold with this permit if it is distributed by Maryland licensed wholesaler.¹⁵⁷ Also, under Article 2B, § 7.5-108, the wholesaler may impose a service charge at the rate of \$2.00 per bottle, but not more than \$4.00 per shipment; and the retailer may impose a service charge at the rate of \$5.00 per bottle, but no more than \$10.00 per shipment. Since this permit has not been widely utilized, it has not been the practice of wholesalers or retailers to impose these service charges.

¹⁵⁶ See the Preamble to Senate Bill 812, where it is declared that, "Maryland has taken substantial steps in the past years to promote the growth of Maryland wineries, including the appropriation of \$100,000 in the fiscal year 2006 budget to create a fund for grants to expand Maryland wineries, and that, "The Governor's Advisory Commission on Wine Making and Grape Growing stated that every \$3 invested in Maryland wineries results in \$1 earned in tourist trade to those wineries." P. 4.

¹⁵⁷ See Article 2B, §§ 7.5-105 and 7.5-106.

The direct wine seller permittee sells wine directly to a consumer through “modified” three-tier distribution. As stated in Article 2B, § 7.5-107(b), “The wholesaler and retailer act solely as facilitators in the shipping process and do not have title to the wine vested in them.” Thus, the wholesaler does not enter the wine shipped into inventory, because the sale occurs between the direct wine seller and the consumer. However, the wholesaler is required to keep shipping invoices. The goal is to provide direct wine shipment to consumers while keeping intact the regulatory and public policy benefits of the three-tier distribution system.

Article 2B, § 7.5-104(d) requires a direct wine seller permittee to file an annual tax return pursuant to Tax-General Article, § 5-201(d) covering the previous 12 calendar months ending September 30. There is no provision in Title 7.5 of Article 2B or Title 5 of the Tax-General Article requiring the direct wine seller permittee to pay the sales tax. The Comptroller issued an administrative release (AB-23) dated April 29, 2003 stating that it is the consumer’s responsibility to pay the sales and use tax pursuant to Title 11 of the Tax-General Article. The applicable provision is Tax-General Article, § 11-102(a)(2), which imposes the tax on a use, in the State, of tangible personal property acquired by a retail sale. Since this permit has been infrequently used, there is no documentation of consumers paying the use tax on these wine retail sales.

Only a handful of permits have been issued by the Comptroller, since the law was passed in 2002,¹⁵⁸ and the amount of alcoholic beverages tax collected has been minimal.¹⁵⁹ An explanation for the lack of use is that the industry and public are unaware that a direct wine seller permit is available. Another reason given is that the paperwork involved does not justify a shipment of a small quantity of wine. It appears that the requirement that a wholesaler and retailer facilitate the delivery of the wine undercuts the whole idea of a direct wine shipment.

All the legislative bills introduced for the direct wine shipper’s license have abolished the direct wine seller’s permit. An alternative to passing a direct wine shipment law is to revise and expand the direct wine seller’s permit. Some of the changes could include:

¹⁵⁸ The number of Direct Wine Seller’s Permits issued, since the law become effective July 1, 2002 are: 0 in fiscal year 2003 (July 1, 2002 – June 30, 2003); 2 in fiscal year 2004; 1 in fiscal year 2005; 1 in fiscal year 2006; 0 in fiscal year 2007; 2 in fiscal year 2008; 3 in fiscal year 2009; and 2 in fiscal year 2010.

¹⁵⁹ Specific statistics for alcoholic beverage tax paid by direct wine seller permittee’s is not available, but it can be estimated that less than \$200 in tax has been paid since the inception of the permit in 2002.

1. Remove service changes for wholesalers and retailers;
2. Eliminate the 2-year restriction on a brand of wine;
3. Eliminate the 2-year prior license or permit restriction for applicants;
4. Require the direct wine seller to pay the sales tax;
5. Change and improve the permit application process.

In the surveys conducted for this report, the questions asked about the direct wine seller's permit and responses given are stated in Appendix 2. Based on responses, the following findings were made about the direct wine seller's permit:

1. That although a large percentage of Maryland alcoholic beverage licensees are aware of the permit, few have used it;
2. That although a majority of Maryland retailers are aware of the permit, few have used it;
3. That close to a majority of Maryland consumers are aware of the permit, but approximately 93.8% have not used it; and
4. That the primary reason why Maryland consumers have not used the permit is because they consider it a "hassle."

Other reasons why Maryland consumers have not used the direct wine seller's permit are the out-of-state winery's unwillingness to obtain the permit; the Maryland retailer's lack of desire to facilitate the purchase; perceived increased costs; and an infringement of economic freedom.

A confirmation of its obscurity is a recent law review article about direct wine shipment in Maryland, where the Direct Wine Seller's Permit is not even mentioned.¹⁶⁰

¹⁶⁰ Lauren Dunnock, "'Quaffable, But Far From Transcendent'": *Maryland's Twenty-First Century Prohibition*," 36 U.Balt.L.Rev. 271 (2007). The author claims that Maryland's law discriminates against out-of-state wineries, because "The out-of-state winery, unlike the Maryland winery, is effectively shut out of the Maryland market unless the winery is small enough to qualify for Maryland's limited wholesaler permit." 36 U.Balt.L.Rev. 271, at 291. This statement is incorrect. The footnote cites the Complaint in the 2005 *Bushnell v. Ehrlich* case, which was prior to the passage of Senate Bill 812. However, in other places in the article, the author refers to the 2006 legislation creating the nonresident winery permit and limited wholesaler license. The reasons the statement is incorrect are as follows: (1) Under Article 2B, § 2-301(b)(2), a Class 6 limited wholesaler license, not a permit, may be issued to a Maryland winery, not an out-of-state winery; (2) In order to qualify for a Class 6 limited wholesaler license, the Maryland winery may not produce more than 27,500 gallons annually; and (3) Under Article 2B, § 2-301(b)(3), if a Maryland winery obtains a Class 6 limited wholesaler license, it may sell its own wine to retailers through its wholesaler license, and is prohibited from selling its wine through a licensed wholesaler. These are the same rules which apply to an out-of-state winery who produces no more than 27,500 gallons annually, and obtains a nonresident winery permit. If a Maryland winery produces more than 27,500 gallons annually, it may not obtain a Class 6 limited wholesaler license; and consequently, must sell its wine through a wholesaler; the same requirement which applies to an out-of-state winery.

B. Legislative History of Bills for Direct Wine Shipper's License

In general, the arguments for and against direct wine shipment in Maryland have been as follows:

(1) Arguments for and against direct wine shipment.

For direct wine shipment.

(a) *Wine Availability.* The argument is that a number of brands of wine are not available for purchase in Maryland, and that consumers should have the ability to purchase wine on-site at out-of-state wineries, or over the internet, and have it shipped to their personal residence.

(b) *Economic Benefit.* The argument is that allowing direct wine shipment to consumers will benefit Maryland wineries and retailers by increasing consumer demand for wine, and benefit the State of Maryland by increased tax revenues for alcoholic beverage tax and sales tax.

(c) *Convenience.* The argument is that consumers, as a matter of economic freedom, should have the choice of convenience by ordering wine over the internet as they do for other products, and have it delivered to their personal residence.

Against direct wine shipment.

(a) *Underage Access.* The argument is that there will be an increase of underage access as minors will order wine over the internet without a face-to-face transaction which assists retailers in preventing such purchases.

(b) *Tax Collection.* The argument is that the floodgate will be open for illegal sales of wine over the internet creating tax leakages and losses, and because most direct wine sellers will be out-of-state, enforcement will be difficult.

(c) *Three-tier System.* The argument is that the three-tier distribution system that has achieved its legislative objectives for over seventy-five (75) years will be undermined bringing harm to the general public, the alcoholic beverages industry, and the Comptroller's ability to execute important public policy goals. It also may set a precedent for further exceptions to three-tier distribution, such as direct beer shipment or direct distilled spirits shipment.

(2) Summary of Legislative Testimony

Written and oral testimony during the committee hearings on the direct wine shipment bills followed the basic arguments outlined above. A summary of the documented testimony is attached as Appendix 3.

Those who support direct wine shipment to consumers cite statistics about the growth of direct consumer sales in wine, and the economic benefits to both consumer and government by allowing direct wine shipment. Economic benefits to Maryland wineries and businesses are touted as well as increased state tax revenues. Concern about undermining the three-tier distribution system is allayed by statements that a nominal percentage of wine sales will occur through direct shipment and mostly by small wineries who would otherwise not have an out-of-state market for its products. Underage access can be adequately addressed by age verification procedures used by on-line sellers and common carriers, such as UPS and FedEx. Also, it was pointed out that minors do not typically drink the brands of wine at the prices normally purchased through direct sales, and that minors desire immediate purchases preferring beer and distilled spirits to wine.

Those who oppose direct wine shipment to consumers, such as Maryland wholesalers, the Alcoholic Alliance Retailer Association, and local liquor boards are convinced that underage access to alcoholic beverages will worsen with direct shipment by eliminating the face-to-face transaction, and that tax collection and other public policy issues, such as three-tier distribution, will be undermined. Opponents do not believe the minimal benefits gained by allowing direct wine shipment outweigh the costs and moral hazard involved.

(3) Prior Legislative Bills

After the *Granholm* decision in 2005, the first direct wine shipment bill was introduced in the 2006 legislative session. Subsequent bills followed during the 2008, 2009, and 2010 legislative sessions. (See Appendices 4 through 7 for prior legislative bills and fiscal notes) No direct wine shipment bill was introduced during the 2007 legislative session. While the direct wine shipment bills introduced over the years in the Maryland General Assembly are similar in basic provisions, there are also some differences that are noted below.

The following provisions are the same in all the proposed bills:

1. A direct wine shipper's license is created and issued by the Comptroller of Maryland;
2. Definition of wine;

3. An applicant must be:
 - (a) an out-of-state licensed wine manufacturer;
 - (b) an authorized brand owner of wine, a United States importer of wine, or a designated Maryland agent of a brand owner or United States importer; or
 - (c) a holder of a Class 3 manufacturer's license or Class 4 manufacturer's license issued under Article 2B.
3. Direct wine shipper licensee shall pay an annual license fee in an amount of \$100, and a renewal fee;
4. All containers of wine shipped directly to a resident in the State are conspicuously labeled with the words "CONTAINS ALCOHOL; SIGNATURE OF PERSON AGE 21 OR OLDER REQUIRED FOR DELIVERY";
5. Allows the Comptroller to perform an audit of the direct wine shipper licensee's records;
6. Requires the direct wine shipper licensee to consent to the jurisdiction of the Comptroller or other State unit of government and the State courts concerning enforcement and any related law;
7. The quantity limitation on the amount of wine permitted to be shipped to one individual annually is 24 9-liter cases;
8. Requires the Maryland consumer who ordered the wine to be at least 21 years of age and use the wine for personal consumption not for resale;
9. Provides a criminal sanction that violation of the direct wine shipment law is a felony and on conviction subject to imprisonment not exceeding 2 years or a fine not exceeding \$1,000 or both

The following provisions differ in all the proposed bills:

1. The scope of the applicants expanded to include in-state and out-of-state retailers licensed to sell off-premises in 2008;
2. Tax return filing by the direct wine shipper licensee was changed from annual to monthly in 2010;
3. Annual renewal fee reduced from \$100 to \$50 in 2008;
4. Prohibiting a direct wine shipper licensee from shipping wine to an area in which the Board of License Commissioners may not issue a retail license for selling wine was changed to prohibiting delivery on Sunday in 2010;
5. Requiring a common carrier to use a shipping label clearly indicating the name of the direct shipper and name of recipient, and to obtain the signature of the consumer, and photographic identification that the consumer is at least 21 years old was added in 2010;
6. Prohibiting a "person" from directly shipping wine without a license was changed to "business entity" in 2010;

7. Providing an exception for the direct wine shipper license in § 9-102(a) of Article 2B, which prohibits multiple licenses was added in 2009;
8. Providing an exception for direct wine shipment to consumers in Montgomery County in § 15-204(b) of Article 2B was added in 2010.

The 2010 direct wine shipment bills contained the most substantive changes thus far. Some of these changes were in response to the Comptroller's written testimony in 2008 and 2009 about certain issues. Also, the tax collection concern voiced in prior committee hearings was addressed by requiring monthly returns and tax payments for direct wine shipper licensees similar to other licensees and permittees who sell and deliver alcoholic beverages in the State.

(4) Summary of Fiscal Notes

A. Revenue

It is expected that there would be a net gain of revenue from license fees and taxes collected. A downward adjustment is made in the projected fee revenues in this report compared to the fiscal notes of prior legislative bills in order to correct the inclusion of an initial application fee of \$200 and renewal application of \$30, both of which do not apply to the direct wine shipper license as drafted in the legislative bills. Also, the calculation of revenue is made based on a \$100 permit and renewal fee for a direct wine shipper's permit.

There would be a minimal loss of revenue and taxes from the repeal of the direct wine seller's permit. The annual permit fee of \$10 as required by Article 2B, § 7.5-104(c) for the period November 1 to October 31 of the following year has provided minimal revenues given the number of permits issued and the modest fee. Similarly, loss of alcoholic beverage tax by repeal of the Direct Wine Seller's Permit would be inconsequential.

1. *License or Permit Fees*

The license fee revenue projections in the fiscal notes mistakenly include a \$200 initial application fee pursuant to Article 2B, § 2-402(a)(1), and a \$30 renewal application fee pursuant to Article 2B, § 2-402(a)(2). Both of these application fees do not apply to the direct wine shipper license, since Article 2B, § 2-402 specifically refers to licenses issued under Subtitle 2 or 3 of Title 2 of Article 2B (manufacturer and wholesaler licenses), and not to the direct wine shipper's license created in Title 7.5 of Article 2B. In order for the Comptroller to impose these application fees, Article 2B, § 2-402 must be amended to include the direct wine shipper license. If language in Article 2B, § 2-402 was included in a direct wine shipper's license bill, then those fees could be imposed, but this may not make sense.

The \$200 application fee covers the administrative cost of the Comptroller's investigation of the licensed premises and processing of new manufacturer and wholesaler licenses. In-state wine manufacturers who obtain a direct wine shipper license will have already have a license, so no additional investigation will be necessary, and it is not practical to do any type of investigation of licensed premises for out-of-state direct wine shipper licensees.

For this reason and others stated in section 7, a direct wine shipper permit rather than direct wine shipper license makes more sense. There would be no application fee, since the Comptroller will not perform an investigation as it does for in-state licensee applicants; however, a \$100 permit fee could be required for a direct wine shipper permittee applicant, and a \$100 renewal fee, since the same permit fees under Article 2B, § 2-101 apply to permit renewals.

With these changes, the revenues projected for permit fees are lower in this report than that estimated in the fiscal notes for the direct wine shipper's license bills.¹⁶¹

There is no projected revenue estimate in the fiscal note attached to House Bill 625 introduced in the 2006 legislative session. Fiscal notes for the House and Senate versions are the same for years 2008 through 2010. The same assumptions were made in all the fiscal notes for years 2008 through 2010 about the estimated number of direct wine shipper licenses to be issued in the first fiscal year, which is 300, and that 5% of the licenses would not be renewed in the next subsequent four fiscal years. Also, it is assumed the number of new licenses issued for the next subsequent four fiscal years will decline by 50 each year from the initial number of 300, i.e., 250, 200, 150, and 100.

Using the same assumptions in the fiscal notes for estimated numbers of issuance and renewal, but calculating the revenues for a direct wine shipper permit rather than a license, the following is projected:

If a \$100 new direct wine shipper permit fee is charged, the estimated permit revenues for the first fiscal year are \$30,000. For the subsequent four fiscal years based on the declining number of 50 new permits each year, and 5% of the permits not renewed, the annual permit fee revenues will average \$75,275.¹⁶²

¹⁶¹ The projected license fee revenues for a direct wine shipper's license with an initial \$200 application fee and \$30 application renewal fee, and an annual license fee of \$100 and renewal license fee of \$50 are \$90,000 for the first fiscal year, and an average of \$ 98,725 for the subsequent four fiscal years.

¹⁶² This average is calculated as follows: second fiscal year: 250 new permits issued, and 285 permits renewed = \$53,500; third fiscal year: 200 new permits issued, and 521 permits renewed =

2. Alcoholic Beverages Tax and Sales Tax

Under Tax-General Article, § 5-105(b), the tax rate for wine is 40 cents for each gallon or 10.57 cents for each liter. Wine is defined in Tax-General Article, § 5-101(o) as “a fermented alcoholic beverage, and includes carbonated, flavored, imitation, sparkling or still wine, champagne, cider, fortified wine, perry, sake, and vermouth.” Also, a sales tax of 6% is imposed pursuant to Tax-General Article, § 11-102(a)(1) on the retail sale of wine.

It is difficult to determine the amount of additional alcoholic beverages tax and sales tax that will be collected for the direct wine shipper permit. The fiscal notes do not formally project tax revenue; however, there is an estimate *for illustrative purposes only* that if the sales of wine increased by one-half of 1% (0.5%), general fund revenues from alcoholic beverages tax and sales tax would increase annually by \$200,000. This assumes a \$12 cost per bottle of wine. The fiscal note for 2010 also includes a hypothetical of a \$550,000 annual increase based on a \$30 cost per bottle of wine.¹⁶³ This latter projection may be more accurate, since research shows the nationwide average cost per bottle of wine directly shipped to consumers in 2009 was \$36.¹⁶⁴ For Virginia, the average bottle price directly shipped in 2009 was \$33.00.¹⁶⁵

B. Expenditures

No estimate of expenditures is made in the fiscal note to House Bill 625 (2006); however, it is mentioned that there could be increase in travel expenses associated with auditing out-of-state wineries who obtain a direct wine shipper’s license. This comment is not included in subsequent fiscal notes. There are not adequate resources in the Compliance Division of the Comptroller for physical audits of out-of-state direct wine shipper licensees, or even desk audits. For in-state wineries, no additional resources are needed as the annual audit already conducted would include sales made under a direct wine shipper license or permit. For in-state retailers, no audits would be performed.

\$72,100; fourth fiscal year: 150 new permits issued, and 695 permits renewed = \$84,500; and fifth fiscal year: 100 new permits issued, and 810 permits renewed = \$ 91,000. The average of the total four fiscal years is \$75,275. The direct wine shipper permit fee is \$100 annually.

¹⁶³ For illustrative purposes only, the fiscal note for HB 716 assumes a 0.5% increase in wine sales equal to an additional five cases per 1,000 residents of legal drinking age. It is further assumed that a 9-liter case of wine (12 bottles of 750 milliliters) sold at \$30 per bottle is taxed at a rate of \$22.56 per case. For each case of wine, \$0.96 is alcoholic beverages tax (\$0.40 per gallon) and \$21.60 is sales tax (taxed at 6% of sales price). House Bill 716, Fiscal Note, p. 5.

¹⁶⁴ “DtC Shipment Reporting,” ShipCompliant, Inc. and Wines and Vines (2010), p. 5.

¹⁶⁵ Ibid., p. 12.

The fiscal note for House Bill 1260 (2008) rightly states, without calculating an estimate, that there will be administrative costs to the Comptroller for implementing and maintaining a direct wine shipper's license. House Bill 1262's fiscal note (2009) estimates a first fiscal year cost of \$21,900 for the Comptroller, which is annualized and factored for inflation for subsequent fiscal years. The estimated cost includes hiring one contractual revenue examiner to review records of direct wine shipper licensees for regulatory and tax purposes.

In 2010, estimated expenditures increased to \$38,600 for the first fiscal year (House Bill 716), because cost for administrative hearings was included. The Comptroller received anecdotal evidence from Virginia who experienced an unexpected number of administrative hearings for quantity limit violations. In this report, an additional expenditure of \$8,000 annually is required for compliance checks of direct wine shipper tax returns and common carrier reports.¹⁶⁶

The effect on small business has been equivocal in all the fiscal notes, since it is not clear whether direct wine shipment would result in an increase or decrease of wine sales for in-state wholesalers and retailers.

VII. DIRECT WINE SHIPMENT REPORT ANALYSIS

As set forth in section 1, the categories of qualitative and quantitative data used in this report are:

1. United States Supreme Court decisions;
2. Government, Academic, and Industry literature;
3. Law Review Articles;
4. State laws and regulations;
5. Surveys; and
6. Case Study.

Since the survey data is not perfect, assumptions and inferences made from the data will be identified. The strength or weakness of an evaluation or determination depends upon validity of the data, and its proper analysis.

According to social scientists, validity and reliability are related, yet independent, data measures. In order for data to be valid, it must actually measure that which it purports to measure. In order for data to be reliable, it must provide consistent results. But, a reliable measure is not necessarily a valid one, because although it may measure something consistently, it may not measure what it

¹⁶⁶ The annual minimum salary for a Revenue Field Auditor Trainee is \$31,724. It is estimated that 25% of this staff person's time would be allocated to review of direct wine shipper tax returns and common carrier reports.

actually intends to making it invalid. Conversely, a valid measure is not necessarily a reliable one, because although it may measure something accurately, it may not do so consistently making it unreliable.¹⁶⁷ The goal is to have both valid and reliable data.

In this analysis section, theoretical (qualitative) and empirical (quantitative) evidence will be discussed under the seven requirements of Senate Bill 858. When discussing survey responses, a “majority” means 51% or more, and a “plurality” means the highest percentage, but less than a majority.

From a regulatory standpoint, direct wine shipment is antithetical to the three-tier distribution system. However, pursuant to Senate Bill 858, the fundamental assumption underlying the following “evaluations” and “determinations” is that direct wine shipment would become legal in Maryland.

Data Analysis: “Evaluations” and “Determinations”

(1) Best practices used by the 37 states and the District of Columbia where direct wine shipment to consumers is legal

Examination of state laws, regulations, and administrative practices where direct wine shipment laws have been enacted was determined to be the best method of data collection for this requirement. Survey data is also included in Appendix 8 to corroborate the findings.

To evaluate the best practices of the states, the following list of requirements were examined and findings made:

A. License or Permit

As previously stated, New Mexico is the only state with a reciprocity law. Since *Granholm*, twelve of the thirteen states which had reciprocity laws changed them to a permit system. Notwithstanding, some states, such as California, have reciprocity provisions within a direct permit framework. Because of the majority’s dictum in *Granholm* that reciprocity statutes may lead to trade rivalries and conflict among the states, and that reciprocity provides no tax revenue and is virtually unregulated, it is not prudent to enact a reciprocity law in Maryland.

¹⁶⁷ Burnham, Lutz, Grant, and Layton-Henry, *Research Methods in Politics*, p. 39.

Except for a few states,¹⁶⁸ every state, where direct wine shipment is legal, requires a direct wine seller to obtain a license or permit. The majority of states require a permit rather than a license. In section 5, the choice between a “license” and “permit” was briefly discussed. Under Article 2B, no license has been issued to an out-of-state alcoholic beverage business. Nonresident wineries and nonresident dealers are issued permits. Given this precedent, it may be prudent that a “direct wine shipper’s permit” be required, not a license. Although this would require an in-state winery to obtain a permit rather than a license, there is precedent for this situation. For example, a Class 4 Limited Winery may obtain a Winery Special Event Permit or its employees may obtain a Solicitor’s Permit. A direct wine shipper’s permit would be consistent with this.

Option # 1: Direct Wine Seller’s Permit

One option is to amend the current Direct Wine Seller’s Permit established in Article 2B, § 7.5. If the direct wine shipment bill would include out-of-state wineries, but not out-of-state retailers, then the following provisions of Article 2B, § 7.5 can remain unchanged: § 7.5-101, § 7.5-102, § 7.5-103(1)-(3), § 7.5-104(a)-(b),(d)(2), and § 7.5-110. The following provisions would be repealed: § 7.5-103(4), § 7.5-105(a)(2), § 7.5-106 through § 7.5-109. The following provisions could be amended: change the permit fee in § 7.5-104(c) to \$100; change the filing of a tax return in § 7.5-104(d)(1) from annual to quarterly; change quantity limits in § 7.5-105(b) to 12 9-liter cases annually. Other provisions would be added, such as a \$100 permit renewal fee, the multiple license or permit exception in Article, 2B, § 9-102(a), shipping label, adult signature, common carrier requirements, and providing an exception for direct wine shipment to consumers in Montgomery County in § 15-204(b). Tax-General Article, § 5-201(d) could be amended to require a quarterly tax return, and a provision requiring a \$1,000 tax bond could be added to Tax-General Article, § 13-825(b).

This option could achieve administrative efficiencies by keeping intact the existing Direct Wine Seller’s Permit, but with substantive changes making it a direct wine shipment permit. There is legislative value in amending a current statutory structure, rather than repeal and replace, because it validates to a certain extent the existing intent and will of the prior legislative enactment inherent in Article 2B, § 7.5.

Option # 2: Direct Wine Shipper’s Permit

This proposal would be a repeal and replace of the Direct Wine Seller’s Permit in Article 2B, § 7.5 consistent with all prior legislative bills, and have the same or similar provisions, except for the fact this would be a “permit” rather than a

¹⁶⁸ Alaska, Florida, Minnesota, New Mexico, Rhode Island, and Washington, D.C. do not require a permit or license to direct ship wine into their jurisdictions.

“license.” As suggested above, the “permit” makes the most historical regulatory sense, and is more common among the states.

Should any direct wine shipment permit bill be introduced, the bill would need to include language similar to prior bills providing for an exception to the multiple licenses prohibition in Article 2B, § 9-102(a). Because the definition of a “licensee” in Article 2B, § 1-102(a)(15)(i) includes a permit holder, providing for an exception will remove any ambiguity about a direct wine shipper permit.

Option # 3: Direct Wine Shipper’s License

This proposal would be a repeal and replace of the Direct Wine Seller’s Permit in Article 2B, § 7.5 consistent with all prior legislative bills, and have the same or similar provisions. It would have the unusual aspect of being the first license issued by the Comptroller to an out-of-state business.

Best practice is to establish a “Direct Wine Shipper’s Permit,” whether it be a revised expansion of the current Direct Wine Seller’s Permit or a newly created one to repeal and replace the Direct Wine Seller’s Permit.

B. License or Permit Fee

All states with a license or permit system impose a license or permit fee. The Model Bill’s annual license fee is \$100. The average license or permit fee among the 30 states that impose a fee is \$150 as they range from a high of \$1,000 for large wineries in Illinois to a low of \$10 in California.¹⁶⁹ The annual license fee in all prior legislative bills introduced to the Maryland General Assembly is \$100. In 2008, the annual renewal fee was reduced from \$100 to \$50, which is consistent with the Model Bill; however, since the alcohol permits issued by the Comptroller all renew for the same fee as the permit fee, the renewal fee for a permit needs to be the same as the permit fee: \$100.

Best practice is to impose a \$100 permit fee, and \$100 for a renewal permit fee, which is consistent with Article 2B, § 2-101.

C. Scope of Applicants

In all states that allow direct wine shipment, an out-of-state winery may obtain a license or permit. A minority of those states (29%), including Washington,

¹⁶⁹ There are no permit or license fees charged by Alaska, Florida, Minnesota, Missouri, New Mexico, North Carolina, Rhode Island, and Washington, D.C.

D.C. allow an out-of-state retailer to obtain a direct shipment license or permit.¹⁷⁰ Virginia issues an “internet retailer license” (\$150 annual license fee), which authorizes in-state and out-of-state retailers to take orders over the internet to sell and ship wine to consumers. These retailers must have adequate inventory, shelving and storage facilities, and not be a retail store open to the public.

Four states have reciprocity provisions for out-of-state retailers.¹⁷¹ Whether to limit the scope of applicants to out-of-state wineries, or extend it to both out-of-state wineries and out-of-retailers is an important issue. These are distinct applicants, and they must not be commingled.

(1) *Wine Country Gift Baskets.Com v. Steen*, 612 F.3d 809 (2010)

On July 22, 2010, the United States Court of Appeals for the Fifth Circuit vacated the ruling of the United States District Court for the Northern District of Texas, which held that the Texas law prohibiting out-of-state retailers from shipping wine directly to consumers, while allowing in-state retailers to do so, was unconstitutional. The reason for the appeal was plaintiff’s dissatisfaction with the relief granted by the United States District Court in *Siesta Village Market, LLC v. Perry*, 530 F. Supp. 2d 848 (N.D. Tex. 2008), which held that an out-of-state retailer must obtain a Texas retailer permit and purchase all wine through a Texas wholesaler, the same requirements for an in-state retailer. *Siesta Village Market, LLC*, a Florida retailer did not take part in the appeal.

The Fifth Circuit Court in *Wine Country Gift Baskets.Com v. Steen*, 612 F.3d 809 (2010) did not extend *Granholm* to out-of-state retailers holding that,

“*Granholm* prohibited discrimination against out-of-state *products* or *producers*. Texas has not tripped over that bar by allowing in-state *retailer* deliveries. Yet it also has not discriminated among retailers. Wine Country is not similarly situated to Texas retailers and cannot make a logical argument of discrimination...The problem with the argument is that it ignores the Twenty-first Amendment. When analyzing whether a State’s alcoholic beverage regulation discriminates under the dormant Commerce Clause, a beginning premises is that wholesalers and retailers may be required to be within the State.”¹⁷²

¹⁷⁰ The following jurisdictions allow direct wine shipment by out-of-state retailers: Alaska, District of Columbia, Louisiana, North Dakota, Nebraska, New Hampshire, Nevada, Oregon, Virginia, West Virginia, and Wyoming. Wine Institute.

¹⁷¹ California, Idaho, Missouri, and New Mexico.

¹⁷² *Wine Country Gift Baskets.Com v. Steen*, 612 F.3d 809, at 820 (2010).

As the court states, “Regulating alcoholic beverage retailing is largely a State’s prerogative.”¹⁷³ Because wholesalers and retailers have a physical presence in a state that most manufacturers or producers do not, and in-state retailers are inherently part of the three-tier distribution system, the Twenty-first Amendment gives states power to make distinctions favoring in-state retailers. The Fifth Circuit held that in-state retail deliveries to consumers was part of what a third-tier retailer does, and that not allowing Wine Country Gift Baskets.Com, an out-of-state California retailer, to do the same was “not discrimination in *Granholm* terms.”¹⁷⁴

The Fifth Circuit cited the Virginia case, *Brooks v. Vassar*, 462 F.3d 341 (4th Cir. 2006), where the court held that a statute limiting the amount of alcohol consumers could personally import into the State was constitutional, because an “effort to compare in-state retailers to out-of-state retailers and then allege they were treated differently was fundamentally a challenge to the three-tier system itself.”¹⁷⁵ The New York case, *Arnold’s Wines, Inc. v. Boyle*, 571 F.3d 185 (2^d Cir. 2009) was also cited to support the proposition that, “A State’s making distinctions among in-state and out-of-state retailers, and even requiring wholesalers and retailers to be present in and licensed by New York, were fundamental components of the three-tier system authorized in *Granholm*.”¹⁷⁶ In *Arnold’s Wines*, the court distinguished between an “exception” to the three-tier system at issue in *Granholm* (direct shipment by out-of-state wineries), and the three-tier system itself, which allowed in-state retailers to make deliveries to consumer residences.

A third case referred to by the Fifth Circuit, *Siesta Village Market, LLC v. Granholm*, 596 F. Supp. 2d 1035 (E.D. Mich. 2008), challenged a Michigan law allowing some in-state retailers to direct ship wine to consumers, but requiring out-of-state retailers to have a physical presence before being permitted to do so. Although the court ruled this regulation was unconstitutional, it became moot as the Michigan legislature passed a law banning all direct shipment by retailers.¹⁷⁷

What does the *Wine Country* case mean in the consideration of direct wine shipment for Maryland?

1. That *Granholm* applies to out-of-state wineries, not out-of-state retailers.
2. That in-state retailers are an inherent part of the three-tier distribution system enacted by state power under the Twenty-first Amendment.

¹⁷³ Ibid.

¹⁷⁴ Ibid.

¹⁷⁵ Ibid., at 816.

¹⁷⁶ Ibid., at 817.

¹⁷⁷ Ibid.

3. That allowing out-of-state retailers to be direct wine shippers is constitutionally different than allowing out-of-state wineries to be direct wine shippers.
4. That direct wine shipment as an “exception” to the three-tier distribution system does not comport with direct wine shipment by out-of-state retailers, which is not an “exception” to the three-tier distribution system, but rather related to three-tier distribution itself.

This constitutional distinction is important and warrants caution. Because in-state retailers are part of the three-tier distribution system itself, the Comptroller took no action after *Granholm* to repeal the regulation that allows in-state retailers to make off-premise deliveries to consumers within their respective county or city upon written approval of the Board of License Commissioners.¹⁷⁸ If retailing is an essential pillar of three-tier distribution, and not an “exception” as out-of-state producing is, and direct wine shipment by out-of-state retailers is permitted, this could have detrimental effects on the alcohol laws and regulation in Maryland. This is not to say that allowing out-of-state wineries to direct ship as an “exception” may also have an erosive effect on three-tier regulation.

(2) Out-of-State Winery v. Out-of-State Retailer

More than any other Maryland licensee, retailers believe direct wine shipment will have a negative effect on their business. Yet, the majority of Maryland retailers (65.6%) believe that if out-of-state wineries are allowed to direct ship wine, out-of-state retailers should be able to do so as well. An inference can be made from this data that Maryland retailers believe it is a consumer’s direct purchase from an out-of-state winery, not an out-of-state retailer, that will harm their business. It appears that this opinion is based on fairness, rather than the distinction between “out-of-state wineries” as an exception to three-tier distribution, and “out-of-state retailers” as integral to the three-tier system. Thus, these survey questions are valid as far as measuring political attitudes, but not in terms of a substantive consideration of law and public policy.

Survey data from consumers indicate that they will use direct wine shipment twice as much for purchases from out-of-state wineries than out-of-state retailers. A “mean” of 46.7% do not visit out-of-state retailers, and 68.6% of consumers would purchase wine from a Maryland retail store rather than online, all other things being equal. Also, a “mean” of 45.8% would check the price of wine online before purchasing the wine from a Maryland retail store. This evidence suggests that Maryland consumers may not utilize direct wine shipment for purchases from out-of-state retailers; however, since over 45% would check the price online, and the

¹⁷⁸ COMAR 03.02.01.03(E)

internet is proliferated by wine retailers, it is possible that Maryland consumers would purchase wine online from out-of-state retailers.

But this depends on who the typical direct wine shipment consumer is? If this consumer is a person who purchases wine directly only when wine is not available from a Maryland retailer, then direct purchases from out-of-state retailers will not be significant. If this consumer is a person motivated by price alone, then given the number of internet wine merchants, it will be economical to purchase online, especially for quantities more than one bottle.

In 2002, when the FTC Report research was conducted, the largest internet wine search engine—Winesearcher.com—which was used for the Comptroller’s Wine & Spirits Study, provided access to “more than 700 wine stores and wineries with online inventories.”¹⁷⁹ By September 2010, that number has skyrocketed to close to 19,000 wine merchants and over 4 million offers through Winesearcher.com. The magnitude of this increase and the widespread use of the internet by consumers suggests that the survey data underestimates the potential volume of internet purchases from out-of-state retailers.

As will be discussed below, a consumer purchase of wine over the internet from an out-of-state retailer seems to be primarily motivated by “price,” whereas a consumer purchase of wine from an out-of-state winery seems to be primarily motivated by “availability.” These are fundamentally different motivations. A main purpose of the three-tier distribution system is to promote temperance, which could be undermined if Maryland consumers can order wine over the internet at “very low” prices. As stated in the policy objectives of Article 2B:

“It continues to be the policy of this State to authorize the exercise of the powers and authority provided by this article for the purpose of displacing or limiting economic competition by regulating or engaging in the sale or distribution of alcoholic beverages or both in order to obtain respect and obedience to law, to foster and promote temperance, to prevent deceptive, destructive, and unethical business practices, and to promote the general welfare of its citizens by controlling the sale and distribution of alcoholic beverages.”¹⁸⁰

The legislative intent is clear. While the alcohol industry operates within a free market economy, promoting competition, which may be an objective for other types of commerce, is not a primary goal of Maryland’s alcoholic beverages law and regulations. Economic price is subordinate to the other legislative purposes.

¹⁷⁹ Alan E. Wiseman, Ph.D. and Jerry Ellig, Ph.D., “Market and Nonmarket Barriers to Internet Wine Sales: The Case of Virginia,” Mercatus Center, George Mason University (June 2004), p. 13.

¹⁸⁰ Article 2B, § 1-101(b)(1), Annotated Code of Maryland.

Based on an inference from observed data to development of a concept, direct wine purchases from out-of-state retailers may be primarily motivated by “price,” which is inconsistent with overall policy goals. In fact, the distinct purpose of many provisions of Article 2B is to avoid price wars and keep prices relatively high in order to promote temperance. Lower prices are at odds with this. It is arguable that temperance is not as much at risk if a Maryland consumer purchases wine over the internet from an out-of-state winery for reasons of unavailability rather than price.

A prudent approach to direct wine shipment could be to allow it for in-state and out-of-state wineries, and not for out-of-state retailers, because of the integral nature of retailing to three-tier distribution. The driving demand for direct wine shipment has been for consumer purchases from out-of-state wineries. The high volume of internet wine retailers may present additional compliance and enforcement problems. Limiting the scope of direct wine shippers to in-state and out-of-state wineries still provides a variety of options for Maryland consumers.

Best practice is allow direct wine shipment for in-state and out-of-state wineries, but not for out-of-state retailers.

D. Quantity Limits

Most states impose a quantity limitation on the amount of wine that may be directly shipped annually to a consumer. Quantity limits have been being legally challenged as unconstitutional. In *Wine Country Gift Baskets.Com*, the Fifth Circuit Court held that the limit on the amount of consumer importation of alcohol was constitutional as part of the three-tier system. As in most states, Maryland has a consumer importation limit,¹⁸¹ and although the quantity limits on direct wine shippers are less restrictive than these consumer importation limits, both of these provisions have the same underlying principle, namely, that an in-state retailer (as the third-tier) is to be the source of alcoholic beverages for a consumer.

This is important, because without these annual restrictions, the potential amount of wine directly shipped to consumers would be unlimited putting significant pressure on the tax collection, underage access, and temperance concerns of state legislators. Cases have been initiated to have courts declare quantity limits on direct wine shippers unconstitutional as a violation of the dormant Commerce Clause.

¹⁸¹ Tax-General Article, § 5-104(c) limits the amount to one gallon by an adult consumer with alcoholic beverages tax paid on the amount exceeding one quart.

The Model Bill recommends an annual quantity limit of 24 9-liter cases per consumer; however, the average quantity limit imposed by other states is close to 16 9-liter cases per year.¹⁸² The current quantity limit under the Direct Wine Seller's Permit is 108 liters of wine per consumer, or 12 9-liter cases; thus, it is determined that keeping the same quantity limit of 12 9-liter cases is the best practice.

According to the survey data, a majority of states have not had problems with violations of the quantity limits; however, anecdotal evidence from Virginia indicates that violations of quantity limits occur frequently. Some winery websites post the quantity limits for each state. Nevertheless, it is the direct wine shipper's legal obligation to comply with quantity limitations, which vary among the states. Appendix 9 is a chart of the state direct wine shipment provisions, including quantity limits.

Best practice is imposing a quantity limit of 12 9-liter cases per consumer annually.

E. Consent to Jurisdiction

According to survey data, a majority of states have not had problems with enforcing their direct wine shipment law against an out-of-state licensee or permittee. Nevertheless, while this "consent to jurisdiction" is an important provision, it does not resolve the tax collection issues that will be addressed in the subsection (2). Consideration may be given to strengthening the language from the Model Bill and prior legislative bills.

Best practice is to include a "consent to jurisdiction" provision, which will facilitate the tax collection process.

F. "Dry" Jurisdictions

The majority of states do not have "dry" jurisdictions; however, this is a necessary provision.¹⁸³ While Maryland has no "dry" jurisdictions, Sunday sales and deliveries are prohibited. Under Article 2B, § 11-101(a), licensed manufacturers may not sell or deliver alcoholic beverages to retailers on Sundays, and under Article 2B, § 11-102(a), with some exceptions, licensed wholesalers may not do the same.

¹⁸² Some states do not impose a quantity limit on wineries: California, Colorado, Florida, Iowa, and Washington. Michigan was not included in the average quantity limit calculation, since 1,500 (9L) cases may be direct shipped per winery each year. Given the variance between Michigan and the other states, this figure was determined to be an outlier. In the following states, the quantity limit applies to an "address" or "household" rather than a consumer: Georgia, Hawaii, Louisiana, Maine, New Hampshire, and Wyoming.

¹⁸³ Texas allows direct wine shipment in "dry" areas. Senate Bill 877 was signed on May 9, 2005.

Consistent with this restriction, the 2010 legislative bills include language prohibiting direct wine shipment to consumers on Sundays.

Best practice is to prohibit wine shipment to consumers on Sundays.

(See Appendix 9 for a chart of basic provisions of state direct wine shipment laws)

(2) Best practices for preventing access by underage drinkers to wine shipped directly to consumers

A. Common Carrier Requirements

1. License or Permit

A majority of states do not require a common carrier to obtain a license or permit; however, Virginia and North Carolina require “approval” of a common carrier who is subject to reporting requirements and regulations. Other states require a common carrier to obtain a permit and file reports, such as Iowa, Missouri, Ohio, Texas, West Virginia, and Wyoming. Some states do not require a permit, but do require a common carrier to file reports acknowledging direct wine shipment delivery.¹⁸⁴

This is one option to offer some type of verification for the direct wine shipper tax returns. The Comptroller can cross-check common carrier reports filed quarterly with the direct wine shipper tax returns filed quarterly. Further duties and obligations can be required of the common carrier, such as those found in the Virginia Administrative Code: (1) two-year record requirement; (2) specifics about each shipment; and (3) delivery requirements.

The two major common carriers in the United States, Federal Express, Inc. (“FedEx”), and United Parcel Service, Inc. (“UPS”) require alcohol shippers, including direct wine shippers to sign an Alcohol Shipping Agreement (“Agreement”). The Agreement covers both wine and alcohol (beer and spirits other than wine). It requires the customer to “comply fully with all foreign, federal, state and local laws, rules, regulations and orders applicable to each of Customer’s shipment of wine or alcohol.” The customer warrants compliance with all laws and regulations, including selling to adults, quantity limitations, recordkeeping, shipping labels, and that all applicable permits or licenses are obtained. The Agreement exonerates FedEx or UPS from liability for the direct wine shipper’s violation or noncompliance with any law or regulation.

¹⁸⁴ New York and New Hampshire are two states that require this.

The Agreement itself is an additional check on the direct shipper. While it is ill-advised for a direct wine shipment law to require the common carrier to enter into a private shipping agreement with a direct wine shipper, the fact that these agreements exist provides a safeguard against violations of the law. Still, further regulation is advised. A permit for a common carrier is the out-of-state equivalent of the public transportation permit issued to a common carrier transporting alcoholic beverages in or out of Maryland.¹⁸⁵

In addition, the Agreement between the common carrier and direct wine shipper protects and indemnifies the common carrier against violations of the law by the direct wine shipper, but does not address the issue of negligence by a common carrier. Some state statutes hold the common carrier liable for delivering wine without obtaining an adult signature. All the shipping labels in the world will not prevent a direct wine shipment to a minor if the common carrier does not obtain the adult signature. According to survey data, a majority of states do not exonerate the common carrier from liability if it delivers wine without obtaining an adult signature

2. Acknowledgement Receipt of a Wine Delivery

Another option to track direct wine shipments is to require a common carrier to obtain and file an “Acknowledgement of Receipt of a Wine Delivery” as required in New York. For each delivery, the common carrier must complete an Acknowledgement Wine Delivery Form which provides the name of the direct wine shipper and licensure information, and the name of the consumer. The common carrier must check the type of identification obtained when making the delivery and submit the form to the New York State Liquor Authority.

Unlike a report filed under a permit, the Acknowledgement Form does not specify how much wine is in the package. Still, the acknowledgement forms could be checked with the direct wine shipper’s tax returns and some type of compliance determined.

¹⁸⁵ In *Rowe v. New Hampshire Motor Transport Association*, 128 S.Ct. 989 (2008), the United States Supreme Court held that the Federal Aviation Administration Authorization Act of 1994 pre-empted Maine state law that required a state-licensed tobacco shipper to utilize a delivery company that provides a recipient-verification service to prevent underage purchases of tobacco products. Although the delivery age verification service provided by delivery companies for tobacco are similar to those for alcohol, this case can be distinguished from the direct wine shipment common carrier for two reasons: (1) there is no federal law to pre-empt state law; and (2) state power under the Twenty-first Amendment.

3. Shipping Label

Every state and Washington, D.C. require common carriers to place a shipping label on the package which states at a minimum: "CONTAINS ALCOHOL; SIGNATURE OF PERSON AGE 21 OR OLDER REQUIRED FOR DELIVERY." New York's shipping label must read:

"CONTAINS WINE
FOR PERSONAL USE AND NOT FOR RESALE
SIGNATURE OF PERSON AGE 21 OR OLDER REQUIRED FOR DELIVERY
DELIVERY TO AN INTOXICATED PERSON IS FORBIDDEN BY LAW"

4. Adult Signature

Every state and Washington, D.C. require a common carrier to obtain an adult signature (over age 21) upon delivery. Although a majority of states answering the survey have not had incidents of a common carrier not obtaining an adult signature upon delivery, there is evidence that minors purchase alcohol online.¹⁸⁶ IDology is a new technique, approved by the Michigan, which creates "knowledge based authentication" questions that only that specific individual would know and then it checks the answers against public records."¹⁸⁷ Apparently, this online age verification is affordable, and one of the best options available.

Age verification and underage access is a potential problem for Maryland retailers as well. There are safeguards available to bricks-and-mortar retailers that cannot be used by "online stores." Face-to-face transactions, physical inspection of age identification, and alcohol awareness training for servers in restaurants and bars all provide regulatory checks on underage access. With the widespread use of the internet by minors, and the lack of compliance checks available, the strongest surety against underage access may be the fact that "wine" is not their drink of choice.

And, while the FTC Report indicates that states have had no problems with underage access, and according to survey data, a majority of states have had no problems with underage access, but this begs the same question: how is this known? Underage drinking behavior may account more for the lack of documented incidents than regulatory requirements and restrictions.

¹⁸⁶ Boris Reznikov, "Can I See Some ID"? Age Verification Requirements for the Online Liquor Store," 4 *Shidler Journal of Law, Commerce & Technology* 5 (Fall 2007), p. 5. According to Reznikov, a 2006 study indicates more than 500,000 teenagers have bought alcohol online.

¹⁸⁷ *Ibid.*, p. 6.

Best practices for preventing underage access are: (1) require a permit for a common carrier delivering wine directly shipped to a consumer; (2) require both direct wine shipper and common carrier to affix a shipping label stating that: "CONTAINS ALCOHOL; SIGNATURE OF PERSON AGE 21 OR OLDER REQUIRED FOR DELIVERY; (3) require a common carrier to obtain an adult signature using age verification procedures.

(3) Whether a significant increase or decrease in access to or demand for wine by underage drinkers that has been documented as the result of direct wine shipment laws

From the studies discussed in section 2, the data shows that "wine" is not the drink of choice for underage pathological drinkers (2.9%), and underage non-pathological drinkers (7.7%). By far, "beer" is the type of alcohol consumed by underage pathological drinkers (79.6%) and underage non-pathological drinkers (71.5%). However, underage drinkers are more than twice (2.7) as likely to become addicted to alcohol, so any increase in alcohol consumption is undesirable.

Survey data shows that a majority of states have not had documented incidents of direct wine shipment to a minor. Of those states who have had documented incidents of direct wine shipment to a minor, the number of incidents for the majority have ranged between 1-5. However, since only 3 states answered this question, the data is not reliable. In response to the survey question statement "*direct wine shipment will lead to an increase in underage access to wine*", a "mean" of 49.3% of in-state licensees "strongly disagree," while a "mean" of 22.6% "strongly agree". A majority of retailers "strongly agree"; while a majority of Maryland wineries "strongly disagree." A "mean" of 78.2% of consumers "strongly disagree."

Price and income elasticities for minors are different than for adults. Minors have a higher price elasticity, because of less disposable income. Thus, they are more sensitive to price and less likely to pay for the cost of direct shipment. As mentioned, it is reported that the price elasticity for young adults averages -1.69, which means that if alcohol prices increase 10%, underage consumer demand will decrease almost 17%. With an income elasticity of 1.66, if an underage consumer's income increases 10%, the demand for alcohol may increase close to 17%.

Another factor to consider is that the average price of a bottle of wine in 2007 was \$11.46,¹⁸⁸ while according to "DtC Shipment Reporting" the average price of a bottle of wine directly shipped is \$36.00. Underage drinkers do not seem to fit the profile of a direct wine shipment consumer.

¹⁸⁸ Steven S. Cuellar, Ph.D., "*Estimating the Price Elasticity of Demand for Wine: Problems and Solutions*," Sonoma State University (August 10, 2007), p. 29. The source for this is AC Nielsen Scan Data.

(See Appendix 10 for survey data about underage access)

A determination is made that there is no evidence that underage drinking has increased or decreased as a result of direct wine shipment. The reasons for this may be that: (1) “wine” is not the drink of choice for youth; and (2) direct shipment of wine is costly and time-consuming.

(4) Best practices for collecting relevant tax revenues

A. Tax Return Filing.

According to survey data, a majority of states require the alcoholic beverage tax and sales tax to be paid by the direct wine shipper licensee or permittee, and that a direct wine shipper file a tax return. Assuming a minimal to moderate amount of direct wine shipment, quarterly tax returns would be sufficient.

B. Common Carrier Permit.

In addition, requiring a permit for a common carrier who files quarterly reports will assist wine sales verification and compliance.

C. Tax Bond.

A winery is required to obtain a wine bond for the federal basic permit, and Maryland could require the same as security for taxes. As explained in the tax collection section above, most of the direct wine shippers will be out-of-state, and although there is a “consent to jurisdiction” provision, it may be an administrative burden to pursue tax collection. Requiring a tax bond is common for those who pay alcoholic beverages tax in Maryland.

A minimum \$1,000 direct wine shipper bond could be required under Tax-General Article, § 13-825(b), which amount may be adjusted by the Comptroller if the tax paid exceeds \$1,000 each month. If a direct wine shipper has tax delinquencies, rather than go through the process of filing a notice of tax lien and executing a judgment lien against an out-of-state business, a claim against the tax bond can immediately be made to secure payment to the Comptroller. If the tax liability exceeds the bond, then imposition of a lien can be pursued.

Ten states require a tax bond.¹⁸⁹ No prior legislative bills in Maryland or the Model Bill include a bond provision, but this is essential as security for taxes, and to mitigate the problem of out-of-state tax collection.

D. Records Requirement.

The records requirement could be based on the law of the state where the direct wine shipper is located. If there is no records requirement in that state, then a direct wine shipper could be required to keep records for 2 years pursuant to Article 2B, § 14-201, and make them available for inspection or audit upon the Comptroller's request. Many states require records to be kept longer than 2 years.

Best practices for tax collection include the following: (1) direct wine shipper "quarterly tax returns"; (2) common carrier permit requiring filing of "quarterly" reports; (3) minimum \$1,000 tax bond, subject to adjustment; and (4) records requirement.

(5) Benefits and costs to consumers

A. Survey Profile of a Direct Wine Shipment Consumer.

In order to assess the benefits and costs to consumers, it is important to determine what type of consumer is most likely to purchase wine from an out-of-state winery, in-state winery, or out-of-state retailer. It is reasonable to believe that a direct wine shipment consumer most likely lives in Montgomery County.

The responses of Maryland Consumers "A" and Maryland Consumers "B" are remarkably similar; thus, the "mean" for these two groups is a representative sample of the consumer population cohort. Given the strong correlation in responses between the two groups, it can be inferred that Maryland Consumers "A" are similar in-kind to Maryland Consumers "B", the latter being members of a trade association called Marylanders for Better Beer and Wine Laws ("MBBWL"), which has been the lead advocacy group for passing a direct wine shipment law in Maryland. Maryland Consumers "A", a random sample of Maryland consumers, and Maryland Consumers "B", members of MBBWL, are predominantly from the same geographic area: Montgomery County.¹⁹⁰ Anne Arundel County was third in stated residency of respondents, while Baltimore County was second.¹⁹¹

¹⁸⁹ The following states requires a tax bond for direct wine shippers: Arizona, Connecticut, Idaho, Illinois, Indiana, Kansas, Oregon, Texas, West Virginia, and Wisconsin. Wine Institute.

¹⁹⁰ Maryland Consumers "A": 28% of respondents lived in Montgomery County; Maryland Consumers "B": 21.5% of respondents lived in Montgomery County.

¹⁹¹ Although for Baltimore County, there was a difference between the respondents: the 12.7% of Maryland Consumers "A", and 17.4% of Maryland Consumers "B". The only other discrepancy

As mentioned, this sample population is self-selected and may have a “bias” towards direct wine shipment. Thus, interpretation of survey results may have to be adjusted accordingly.

Based on observations from survey data, an inference has been made that conceptually the other characteristics of a Maryland direct wine shipment consumer are as follows:

1. A majority do not attend or visit California wine festivals or foreign wine festivals, but may attend or visit one to two Maryland wine festivals and one wine festival in another state;
2. A majority would purchase wine directly from out-of-state wineries, in-state wineries, and in-state retailers, in that order respectively; with only 46.2% purchasing wine directly from out-of-state retailers;
3. A plurality visit at least 2 retail package stores in their county of residence in a given month to purchase wine, and a certain portion (30.2%) visit one retail store in another Maryland county, and a smaller number (22%) visit a retail store out-of-state;
4. A majority would purchase a bottle of wine at the same price from a Maryland retail store rather than an online store; however a plurality would check the price online before purchasing wine at the local retail store;
5. A plurality have requested between 1 to 5 times wine from a Maryland retailer who did not carry it; and they are not likely to ask the retailer to order it from a Maryland wholesaler, but are inclined to purchase a close substitute;
6. This consumer spends 3.5 times more money on wine than beer or distilled spirits each month;
7. A plurality drink California wine and foreign imports;
8. A majority do not subscribe to the Wine Spectator or Wine & Spirits Magazine, yet the 100 Top Wines listed by the Wine Spectator have a moderate to minimal influence on wine purchasing decisions, while those listed by Wine & Spirits have less influence;

was for Howard County: 6.6% of Maryland Consumers “A”, and 10.6% for Maryland Consumers “B”.

9. A majority of Maryland retailers believe that the 100 Top Wines listed by the Wine Spectator or Wine & Spirits Magazine influence consumer demand, which has a moderate to minimal effect on wine buying decisions by retailers;

10. The primary reason why a majority would direct ship wine is unavailability from a local retailer; the next three reasons in order of importance are: wanting to purchase directly at the winery, convenience of delivery, and convenience of ordering around-the-clock. Lower price is the fourth reason for direct wine shipment;

11. The average price paid for a 750ml bottle of wine across ten brands is \$19.30.

Based on the above, the composite Maryland direct wine shipment consumer is a person who has a connection with local Maryland retailers and would look there first before purchasing online. This person is more likely to purchase wine from an out-of-state winery than out-of-state retailer; but would purchase from either if the wine was not available from a Maryland retailer. The wine purchased would most likely be California wine or a foreign import. This is a person who predominantly drinks wine rather than other alcohol, and is somewhat influenced by the 100 Top Wines listed in the Wine Spectator, and even less by those listed in the Wine & Spirits magazine.

Wine economists state that how a consumer uses price in making quality wine purchases depends upon the consumer's knowledge of wine, country of origin, and past consumption.¹⁹² Familiarity and expertise are the two ingredients of consumer knowledge. According to the authors of an AAWE paper entitled, "*How Do Consumers Use Signals to Assess Quality?*": "Beginners use extrinsic signals such as price to assess quality." Those with more wine knowledge "use signals such as brand."¹⁹³ Whether one is a novice or expert, "Price is the most influential source of information."¹⁹⁴ But, connoisseurs use other signals, such as a collective brand name. Since brand name is not useful for a non-connoisseur, price is substituted to determine quality.

Another study conducted by AAWE states that "most people do not prefer expensive wines." Of the 266 individual participants in this experimental study, an

¹⁹² Olivier Gergaud and Florine Livat, "*How Do Consumers Use Signals to Assess Quality?*," American Association of Wine Economists, AAWE Working Paper No. 3 (April 2007), p. 5.

¹⁹³ *Ibid.*, p. 7.

¹⁹⁴ *Ibid.*, p. 14.

average of \$13.00 was spent on a bottle of wine with only 5% spending more than \$20.00.¹⁹⁵ This confirms that for the average wine consumer price is paramount.

Based on this, an inference can be made that a Maryland direct wine shipment consumer is a connoisseur, and that other factors, such as brand name, will be considered along with price.

(See Appendix 11 for survey data about Maryland Consumers)

B. Cost-benefit Analysis – Bricks-and-Mortar Stores v. Online Stores

(1) The Federal Trade Commission Report: “Possible Anticompetitive Barriers to E-Commerce: Wine” (July 2003) has gained an authoritative status, because of the *Granholm* majority’s reliance on it for Commerce Clause analysis. However, it is important to note that the FTC Report had the objective of assessing “the impact on consumers of barriers to e-commerce in wine.”¹⁹⁶ The broader context of the FTC Report is the evaluation of the anticompetitive barriers in e-commerce for many other industries besides wine, such as auctions, automobiles, caskets, contact lenses, cyber-charter schools, online legal services, real estate, mortgages, and financial services, retailing, and telemedicine and online pharmaceutical sales.¹⁹⁷ Wine differs from these other items of commerce in the way it is regulated.

The FTC analysis was considered from a “free trade” perspective, and not from the view of a three-tier distribution system, which is enacted in some form nationwide, and by its nature is a barrier to the free flow of alcoholic beverages across state borders. So, it is not surprising that one finding of the FTC Report was that a state ban on direct wine shipment to consumers is the single largest barrier to e-commerce in wine. The FTC Report must be read and interpreted under its own terms, which was primarily to consider regulatory barriers to e-commerce in wine, and not take into full account other legislative and policy objectives for the regulation of alcoholic beverages, such as temperance, orderly distribution, and obedience to law.

¹⁹⁵ Johan Almenberg and Anna Dreber, “When Does the Price Affect the Taste? Results from a Wine Experiment,” American Association of Wine Economists, AAWE Working Paper No. 35, Economics (April 2009), pp. 9-10.

¹⁹⁶ *Ibid.*, 2.

¹⁹⁷ *Ibid.*, 2 n. 3.

In sum, the FTC Report stated the following findings:

1. Consumers can purchase many wines online that are not available in bricks-and-mortar stores;
2. Depending on the wine's price, the quantity purchased, and the method of delivery, consumers can save money by purchasing wine online;
3. State prohibition of direct wine shipment to consumers is the single largest regulatory barrier to expanded e-commerce in wine;
4. Other regulations impede e-commerce in wine;
5. There are regulatory options to prevent underage access by minors if direct wine shipment to consumers is permitted;
6. States that allow direct wine shipment to consumers have not had problems with underage access;
7. States that allow direct wine shipment to consumers have not experienced problems with tax collection.¹⁹⁸

Several of these findings were based on a McLean, Virginia study ("McLean Study"), where a sample of the 50 most popular wines in the Wine & Spirits magazine's 13th Annual Restaurant Poll were used to compare prices and availability at local retail stores in the McLean area and online.

The Wine & Spirits Study conducted by the Comptroller is based on the methodology of the McLean Study; that is, a sample of the 50 most popular wines in the Wine & Spirits magazine's 21st Annual Restaurant Poll were used to compare price and availability at Maryland retail stores and online. The findings of the Wine & Spirits Study are discussed below.

(2) Comptroller's Wine & Spirits Study.

The objective of this retail study is to contribute to the determination of the costs and benefits of allowing direct wine shipment to consumers in Maryland. The sample of wines used in this case study are the top 50 restaurant wines selected by the Wine & Spirits magazine for year 2009. By identifying the top 50 restaurant wines, which is constituted by 85 wine varietals as its sample, a cost-benefit analysis can be based on price and availability for Maryland consumers.

A case study method is used for the Wine & Spirits Study ("W&S Study") which provides both qualitative and quantitative data. The strength of a case study is its in-depth research, but its weakness is that "data cannot be used to generalize about the population as whole."¹⁹⁹ Because it is unique, the data from the case study

¹⁹⁸ FTC Report, pp. 3-4.

¹⁹⁹ *Research Methods*, p. 64.

cannot be applied to all Maryland consumers; however, it does provide relevant information about the difference in cost for wine purchases between Maryland brick-and-mortar stores and online retailers. It is not claimed that the top 50 restaurant wine brands represent the market for Maryland consumers. This list was chosen because it was the one used in the FTC Report, and it incorporates consumer demand.²⁰⁰

The methodology of W&S Study:

1. Of the 85 wine varieties,²⁰¹ 8 were determined unavailable, because they are sold to restaurants only, sold-out at the winery, or are not listed with a Maryland wholesaler.

2. Of the remaining 77 wine varieties, wholesale prices for 17 varieties were not available from the Maryland Beverage Journal; thus, 60 wine varieties constitute the “sample.”

3. Retail prices for the Maryland brick-and-mortar stores were determined by using the wholesale price listed in the Maryland Beverage Journal (August 2010) and multiplying that price by 1.5, which is the typical retailer markup.

4. Online retail prices were determined in September 2010 by using the winery’s online price and a range of prices offered by retail stores using Winesearcher.com.

5. Retail prices of Maryland brick-and-mortar stores and online retail stores available through winesearcher.com were compared for the “sample” using the “median” price of online retail stores.

6. Retail prices of Maryland brick-and-mortar stores and the “lowest” prices of online retail stores available through winesearcher.com for the “sample” were compared.

7. Of the 60 wine varieties in the “sample,” prices for 40 wine varieties were available online from the wineries, and these 40 wine varieties constitute the “winery sample.”

²⁰⁰ Wine & Spirits magazine mailed 2,581 questionnaires to restaurants with a 8% response rate, or 210 replies. Restauranters listed the 10 top selling popular wine during the last three months of 2009. Wine popularity is determined by how many mentions per 100 respondents the winery received in the annual restaurant poll.

²⁰¹ The major wine varieties fall into two basic categories: (1) White: Chardonnay, Chenin Blanc, Gewurztraminer, Pinot Grigio, and Riesling; (2) Red: Merlot, Cabernet Sauvignon, Pinot Noir, Zinfandel, and Syrah.

8. Retail prices of Maryland brick-and-mortar stores, “median” online retail prices available through winesearcher.com, and online winery prices were compared for the “winery sample.”

Descriptive statistics of W&S Study:

1. Of the top 25 wine brand varietals, 80% were Californian wines; 8% were foreign imports; and 12% were from Washington and Oregon.

2. Of the “sample” 60 wine brand varietals, 68% were Californian; 22% were foreign imports; 7% were from Oregon; and 3% were from Washington.

3. Six of the twenty-four Maryland wholesalers listed in the Maryland Beverage Journal represent the top 50 wineries in the “sample.”²⁰²

4. Of the “sample” 60 brand varietals, 82% are sold and distributed almost equally by the top two Maryland wholesalers, Republic National Distributing Company (“RNDC”) and Reliable-Churchill (“Reliable”) RNDC sells 42% of the brands and Reliable sells 40%.²⁰³

The following findings were made from the W&S Study:

1. Of the 85 wine brand varietals, 90.6%, or 77, were available in Maryland.

2. Of the 77 wine brand varietals, 75.3%, or 58, were offered for sale by the winery through a wine club.

3. Shipping costs have increased since the FTC Report was published in 2002. The FTC Report lists the following shipping costs using UPS for one bottle of wine from Palo Alto, California to McLean, Virginia:

Standard ground:	\$ 8.81
3 rd day Air:	\$14.23
2 nd day Air:	\$16.45

In November 2010, UPS shipping costs for the same shipment are:

Standard ground:	\$13.65
3 rd day Air:	\$24.90
2 nd day Air:	\$32.82

²⁰² The eight Maryland wholesalers are: Republic National, Reliable-Churchill, Monument Fine Wines, Prestige Beverage, Country Vintner, Bacchus Imports, Monsieur Touton, and F.P. Winner.

²⁰³ The other five wholesalers are: Bacchus (8%), Prestige Beverage (3%), Monsieur Touton (3%), Monument Fine Wines (2%) and F.P. Winner (2%).

This is not an inconsequential increase. The 2nd day Air shipping cost has almost doubled. FedEx offers a 20% discount for ground delivery to wineries who are members of the Wine Institute, and discounts from 10% to 24% to members of WineAmerica.

4. It is less expensive for a consumer to purchase a bottle of wine from the “sample” at a Maryland bricks-and-mortar store than from an “online” winery or retailer, because of shipping costs.

For example, one of the wines in the “sample” is Sonoma-Cutrer Vineyards, Sonoma Coast, a chardonnay which sells at Maryland retail for \$25.00. The online price from the winery is \$21.00, and if shipped UPS Ground would cost an additional \$21.58.

5. Purchasing a “case” of wine from an “online” winery or retailer makes economic sense, because of the economy of scale achieved for shipping cost per bottle.

For example, if a case of Sonoma-Cutrer Vineyards, Sonoma Coast was purchased from the winery, the UPS Ground cost is \$40.20, or \$3.35 per bottle for shipping compared to the bottle shipping cost of \$21.58.

There is a significant economy of scale of shipping cost for quantity purchases.

6. Foreign wineries and U.S. importers do not offer direct wine shipment; thus, it is possible that a consumer who wants to purchase a foreign import not available in Maryland would not be able to do so, unless out-of-state retailers would be allowed to direct ship.

7. The average Maryland retail price for a 750ml bottle of wine at bricks-and-mortar store for the “sample” is \$34.10.

8. The average “median” online retail price for a 750ml bottle of wine for the “sample” is \$33.50.

9. The average online winery price for a 750ml bottle of wine for the “winery sample” is \$ 32.64.

10. The average “lowest” online retail price available through winesearcher.com is \$24.42.

These statistics of the “sample” are indicated as follows:

Maryland Bricks-and-Mortar Retail Store	\$ 34.10
"Median" Online Retail Store (Winesearcher.com)	\$ 33.50
"Lowest" Online Retail Store (Winesearcher.com)	\$ 24.42
Online Winery	\$ 32.64

The online wine sales prices do not have the alcoholic beverage tax included in the cost, while the Maryland retail stores do. Higher prices for Maryland brick-and-mortar store retailers than online retailers can be attributed to wholesaler markup.

Except for the lowest price of online retailer stores, the retail prices are approximately similar. Given shipping costs, the economics of direct wine shipment could make sense if purchasing more than one bottle from an out-of-state winery, and particularly from an out-of-state retailer. (See Appendix 12 for W&S Study)

Based on survey data from the Wine & Spirits Study and other academic and industry literature, inferences have been made in order to make the following determinations:

A determination is made that the majority of wine brand and varieties are available for consumers to purchase in Maryland.

A determination is made that direct wine shipment will benefit wine connoisseurs motivated more by brand than price, and who would purchase wine directly if it was unavailable from a local retailer.

A determination is made that direct wine shipment could make economic sense if quantities exceeding one bottle are purchased, because of the savings in shipping costs related to economies of scale.

(6) Related fiscal, tax, and other public policy and regulatory issues

A. Tax Collection

(1) *American Association of Wine Economists ("AAWE") Paper – Direct Wine Shipment Tax Leakages*

Recently, the American Association of Wine Economists ("AAWE") published a paper which concluded that, "There is likely significant leakage of

revenue due to the accessibility of direct-ship wine. Producers at some wineries appear to be paying excise taxes only for sales occurring within their home state.”²⁰⁴ Using an interstate demand model of wine, which included a number of factors,²⁰⁵ to determine in-state and interstate wine distribution and sales, the authors of this AAWE paper (“AAWE Paper”) believe there is a “loss of state excise tax revenue due to the growth in non-taxed interstate wine sales at the expense of state tax authorities.”²⁰⁶ State excise tax revenue consists of alcoholic beverage tax and sales tax.

The AAWE Paper cites a 2004 report by Goolsbee and Slemrod, which stated that direct tobacco shipment laws have led to a loss of tax revenue. Goolsbee and Slemrod found about tobacco, “That the tax increases of 2001-2003 would have generated about 25 percent more revenue had the Internet merchants not existed, with some state estimates as high as 40 percent.”^{[17]207} Also, in a 1999 study by the Tax Foundation, it was reported that approximately 15% of excise tax revenues from beer were lost in states with higher taxes from cross-border purchases.²⁰⁸

Assuming the interstate demand model used in the AAWE Paper is valid, which sought to measure cross-border sales of wine motivated by price differentials during the period following *Granholm* (2005 to 2008) (cross-border sales means “interstate sales”), the following finding should be considered:

“By 2008, the volumes had grown substantially. In total, about 11.5 percent of sales were not being sold through cross-border channels, with nearly 84 percent of this not being taxed at the state level. In other words, the market for wine not entering the state excise tax system increased to 9.6 percent of the total or about 32.8 million cases. Since prices and excise tax rates did not jump considerably during this three year period, it is likely that much of this is due to increased direct shipments of wine from producers to consumers.”²⁰⁹

²⁰⁴ Dunham, Eng, and Ronga, “*Direct Ship Blowout: How the Supreme Court’s Granholm Decision has Led to a Flood of Non-Taxed Wine Shipments*,” pp. 21-22.

²⁰⁵ Some of the factors are differential pricing mainly due to excise and sales taxes; taxable sales volumes at both state and federal levels; state populations, population density, and distance functions. *Ibid.*, p. 2 The interstate demand model for the wine industry was created by John Dunham and Associates for the Wine and Spirits Wholesalers of America. *Ibid.*, p. 9.

²⁰⁶ *Ibid.*

²⁰⁷ [¹⁷ Goolsbee and Slemrod found in their estimates that the elasticities were negative as Internet sales increased versus declining revenues and concluded that tax revenue leakage was significant based on increasing usage of the Internet for tobacco purchases.] (AAWE’s note), *Ibid.*, p. 7.

²⁰⁸ *Ibid.*, p. 9.

²⁰⁹ *Ibid.*, p.21.

The AAWE Paper estimates that the following jurisdictions bordering Maryland, where direct wine shipment is legal, lost the following percentages of tax revenues in 2008: Washington, D.C.: 22.73%; Virginia: 2.91%; and West Virginia: 2.96%.²¹⁰ There is no direct wine shipment in Pennsylvania or Delaware.

In sum, the thrust of the AAWE Paper is that in a post-*Granholm* world, at least from 2005 to 2008, there was an increase in interstate sales without a corresponding increase in wine tax collections. The increase in interstate sales and lower tax collection is a “leakage” attributed to direct wine shipment to consumers.

The possibility exists that wine tax leakage could occur if direct wine shipment became legal in Maryland. This is the reason why it is illegal to sell and ship cigarettes and other tobacco products to consumers over the internet in Maryland.²¹¹ Since Maryland has one of the lowest tax rates for wine nationwide, and one that is on par with neighboring states, there is a low probability of tax leakage from nearby cross-border purchases if direct wine shipment became legal. However, a low wine tax rate does not prevent tax evasion by direct wine shippers through the internet or otherwise.

The FTC Report indicates that states have few, if any, problems with tax collection.²¹² That is consistent with the survey data stated below. Yet, the FTC Report cites testimony by Michigan that they have had problems with illegal shipping.²¹³ Michigan did not seek redress through the Twenty-first Amendment Enforcement Act or from TTB, but did reach an agreement with the common carriers about seizure of illegal shipments.

It is not clear how states know whether or not they have a tax collection problem. State regulatory agencies must rely on the voluntary compliance of direct wine shippers, because it is difficult to detect under-reporting or outright tax evasion. The built-in accountability of the three-tier distribution system is lost when wine is directly shipped to a consumer. There will be no inspections of consumer residences by the Comptroller as there are for Maryland retailers. Checks and balances are missing to verify direct wine shipper tax returns.

²¹⁰ Ibid., Appendix B., p. 25.

²¹¹ See Business Regulation Article, § 16-223, Annotated Code of Maryland prohibiting the sale of cigarettes directly to consumers over the internet; and Business Regulation Article, § 16.5-217 to take effect May 1, 2011, prohibiting the sale of OTP over the internet.

²¹² FTC Report, p. 38.

²¹³ Ibid., p. 39, n.170. See FTC Report, p. 11, n. 51.

(2) Survey Data:

The survey data does not comport with the AAWE Paper as the majority of states report no problems with tax collections and minimal issues with delinquent tax returns. However, as mentioned, it is difficult for states to know whether or not there are tax collection problems with direct wine shipment. Of those states who have had incidents of delinquent tax return filing, the number of incidents for the majority have ranged between 1-10% annually.

(See Appendix 13 for survey data about tax collection)

To conclude, although there are not various studies and corroborating sources about direct wine shipment tax leakage, and Justice Kennedy in *Granholm* deemed certain state practices as satisfactory safeguards for tax collection, it is reasonable to believe that tax leakage and evasion may occur. Justice Kennedy makes a passing reference to the Twenty-first Amendment Enforcement Act as an available remedy for lost tax revenues; however, the Maryland Attorney General can only obtain injunctive relief stopping illegal direct wine shipment. The Enforcement Act does not provide for damages or penalties for lost tax revenues.

B. Compliance

Tax collection presents a compliance issue. As mentioned, there is a systematic explanation for this. In a direct wine shipment sale, both the direct wine shipper and consumer are outside of the three-tier distribution system. Because of this, it is difficult, if not impossible, to verify direct wine shipper sales. Consumers provide no cross-check. A way to alleviate this concern is to require common carriers to obtain a permit and report deliveries.

Another issue is “marketing agents,” who act as quasi-wholesalers for wineries who sell online. These third parties perform packaging and shipping services for online sellers. When an online wine seller uses a third-party marketing agent, the wine will be shipped from a location other than the permitted or licensed premise. Maryland regulations allow a nonresident dealer permittee to ship from a different location than the licensed premise without obtaining a permit; however, with a direct wine shipper the shipment would not be made from a different location, but from another company. California has issued an advisory stating the marketing agents must be licensed, and that a tied-house issue arises if the marketing agent receives income from the winery while providing services to retailers.²¹⁴ Virginia and Washington have also dealt with this issue. Virginia prohibits unlicensed marketing agents, but does allow wineries to obtain a separate

²¹⁴ R. Corbin Houchins, Esquire, “Notes on Wine Distribution,” p. 21.

license at a separate shipping location. Washington has issued regulations prohibiting retailers from using contract site operators along with banning drop shipments by suppliers.²¹⁵

A new law passed by the Virginia General Assembly (Senate Bill 483), effective July 1, 2010, creates two licenses to address the third-party shipment issue. A “fulfillment warehouse license” and a “marketing portal license” are established as retail licenses issued by the Virginia Alcoholic Beverage Control. The “fulfillment warehouse license” (\$120 annual license fee) authorizes in-state businesses or out-of-state businesses, who are authorized to do business and have a place of business in Virginia to receive, store, pick, pack, and ship deliveries and shipments of wine and beer owned by direct shipper licensees. The “marketing portal license” (\$150 annual license fee) authorizes certain defined agricultural cooperative associations with a place of business in Virginia to solicit and receive orders for wine and beer through the internet from persons in Virginia who may be sold wine or beer on behalf of direct shipper licensees. When the marketing portal licensee receives an order for wine or beer, the licensee must forward it to the direct shipper licensee. The marketing portal licensee may receive payment on behalf of the direct shipper licensee.

The “marketing agent” regulatory issue reveals that out-of-state wineries still need wholesalers in some form. New licenses established in Virginia—“fulfillment warehouse license” and “marketing portal license”—suggests that tiered distribution cannot be avoided. It is speculative, but there is a sense that direct wine shipment may lead to additional regulatory complexity by necessitating the creation of new licensees as second-tier actors, as in Virginia, to address the vacuum created by operation outside of the three-tier system.

Another issue is audits. Desk audits could be performed of direct wine shipper records and tax returns, but this would require the Comptroller to hire additional staff. Evenso, because the consumer is outside of three-tier distribution, there are no verification documents to use when performing a desk audit. In this sense, though desk audits are necessary, they may not yield sufficient information to warrant tax assessments.

C. Enforcement

As mentioned in section 3, Justice Kennedy thought that federal and state law could achieve regulatory enforcement objectives for tax collection. The deterrent effect of license or permit suspension or revocation (both the federal basic permit and state license or permit) on the direct wine shipper satisfied the majority in

²¹⁵ Ibid.

Granholm as a nondiscriminatory alternative to achieving the legitimate objective of tax collection.

However, the process of tax collection was not addressed in *Granholm*. Enforcement problems could arise in legal actions to collect outstanding taxes. Revocation of a license or permit does not mean outstanding tax liabilities are extinguished. This is the case for any licensee.

Under Tax-General Article, § 5-301(f), licensed wholesalers located in Maryland pay the alcoholic beverage tax on the sale and distribution of wine and distilled spirits to retailers. Tax assessments imposed by the Comptroller are prima facie correct. However, a due process procedure is established in Title 13 of the Tax-General Article for a wholesaler to appeal an alcoholic beverage tax assessment and request a hearing by the Comptroller. Under Tax-General Article, § 13-510, a wholesaler licensee may appeal the Comptroller's final determination as a result of a hearing to the Maryland Tax Court. A further appeal of the Maryland Tax Court is provided under Tax-General Article, § 13-532 to the circuit court, which for an out-of-state direct wine shipper would be Anne Arundel County, where the Comptroller is located. The exercise of rights afforded a direct wine shipper under Title 13 of the Tax-General Article would be costly to the direct wine shipper, particularly because many of the direct wine shippers are likely to be located in California.

Also, for the Comptroller it will be costly and burdensome to impose a lien to collect outstanding taxes. A lien against all property and rights to property may be imposed by the Comptroller for unpaid tax under Tax-General Article, § 13-805(a). When the Comptroller files notice of a tax lien with the clerk of the circuit court for the county where the property that is subject to the lien is located, the lien has the full force and effect of a judgment lien under Tax-General Article, § 13-808. For an out-of-state direct wine shipper, the tax lien will have to be filed in an out-of-state court creating additional costs and administrative burdens. To execute the judgment lien, a court action is necessary, which would require the assistance of out-of-state legal counsel.

The potential pitfalls outlined above explain why many taxes, and in this case, the alcoholic beverage tax, is typically paid by an in-state person or business. Also, the lack of physical and desk audits of out-of-state direct wine shippers undermines the accountability typically required by the Comptroller for licensees.

Thus, despite a "consent to jurisdiction" provision and the Twenty-first Amendment Enforcement Act, tax collection and litigation out-of-state could be costly and administratively burdensome. It can be argued that since nonresident dealers are out-of-state permittees, who pay the beer tax, that out-of-state direct wine shippers are no different. There is a distinction, however, which is that

nonresident dealers must prepay the beer tax before beer is distributed to Maryland wholesalers; whereas, the direct wine shipper pays the wine tax after the product is shipped across state borders. Prepayment of beer tax by nonresident dealer permittees is less of a risk than after-the-fact payment of wine tax by out-of-state direct shippers.

There is precedent for out-of-state wine businesses to pay taxes rather than in-state wholesalers. Nonresident winery permittees file monthly tax returns and remit payments to the Comptroller, but the creation of this out-of-state permit was admittedly a concession to *Granholtz*; and thus, it does not reflect the historical practice of the Maryland General Assembly in alcohol regulation under Article 2B. Desk audits are not performed on nonresident wineries. There have not been problems with tax collection from nonresident wineries; however, unlike direct wine shipment to consumers, the Comptroller may inspect records of licensed Maryland retailers to verify nonresident winery compliance.

On the whole, states have not reported problems of noncompliance with direct wine shippers. Survey data indicate that a majority of states have not prosecuted any person criminally, or suspended or revoked a license or permit; and that a majority of states have had no violations. Most states have had no administrative hearings, or imposed a statutory penalty.

The “validity” of this survey data is questionable as an accurate representation of the status of direct wine shipper compliance and enforcement.

D. Three-tier Distribution System

It must be said at the onset that direct wine shipment philosophically contradicts the three-tier distribution system. The first-tier wine producer is transformed into a third-tier out-of-state retailer by hurdling the second-tier in-state wholesaler and third-tier in-state retailer. The effect that direct wine shipment to consumers would have on Maryland’s three-tier distribution system is a fundamental question.

By definition, as an “exception” to three-tier distribution, direct wine shipment has an inherent tendency to pull away from the regulatory framework. However, there is a distinction between an “exception” to and “undermining” three-tier distribution. There may be an “exception” to three-tier distribution that with the proper restrictions does not fundamentally undermine it.

Opinions expressed in survey data are more optimistic. In response to the survey question statement that “*direct wine shipment will undermine the three-tier distribution system*”, a majority of in-state licensees disagreed: a “mean” of 25.5%

“strongly agree”; a “mean” of 28.6% “strongly disagree”; and a “mean” of 28.6% disagree. A majority of retailers strongly agreed; while a majority of Maryland wineries strongly disagreed. Maryland wholesalers were polarized with 31% strongly agreeing, and 34.5% strongly disagreeing. A majority of state regulators (53.8%) disagreed, and 30.8% agreed. If in-state licensee opinion is correct, the effect on the entire system itself will be minimal, because of the parochial nature of direct wine purchases.

Another concern of those against direct wine shipment is the “precedent” it may establish for further exceptions to the three-tier distribution system. Survey data indicates polarization between Maryland wineries and Maryland retailers about the potential of direct “beer” shipment: In response to the statement whether “*direct wine shipment will lead to direct “beer” shipment*”, a “mean” of 27.5% of in-state licensees “strongly agree,” while a “mean” of 23.6% “agree.” A majority of retailers either agreed or strongly agreed; while a majority of Maryland wineries disagreed, strongly disagreed, or neither agreed or disagreed. A majority of state regulators (50%) disagreed.

The contrast is not so stark about potential direct “distilled spirits” shipment: In response to the statement whether “*direct wine shipment will lead to direct “distilled spirits” shipment*”, a “mean” of 24.7% of in-state licensees “strongly agree,” while a “mean” of 19.7% “agree” and a “mean” of 20.3% neither agreed or disagreed. A plurality of retailers either agreed or strongly agreed; while Maryland wineries were fairly divided. A majority of state regulators (54.5%) disagreed.

Only a few jurisdictions allow direct “beer” shipment—Alaska, Virginia, New Hampshire, North Dakota, and Washington, D.C., and fewer allow direct “distilled spirits” shipment: Alaska, North Dakota, and Washington, D.C. Similar to direct wine shipment, direct beer and distilled spirits shipment are subject to quantity limitations. Each type of alcoholic beverage brings with it particular issues and concerns, and must be considered separately without application of uniform generalizations from wine shipment.

Theoretically, if direct shipment of all alcoholic beverages was permitted, the three tier distribution system would no longer exist. Consideration must be given to the future and long-term effect that direct wine shipment would have on direct “beer” shipment and direct “distilled spirits” shipment. There is no evidence showing any causal link between direct wine shipment and direct “beer” shipment; however, the propositions are correlated, and two states have passed such laws.

E. Temperance

The idea of temperance is the idea of limits. Three-tier distribution is intended to impose limits and restrictions on the sale, distribution, and use of alcoholic beverages. Alcohol-related injury and illness discussed in section 2. substantiates concern for the general welfare. Unlike other articles of commerce, the legislative objective as stated in Article 2B does not place economics at the forefront, and that is why the argument about lower prices for consumers undercuts one of the main legislative objectives of the three-tier distribution: temperance. In fact, as mentioned, it is the policy of the Maryland General Assembly that alcoholic beverage laws may displace or limit competition, which presumably lowers prices. The question is what does “temperance” mean? An underlying premise of direct wine shipment is that it will allow Maryland consumers to purchase wine not otherwise available, or at cheaper prices. Both of these justifications do not square with temperance strictly understood. The more wine consumed in Maryland, the less temperance there will be. That is an example of a causal inference. But, a causal inference may be too strong here. If the direct wine shipment consumer is a person who does not increase the intake of wine, but only substitutes one brand for another, then temperance is not undermined.

Temperance and underage access are connected. While the evidence does not point to a problem of underage access and direct wine shipment, the possibility must not be ignored.

In response to the survey question statement “*direct wine shipment will undermine temperance*”, a “mean” of 46.7% of in-state licensees “strongly disagree,” while a “mean” of 14.1% “strongly agree”. A majority of wineries and plurality of wholesalers “strongly disagree.” Maryland retailers were spread evenly with the plurality of 32.3% answering “neither agree or disagree”; 29% “strongly agree; and 22.6% strongly disagree. A “mean” of consumers 78.2% “strongly disagree.”

A majority of states answering the survey do not have temperance in their statute as an explicit objective of legislative policy, but many do, including Maryland. (See Appendix 14 for survey data about public policy issues)

To conclude, any exception to the three-tier distribution system may create potential enforcement and tax collection issues. In-state wholesalers provide an immediate and proximate safeguard for state tax collection and regulatory enforcement.

An evaluation of the related fiscal, tax, and other public policy and regulatory issues shows that the following problems are possible: (1) tax reporting and collection; (2) regulatory compliance; (3) precedent for further “exceptions” to three-tier distribution; and (4) temperance.

(7) Effect of direct wine shipment laws on in-state alcoholic beverage licensees and other local businesses.

A. Economic Impact.

According to the DtC Shipment Report, the majority of direct wine shipments for the year (April 2009 - March 2010) came from small wineries, who produced between 5,000 - 49,999 cases annually. In fact, that size winery shipped 36% more wine than the next highest shipper—wineries producing 50,000 - 499,999 cases annually. Wineries producing 1,000 - 4,999 cases annually shipped 65% less than the top winery size, but still shipped close to 400,000 cases.²¹⁶

Survey data shows that the majority of Maryland wineries (57.9%) fall into the 1,000 - 4,999 annual case winery size, with 21.1% producing between 5,000 - 49,999 cases annually. Data from Maryland nonresident wineries is about the same: 60% produce 1,000 - 4,999 cases annually, and 20% produce 5,000 - 49,999 cases annually. An inference may be made that 20% of Maryland wineries would ship a considerable amount of wine, and 58% would ship less wine, but still engage in a measurable amount of direct wine shipment. However, winery size is only one factor. There must be consumer demand for Maryland wine, and while this cannot be quantified, the statistics from the DtC Shipment Report show that California dominates the direct wine shipment market with Oregon and Washington trailing significantly. Evenso, Oregon and Washington combined are not far behind the rest of the United States in the number of cases shipped.²¹⁷

In response to the survey question of what type of financial effect “*direct wine shipment to consumers has had or will have on wine industry licensees*”, a “mean” of 14.3% of state regulators answered “no effect.” The other 85.7% did not think the question applicable. Similarly, the overall “mean” for Maryland wineries was 63% responding “no effect,” with 85% indicating that direct wine shipment would have a positive effect (increase sales revenue) on in-state wineries compared to 20% of a positive effect for out-of-state wineries. This may be at odds with the data that shows most direct wine shipment purchases will be made from California wineries. Nonresident wineries support this proposition with 85% stating that direct wine shipment will have a positive effect on out-of-state wineries, e.g., their own wineries,

²¹⁶ “DtC Shipment Reporting,” p. 6.

²¹⁷ Ibid., p. 10.

because 85% of them direct ship to out-of-state consumers. Since only 20% of Maryland wineries indicate they ship to out-of-state consumers, most of the direct shipping gained will be in-state shipment to Maryland consumers. A recent ShipCompliant, Inc. Report—*Where are we now? The Direct Shipping Saga Continues*—states that 35% of the 6,223 wineries nationwide direct ship, and that 21% of those are in California; 15% in Oregon, and 9% in Washington. On the East Coast, only 4% are in New York, North Carolina, and Virginia, respectively.²¹⁸

Maryland wholesalers on average (27.7%) believe direct wine shipment will have a negative effect (decrease sales revenue) on all licensees: out-of-state wineries and retailers, and in-state wineries and retailers. However, the highest average percentage—55.5%—indicate that it will have “no effect.” These numbers are less optimistic for Maryland retailers, who on average (52.8%) believe direct wine shipment will have a negative effect on all licensees, with 36.7% stating it would have “no effect.” Other Maryland alcoholic beverage manufacturers (breweries) follow the general mean of Maryland wineries and wholesalers with 58.4% indicating it would have “no effect.”

Perhaps surprisingly, 66.7% of Maryland wholesalers do not believe direct wine shipment will significantly reduce their market share, while Maryland retailers (75.8%) believe it will have a negative effect on Maryland wholesalers. The majority of Maryland retailers (60.4%) believe they will lose business, and 74.5% do not believe they can compete with online sales of the same product.

According to the ShipCompliant Report, 83% of America’s population in the time period 2004-2010 live in states that allow direct wine shipping by wineries, while only 9% of the population live in states that allow direct wine shipping by retailers. The ShipCompliant Report shows that from 2004 to 2008, the market availability for retailers declined from 38% to 9%, while it increased for wineries from 51% to 83%.²¹⁹ This shift can be explained by *Granholtm*, which opened direct shipment channels for wineries, but not retailers. As discussed in subsection (1) above, *Granholtm* has been interpreted by courts to apply to wineries, who are typically out-of-state, and not retailers, who are typically in-state and part of the three-tier distribution system.

²¹⁸ ShipCompliant, Inc. is a technology company that automates alcohol compliance, and has industry partnerships with the Wine Institute, WineAmerica, Oregon Wine & Grape Growers, Washington Wine Institute, FedEx and UPS. Jason Eckenroth, “*Where are we now? The Direct Shipping Saga Continues*,” ShipCompliant, Inc. Report (March 10, 2010), pp. 11, 13.

²¹⁹ *Ibid.*, pp. 4-6.

B. Wine Availability.

One of the arguments for direct wine shipment is “availability.” Responses to survey questions by Maryland retailers about wine availability support the proposition that there are various wines not available to Maryland consumers. Only 5.3% of Maryland retailers have not had a request for a brand or varietal of wine they do not sell. On an annual basis, 34.2% receive 11-15 customer requests for brands and varietals of wine the retailer does not sell, and 52.8% indicate that 1-5 times annually the requests are brands and varietals not available from a Maryland wholesaler. However, in response to the question of “how likely is it that the brand and varietal you do not carry is available from a Maryland wholesaler? 47.2% answered “likely” and 33.3% answered “very likely.” There is a discrepancy in the answers to these two similar questions making them unreliable.

Consideration of two additional questions supports the tentative conclusion that most brands and varietals of wine are available from the Maryland wholesaler. Fifty percent of Maryland retailers answered “very likely” to the question whether the customer would ask the retailer to order a brand and varietal of wine from a wholesaler if the retailer did not carry it. And, 45.9% of Maryland retailers stated it was “very likely” that a customer would purchase a close substitute of wine if the retailer did not carry what was originally requested.

(See Appendix 15 for survey data about effect on in-state licensees)

Based on survey data, academic and industry literature, and the Comptroller’s Wine & Spirits Study, an inference has been made that consumers who can be classified as wine connoisseurs, or who have knowledge about wine, may be primarily motivated by brand, rather than price. Although price is always part of the consideration in making a wine purchase, consumers who are wine connoisseurs may be expected to request a direct wine shipment from an out-of-state winery when the wine is “unavailable” from a local retailer. As mentioned, the DtC Shipment Reporting indicates that the average bottle price of wine directly shipped in 2009 was \$36.00. By contrast, an inference has been made that consumers, who are not wine connoisseurs, are primarily motivated by price, rather than brand or availability. Consumers who are not wine connoisseurs may purchase less expensive wine (\$12 bottle) from an out-of-state retailer, rather than from an out-of-state winery.

A determination is made that direct wine shipment by out-of-state wineries to Maryland consumers would not have an overall negative effect on in-state licensees, because purchases from wineries are primarily motivated by “availability.”

A determination is made that direct wine shipment by out-of-state retailers to Maryland consumers would have a negative effect on in-state licensees, because purchases from retailers are primarily motivated by “price.”

Conclusion

From a regulatory standpoint, direct wine shipment is antithetical to the three-tier distribution system. However, pursuant to Senate Bill 858, the fundamental assumption underlying the “evaluations” and “determinations” is that direct wine shipment would become legal in Maryland.

This report is not intended to be considered as a model for legislation or public policy recommendations. Final determination of any legislation related to direct wine shipment rests entirely with the Maryland General Assembly.

APPENDIX 1

DtC SHIPMENT REPORTING

A project of ShipCompliant and Wines & Vines

This is a new study of Direct-to-Consumer Shipping (2010) which takes anonymized data from ShipCompliant about actual DtC sales and analyzes it through the Wines & Vines winery database, the most accurate and up-to-date in the wine industry.

(DtC means “direct-to-consumer”)

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DtC Shipment Reporting

A project of ShipCompliant and Wines & Vines

A New Study of Direct-to-Consumer Shipping

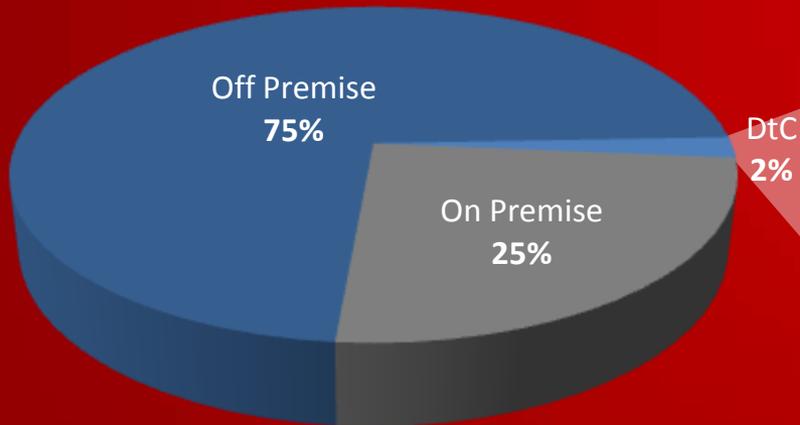
ShipCompliant and Wines & Vines have joined in a collaborative effort to accurately model the size and characteristics of the Direct-to-Consumer shipment market for U.S. wines. The two companies have been working for the past 12 months to build an industry model to process 3 million DtC transactions sourced from a portion of ShipCompliant's completed transactions during that period to produce statistically accurate results representative of ALL winery-to-consumer wine shipments in the U.S.

The DtC Shipment Reporting model takes anonymized data from ShipCompliant about actual DtC sales and analyzes it through the Wines & Vines winery database, the most accurate and up-to-date in the wine industry.

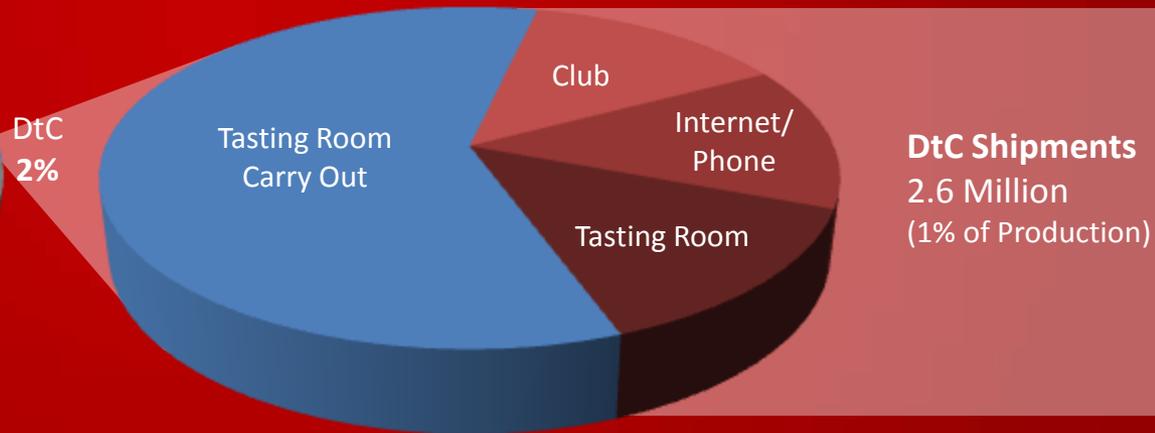
2009 US Wine Production Volume

9L Cases By Channel

Total Produced*
251 Million



Direct to Consumer (DtC)
6 Million



* Excluding Exports

Sources: TTB, Industry and Wines & Vines Estimates

DtC Shipment Model



US Winery Database
6,400 Wineries



Shipment Transactions
3 Million +

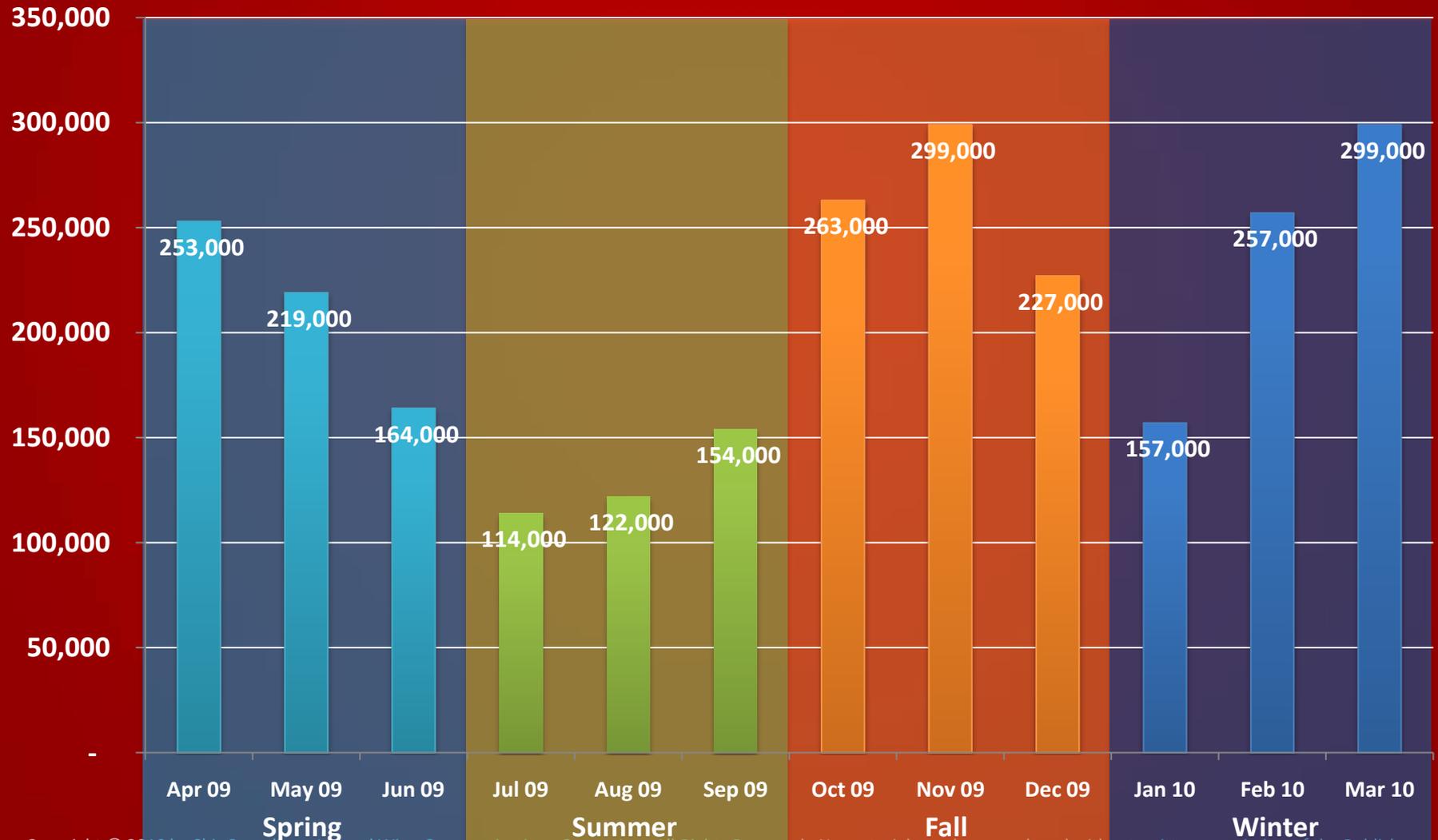
6 Geographic Regions



- Model adjusts sample for:
 - Completeness by region and winery size
 - Growth and change of sample wineries over time
- Output is the data for reports you are seeing today

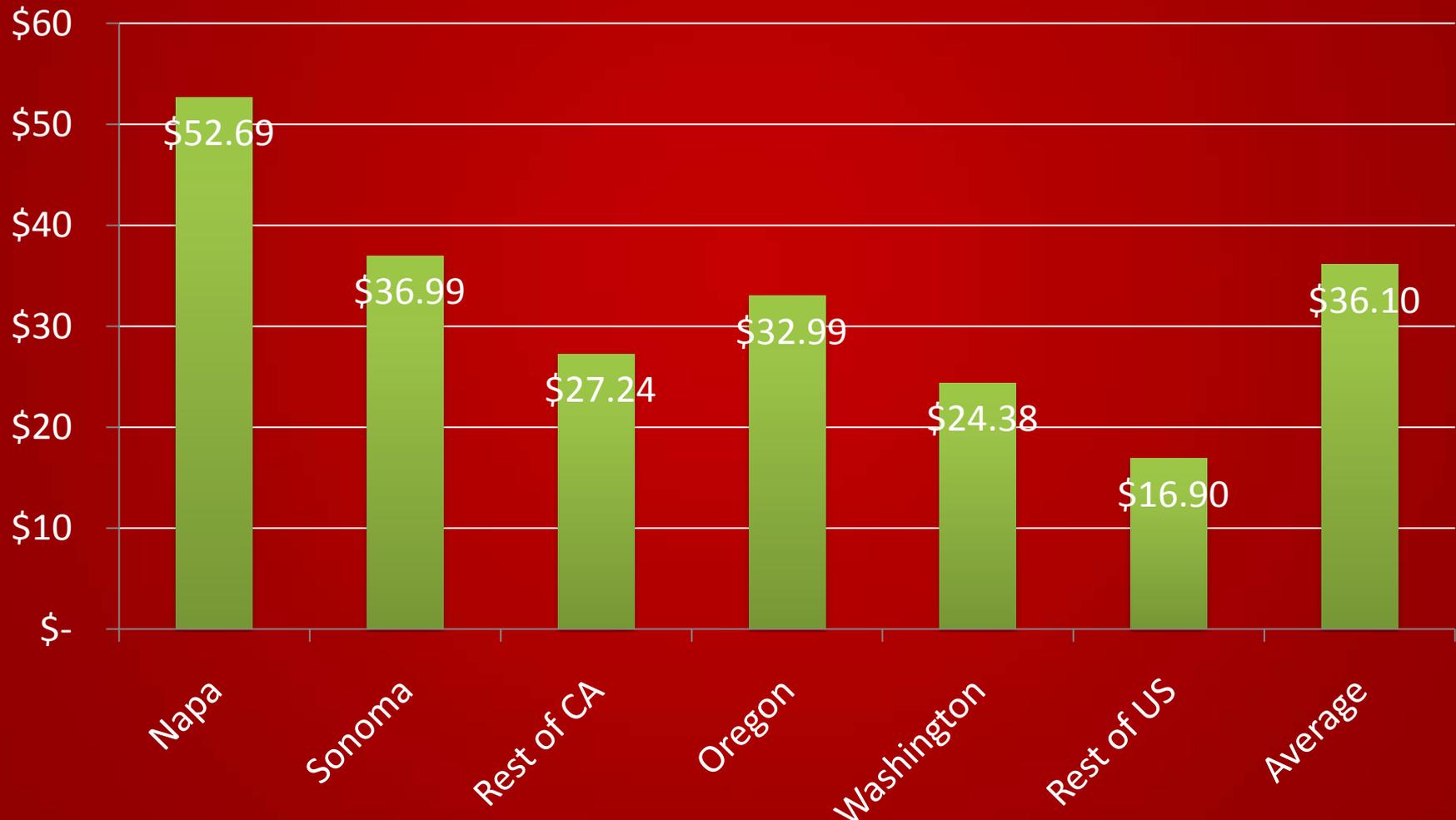
Shipments by Month

9L Cases, 12 Months April 2009 to March 2010



Average Bottle Price by Region

12 Months April 2009 to March 2010



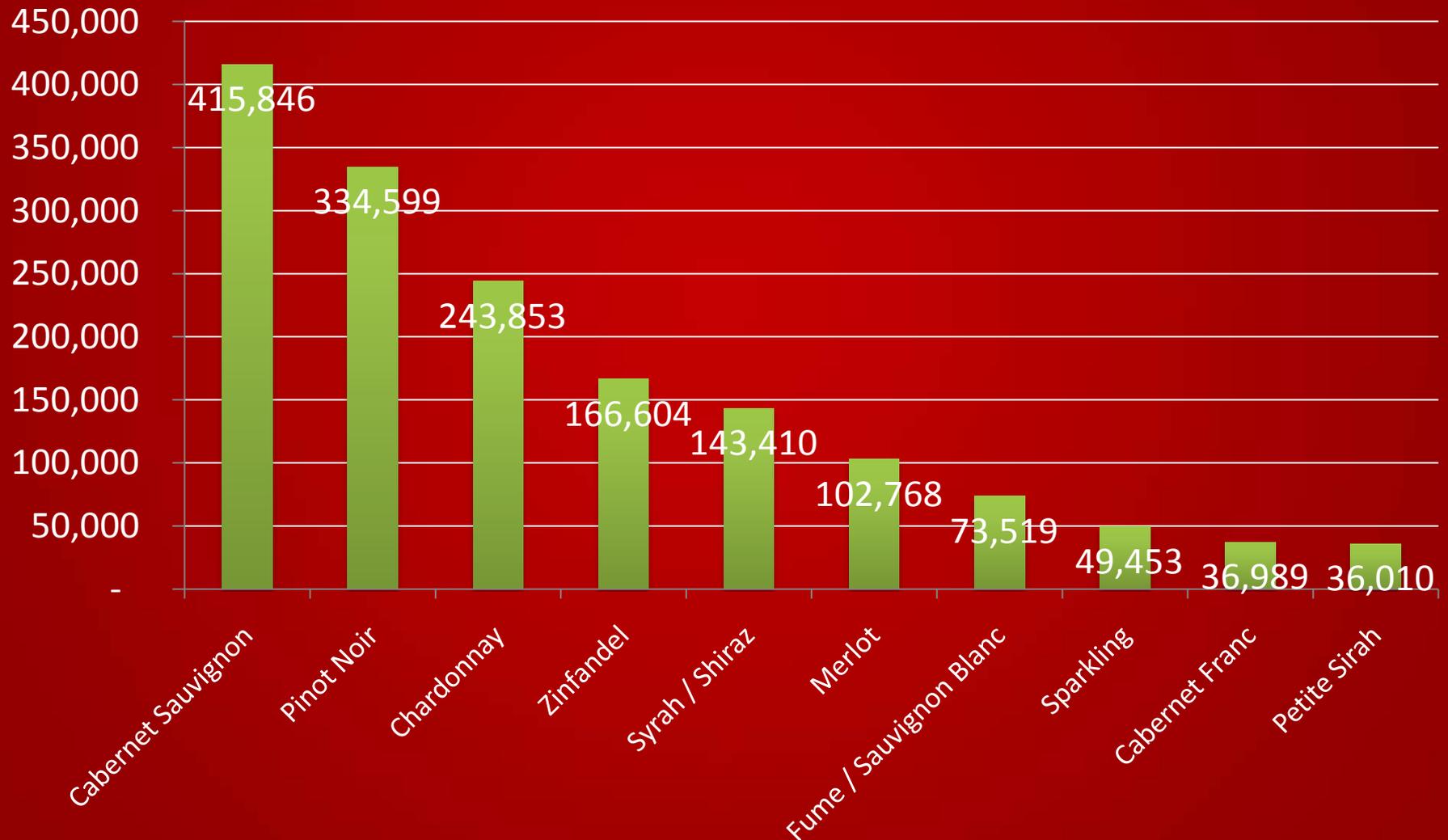
Shipments by Winery Size

9L Cases, 12 Months April 2009 to March 2010



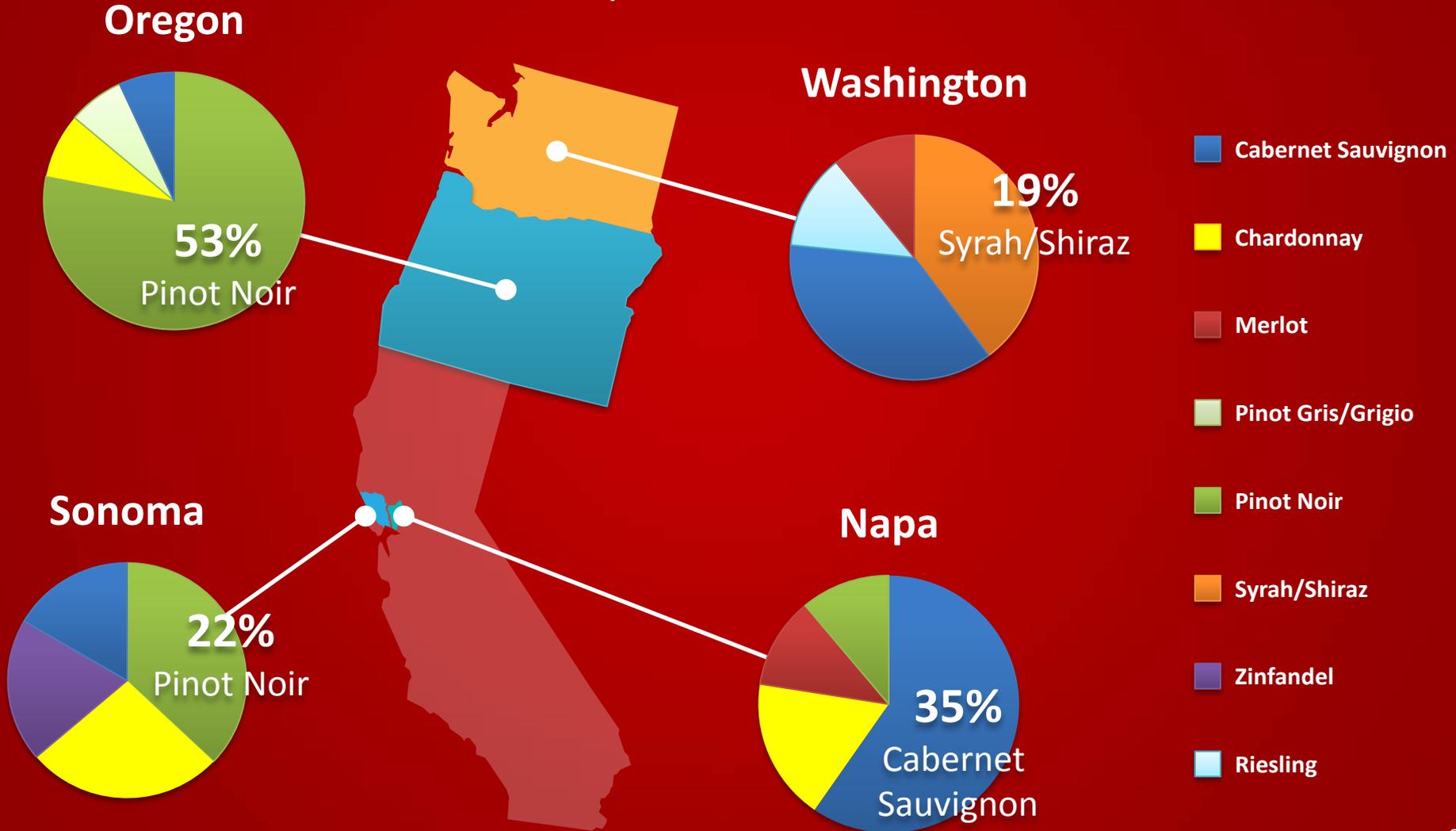
Top 10 Varietals – Cases Shipped

9L Cases, 12 Months April 2009 to March 2010



Top 4 Varietals by Region

12 Months April 2009 to March 2010



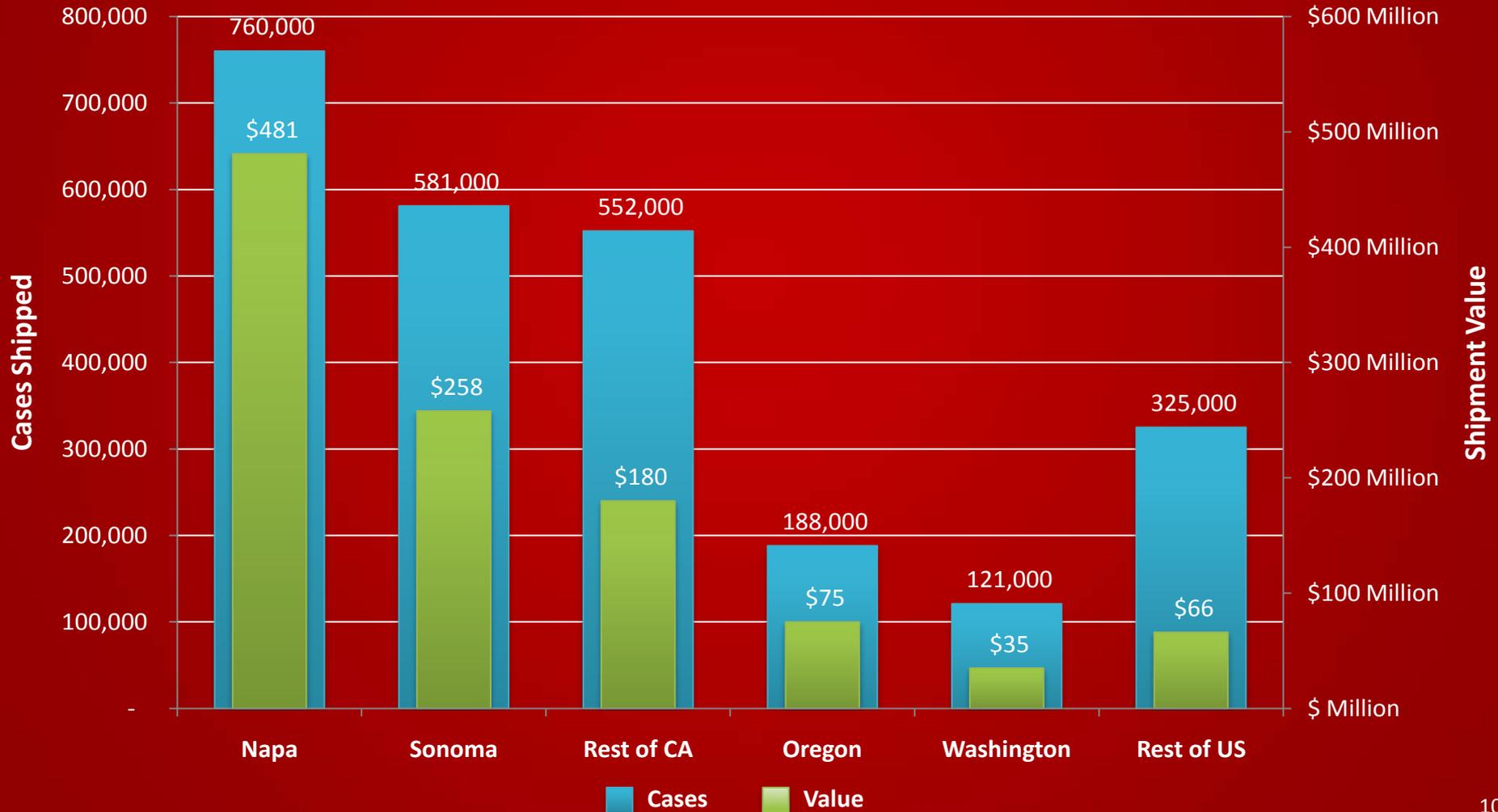
Average Bottle Price by Varietal

12 Months April 2009 to March 2010



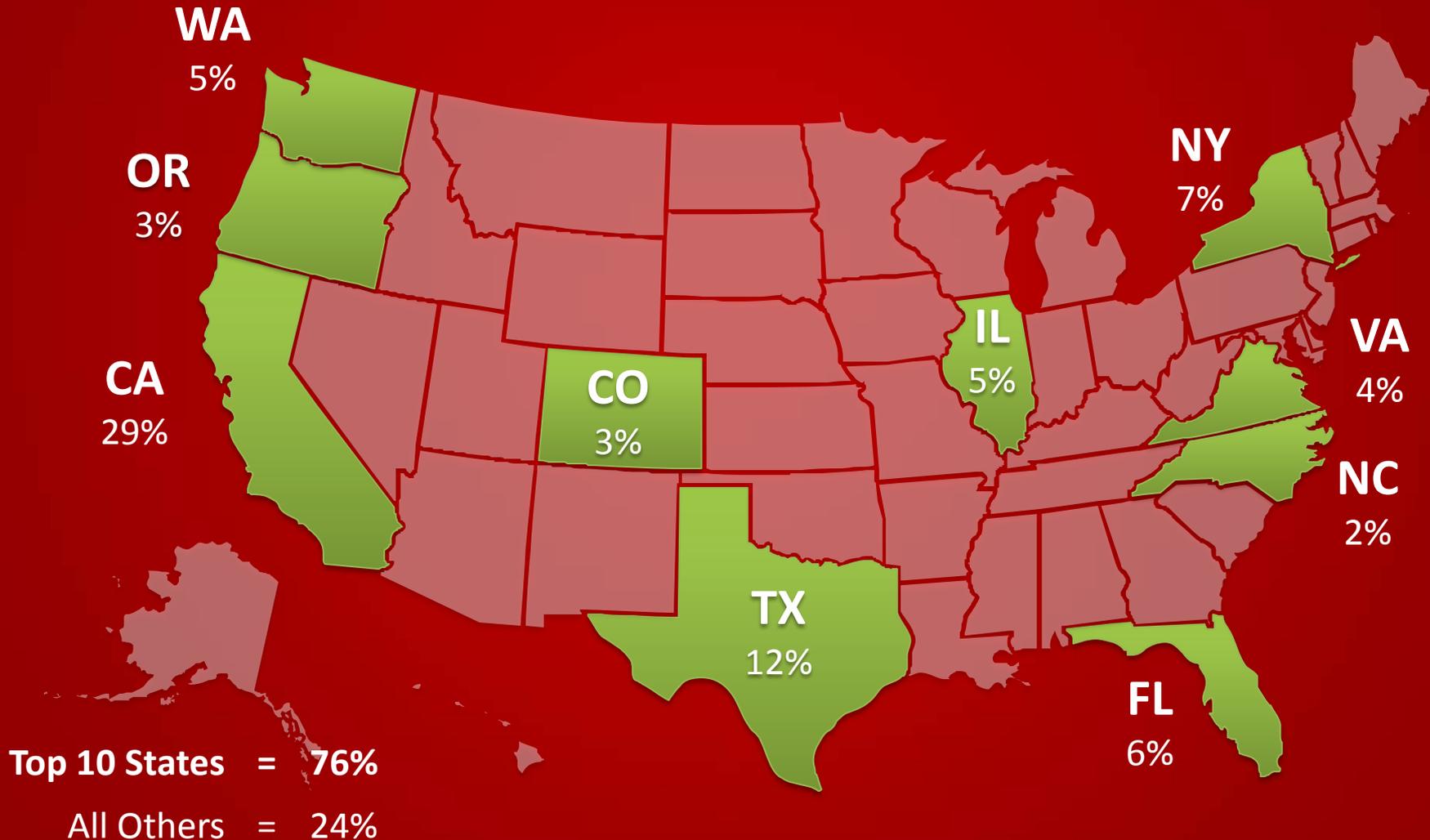
Performance by Winery Region

9L Cases and Value, 12 Months April 2009 to March 2010



% of Total DtC Shipments to Top 10 States

12 Months April 2009 to March 2010



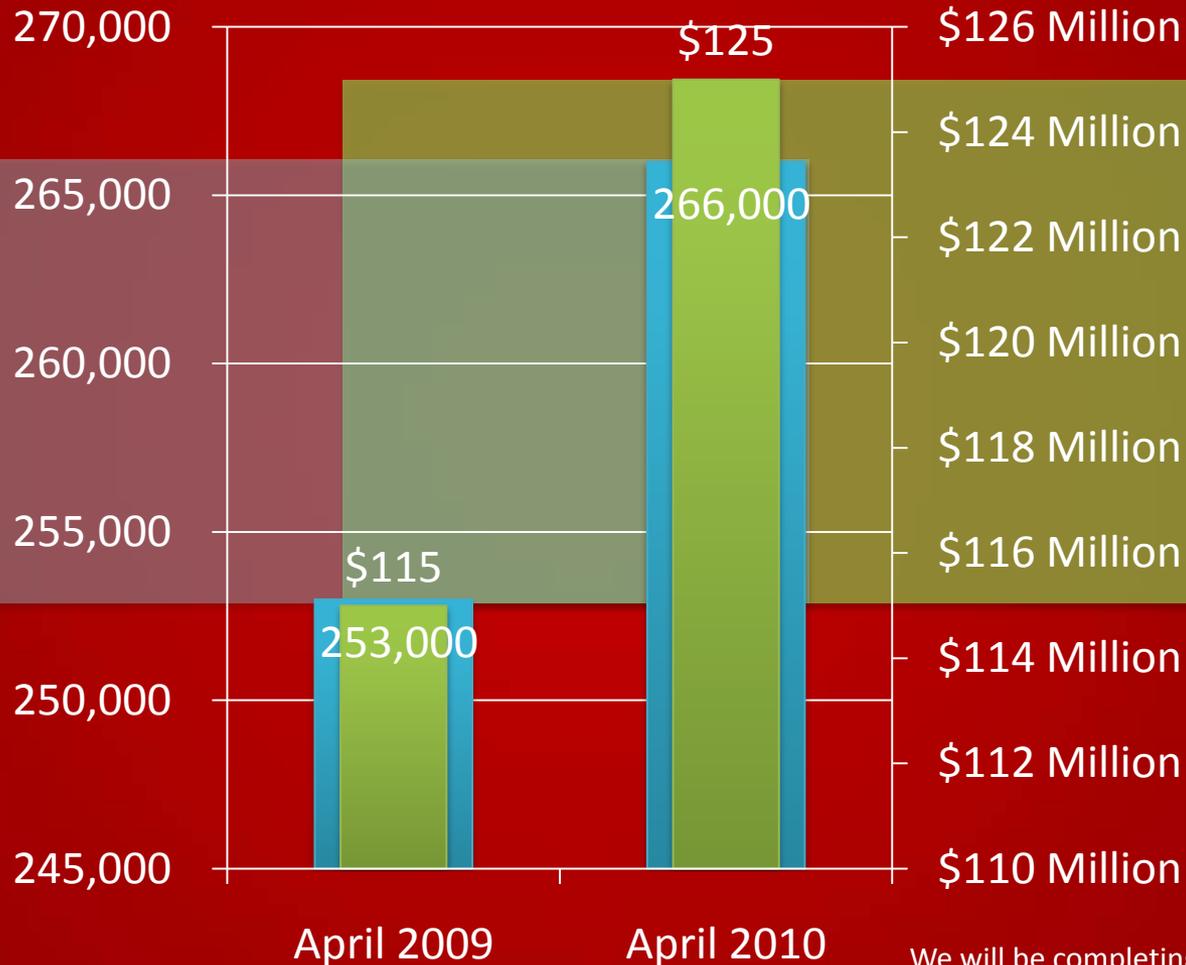
Average Bottle Price by Destination

12 Months April 2009 to March 2010



Year-to-Year Shipments

4.9%
Increase in
Cases Shipped



8.9%
Increase in
Shipped Value

We will be completing year over year comparisons as monthly shipment data becomes available.

Cases **Value**

What the Data Says

- Top shipping months: October, November and March
- Top varietal by bottle price: Cabernet Sauvignon
- Small wineries ship the most cases
- Top varietals by volume are Cabernet, Pinot Noir and Chardonnay
- Napa leads regions in: Cases, dollars, bottle prices
- California takes the most shipments, then Texas
- New Yorkers pay the most per bottle
- DtC shipments grew 8.9% by value in April

...in closing

We would enjoy discussing your specific areas of interest off line this afternoon.

Thank you.

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APPENDIX 2

SURVEY QUESTIONS - DIRECT WINE SELLER'S PERMIT

1. Survey question:

Are you aware that a Direct Wine Seller's Permit issued by the Comptroller allows an out-of-state winery to sell wine online to a Maryland consumer that is shipped through a Maryland wholesaler to a retail store for consumer pick-up?

	<u>% Yes</u>	<u>% No</u>	<u>% Response Rate</u>
<u>In-state Licensees:</u>			
1. Maryland Wineries	82.4	17.6	81.0
2. Maryland Wholesalers	87.1	12.9	79.5
3. Maryland Retailers	58.8	41.2	66.6

Other Respondents:

4. Maryland Liquor Boards	87.5	12.5	80.0
5. Nonresident Wineries	69.2	30.8	65.0
6. Maryland Consumers "A"	41.5	58.5	95.6
7. Maryland Consumers "B"	45.4	54.6	94.5

2. Survey question:

Please estimate how many times you have informed a customer that wine may be shipped through the use of a Direct Wine Seller's Permit by an out-of-state winery through a Maryland wholesaler to a retail store for pick-up.

	<u>%0</u>	<u>%1-5</u>	<u>%6-10</u>	<u>%11-15</u>	<u>%Do not know</u>
1. Maryland Wineries (Response Rate - 85.7%)	55.6	22.2	0	11.1	11.1
2. Maryland Liquor Boards: (Response Rate - 70.0%)					
-Informed Consumer	57.1	42.9	0	0	0
-Informed Licensee	85.7	0	0	0	14.3
3. Nonresident Wineries: (Response Rate: 60%)	50.0	16.7	16.7	8.3	8.3

3. Survey question:

How many times have you delivered wine from an out-of-state winery through the use of a Direct Wine Seller's Permit? (paraphrase of question)

	<u>%0</u>	<u>%1-5</u>	<u>%6-10</u>	<u>%11-15</u>	<u>%Do not know</u>
1. Maryland Wholesalers (Response Rate - 77.0%)	96.7	0	0	3.3	0
2. Maryland Retailers (Response Rate - 66.6%)	77.1	11.4	2.9	2.9	5.7

4. Survey question:

Have you done the following to purchase wine through the use of a Direct Wine Seller's Permit?

	<u>Maryland Consumers "A"</u> <u>(Response Rate - 38.5%)</u>	<u>Maryland Consumers "B"</u> <u>(Response Rate - 34.9%)</u>
Contacted Out-of-State Winery	9.6	13.9
Made Request at a Maryland Retailer	12.7	16.9
Both	8.4	10.5
Neither	69.3	58.8

5. Survey question:

Have you successfully purchased wine through the use of a Direct Wine Seller's Permit?

	<u>% Yes</u>	<u>% No</u>
Maryland Consumers "A" (Response Rate: 38.2%)	6.0	94.0
Maryland Consumers "B" (Response Rate: 39.8%)	6.5	93.5
<u>Maryland Consumers:</u>	<u>%Mean: 6.2</u>	<u>%Mean: 93.8</u>

6. Survey question:

What problems have you encountered when trying to use the Direct Wine Seller's Permit?

<u>Type of Problem:</u>	<u>%Hassle</u>	<u>% Winery</u>	<u>% Retailer</u>	<u>% Price</u>
Maryland Consumers "A" (Response Rate: 18.1%)	59.7	22.3	8.6	9.4

The categories of the types of problems are based on comments by respondents in the survey.

Note:

Maryland Consumers "A" are a random sample of consumers at-large

Maryland Consumers "B" are a random sample of consumers affiliated with the trade association,

Marylanders for Better Beer & Wine Laws

APPENDIX 3

SUMMARY OF LEGISLATIVE TESTIMONY

Direct Wine Shipper's License Bills

Senate Bill 616 (2008)

Support:

- (1) Zero Link Markets, Inc., d/b/a VinoShipper.com - Windsor, California -

This internet-based wine retailer ships from 27 states to 19 states. According to Kathleen Hoertkorn, President and CEO of New Vine Logistics, direct-to-consumer wine market is growing three times faster than rest of industry. Consumer direct sales ("CDS") is up 30% in the 1st quarter 2007 compared to 1st quarter 2006, and between 2005 and 2006 there has been an increase of 27.6%. The market size exceeds \$1 billion.

This online retailer buys wine, he sends email to winery, who packs wine and sends it to him via UPS pickup, and then he sends to customer. He ships to AK, CA, DC, FL, ID, LA, MO, NE, NH, NM, NV, ND, OR, VA, WV, WY. His business started in January 2008. He represents over 260 wineries, and help wineries sell direct.

Direct wine shipment is good for the state, wine industry, and consumers. This retailer cannot sell wines produced by Maryland wineries to residents of Maryland and other states. Maryland wineries benefit from residual sales related to visiting California wineries.

Underage access can be addressed by IDology, Inc., an age verification system used by Michigan. It requires second age verification confirmation. This retailer contracts with UPS, who uses label and age verification at delivery. Few people purchase 2 or more cases a month. Monthly reporting is good. In the 1950s, there were 5,000 wine wholesalers, now there are less than 500. Statistic cited from Inertia Beverage Group: In 2005, there were online sales of 250 brands, and 93% of wines sold online are priced at \$20 a bottle or more. In 2009, the bottle price is \$25 for direct ship consumers.

Three-tier vs. direct sale. With three-tier, retailer markup is 50% with cost of \$16.67, and wholesaler markup of 30% with cost of \$12.82, so net to winery is \$12.82. With direct sale, no wholesaler or retailer markup, so all \$25.00 paid to winery.

- (2) Retailer - DiWine Spirits, Pikesville, Maryland - Class A Licensee - Customers on a daily basis request shipment of wines in Maryland and out-of-state. Limit availability of kosher wine by carrying only major brands.

Oppose:

(1) Baltimore County Liquor Board - Cannot impose sanction if sale to minors occurs. Retailers have alcohol awareness training. Couriers do not have this training.

(2) Kids First Coalition - Fairfax, Virginia - Need face-to-face. Safe distribution method. Tax revenue, consumers,

No position:

(1) Federal Express - Do not support or oppose, provide information. Shipments required Special Delivery Instruction label: package contains alcohol, adult signature and FedEx courier required to check ID, 21 years old, not deliver intoxicated person, no signature release, courier release or indirect delivery is allowed, shipper certifies the shipment complies with FedEx requirements, and applicable laws. Copy of FedEx Alcoholic Shipping Agreement

Senate Bill 338 (2009)

Support:

(1) United Parcel Service, Timmy Nelson - United States and over 200 countries. In 2007, worldwide 4 billion packages; daily volume of 16 million packages. UPS wine shipments in over 30 states. Wine shipping program, accepts packages of wine on a contract-only basis. Shipper must first sign UPS wine shipping agreement so comply all states laws. Must use UPS Delivery Confirmation Adult Signature Required Service – over 21.

(2) Specialty Wine Retailers Association (SWRA) - group of retailers and consumers nationwide advocate fair and well-regulated direct shipping of wine.

(3) Public - Identical letters - 14 - same language. Wine clubs. Wine Library in Springfield, New Jersey. Consumer on Wine and Grape Advisory Committee - traveling to California, New Mexico, Canada, France, and Greece. France would ship, Customs allowed few cases of Canadian wine over border. In CA, no ship.

Oppose:

(1) Wholesale, Retail, Associations of Maryland - The Alliance of Alcohol Beverage Trade Associations. Underage drinking. NBC Nightly News with Brian Williams - Lea Thompson - 2006 report: two packages delivered to state where illegal, one to 15-year old who was standing in front yard, and only one came marked as alcohol. No indicate one had wine and another grain alcohol. Need face-to-face

transactions. 7,000 retailers selling 15,000 different types of wine. Report issued Wine and Spirits Wholesalers of America – one in ten teenagers ordered alcohol over internet.

(2) University of Maryland, Office of Governmental Relations - Amend bill to prohibit delivery to a residence hall operated by institution of higher education, because do not distinguish ages of students.

Senate Bill 616 (2008) & Senate Bill 338 (2009)

Support:

(1) Cato Institute, Director of Government Affairs - Identical testimony. Does not mention direct wine seller's permit. He states that, "As of 1999, Maryland law makes it a felony to bypass the three-tier system." Benefits: consumer choice, refers to Wiseman and Ellig 2004 study. Maryland Wine and Grape Advisory Committee recommended direct wine shipment in its 2005 report. No significant increase underage drinking. Refers to FTC Report and Justice Kennedy in Granholm, p. 27 and 28 about ways to prevent underage access, e.g., adult signature and label. National Institute on Drug Abuse found that in 2006, 63% of the 8th graders, 83% of 10th graders, and 93% of 12th graders said alcohol fairly easy or very easy to get. Justice Kennedy said tax collection issue resolves by requiring permit. Recommends direct shipment of beer; allow retailer to receive direct shipment from winery, and abolish three-tier distribution.

(2) WineAmerica - Essentially same testimony. National Association of American Wineries – 800 member wineries from 48 states. More than 5,500 wineries in America, expanded five fold past 25 years. Wineries produce more than 50,000 labels. Majority of wineries are small, farm-based, family-run enterprises. More than 70% of wineries produce fewer than 10,000 cases annually and more than 4/5 produce fewer than 25,000 cases annually. A small winery employs 5-10 people and annual sales between \$200,000 and \$1.5 million.

(3) Marylanders for Better Beer & Wine Laws - This organization was incorporated in December 2005. 2,000+ members. Top priority direct wine shipment. Consumer choice, convenience and freedom. Maryland wineries will increase sales, and retailers. Maryland wines not available at retail stores. Not hurt wholesalers or retailers. Direct wine seller permit does not work – too cumbersome, costly and not profitable for wineries. 2009 - Virginia statistics. Increased wine consumption in Virginia 7.2% FY2006-FY2007 and 2.2% FY2007-FY2008. Gift giving, complement three-tier.

(4) Maryland Wineries Association - Encourage growth small wineries. Recommendation #23 in Maryland Wine report: direct ship. Bill based on model legislation ratified by National Conference of State Legislatures, national trade group of wineries, WineAmerica, Wine Institute, and Specialty Wine Retailers Association, UPS, FedEx.

(5) Montgomery County Chamber of Commerce - identical language. Positive impact on Maryland economy: increased revenue to State via fees and taxes, increased business Maryland wineries and retailers, profits for businesses in e-commerce. Virginia, West Virginia, and D.C. have it.

(6) Wine Institute - Non-profit trade association represent over 1,100 CA wineries, who manufacture 90% of all wine produced in U.S. More than 80% adult population lives in state with direct wine sales. Refers to VA law and NH law. Unaware of any winery sale to minors. Occasional failure to file reports, pay taxes, and exceed quantity limits. One delivery in NH where driver left package without adult signature. FedEx paid fine, 3-day suspension and driver fired. Cited violations in VA. Robert Wood Johnson Foundation awarded \$400,000 over 3 years to UNC Chapel Hill professor to study this issue.

(7) Public - Thomas Mc Quighan, Gaithersburg, MD - essentially same testimony. \$20-\$30 American red wine. Travel to CA and WA - Pinot Noirs and Red Zinfandels from small wineries not available in Maryland. In 2009, critical of direct wine seller's permit.

Others - small wineries, gifts, visit VA wineries and in 8 states, including Canada.

Senate Bill SB 566 (2010)

Support:

(1) Public - Tanisha R. Townsend, Suitland, Maryland - Consumer who is frustrated that the state in which she resides and pays taxes is preventing her from accessing wine of her choice. Questions why Maryland wineries can ship to Virginia and D.C. but not directly to her, a Maryland resident. Feels that Maryland is progressive but clearly behind the times with regard to this issue.

(2) Public - James E. French, Frederick, Maryland - Consumer who is frustrated that the State of Maryland is preventing him from accessing wines of his choice. Would like to be able to order wine through direct shipment. Believes there are economic benefits of this legislation.

(3) Public - Steven J. Prior, Eldersburg, Maryland - Consumer who is frustrated that the State of Maryland is preventing him from accessing wines produced in other states, but also Maryland wines. Feels it is disheartening that Maryland wineries cannot ship within their own state. Wants to join wine clubs and purchase select wine but is prevented from doing so by current Maryland law. Feels that underage drinking is not an issue.

(4) Public - Paul A. Hoffstein, Eastport, Maryland - Consumer who is frustrated that the State of Maryland is prohibiting him from having wine shipped directly to his home. Wants to be able to have wine from California and Maryland wineries shipped directly to his home. Feels this bill is pro-small business and pro-consumer.

(5) Garret Peck, Author of *The Prohibition Hangover: Alcohol in America from Demon Rum to Cult Cabernet* - The author has studied this issue for years and supports the effort to open the wine market to direct ship. Feels that direct shipment represents no threat to the three-tier system. Believes that most states recognize that three-tier and direct ship can co-exist. Maryland should allow direct ship because it is what Maryland consumers want.

(6) Tom Wark, Executive Director, Specialty Wine Retailers Association (SWRA) - Supports the bill because it will give Marylanders access to products they cannot currently obtain. Feels the bill also keeps in place Maryland's long-established three-tier system.

Senate Bill 616 (2008), Senate Bill 338 (2009) & Senate Bill 566 (2010)

Support:

(1) Public - Tom McQuighan, Gaithersburg, Maryland - Has testified five times in favor of direct shipping. He has tried to use the existing direct shipping system and feels it is a completely dysfunctional piece of legislation. He has had difficulty with wholesalers and distributors, believes it is not a priority to them.

House Bill 716 (2010)

Support:

(1) Terri Cofer Beirne, Eastern Counsel, Wine Institute- Economic impact of direct wine shipments in Virginia - Adding together the actual or estimated sales, license and excise tax revenue, Virginia's direct wine and beer shipper licensees contributed \$2,419,286 to the Commonwealth in FY2008. Maryland has a smaller population, fewer in-state wineries than Virginia, a \$0.40/gallon excise tax and a 6% sales tax, but the Virginia program may provide some indication about the efficacy of a

Maryland direct shipper program. Revenue could translate to similar benefits in Maryland. As to the concern of underage access via wine shipments, Wine Institute knows of no winery cited by a government enforcement operation for sales to minors.

(2) Cindy Schwartz, Executive Director, Maryland League of Conservation Voters - Supports sustainable farming practices and will protect and preserve Maryland's open space.

(3) Tom Wark, Executive Director, Specialty Wine Retailers Association (SWRA) - Supports the bill because it will give Marylanders access to products they cannot currently obtain. Feels the bill also keeps in place Maryland's long-established three-tier system.

(4) Gigi Godwin, President and CEO, Montgomery County Chamber of Commerce - Feels it will have several positive impacts on the Maryland economy including increased revenues and increased business for Maryland wineries and retailers.

(5) Cary M. Greene, Vice President and General Counsel, WineAmerica - Maryland's 42 wineries and 15 wineries in development are small, family operations. These businesses are keeping small farms viable, and though agri-tourism are building a new model for rural economic growth. Believes that smaller brands are not likely to find distribution through traditional three-tier channels. By allowing wineries in New York, New Jersey, Pennsylvania, Delaware, Virginia, North Carolina, West Virginia, and Ohio to ship to Maryland consumers, the state would be opening its borders to many of these products for the first time. Maryland wineries would also benefit by being able to capture lost sales that often result from consumers aiming to buy local, but unable to find their favorite Maryland wines on local store shelves.

(6) Guido Adelfio, Owner of a custom boutique travel planning firm in Bethesda, Maryland - They have a higher-end clientele. A shipped case of 12 bottles takes 4-6 weeks and cost starts at around \$600 and can go into thousands, which translates to \$50-\$350 or more per bottle. Doubts the underage drinker will want to spend that on a bottle of wine. Admits that none of his 450 bottles of wine were purchased in Maryland, most were purchased in the District of Columbia. Therefore, Maryland has lost revenue.

(7) Public - Tom McQuighan, Gaithersburg, Maryland - Has testified five times in favor of direct shipping. He has tried to use the existing direct shipping system and feels it is a completely dysfunctional piece of legislation. He has had difficulty with wholesalers and distributors, believes it is not a priority to them.

(8) Public - John "Mike" Hales, Bowie, Maryland - Consumer who is frustrated that the State of Maryland is preventing him from accessing wines produced in other states, but also Maryland and Virginia wines.

(9) Public - Jennifer M. Thayer, Annapolis, Maryland - Feels that this bill has the potential to create a much needed new revenue source for the State. Ms. Thayer was asked to participate in a number of "wine clubs" but Maryland's law prevents her from purchasing many of my favorite wines. States she will not be using direct shipment for everyday consumption but will continue to purchase wine from local liquor stores.

(10) Public - Mike Burrows, Silver Spring, Maryland - Business took him to California where he enjoyed many wines. Unfortunately, Maryland law deprives him of having those wines shipped to his home. Visits many Maryland wineries and does not want to drive hours for another case of wine which he should be able to direct ship. Attends wine tastings in D.C. and Virginia and finds these wines unavailable in Maryland.

(11) Public - James E. French, Frederick, Maryland - Consumer who is frustrated that the State of Maryland is preventing him from accessing wines of his choice. Would like to be able to order wine through direct shipment. Believes there are economic benefits of this legislation.

(12) Public - Steven J. Prior, Eldersburg, Maryland - Consumer who is frustrated that the State of Maryland is preventing him from accessing wines produced in other states, but also Maryland wines. Feels it is disheartening that Maryland wineries cannot ship within their own state. Wants to join wine clubs and purchase select wine but is prevented from doing so by current Maryland law. Feels that underage drinking is not an issue.

(13) Public - Tanisha R. Townsend, Suitland, Maryland - Consumer who is frustrated that the state in which she resides and pays taxes is preventing her from accessing wine of her choice. Questions why Maryland wineries can ship to Virginia and D.C. but not directly to her, a Maryland resident. Feels that Maryland is progressive but clearly behind the times with regard to this issue.

(14) Public - Paul A. Hoffstein, Eastport, Maryland - Consumer who is frustrated that the State of Maryland is prohibiting him from having wine shipped directly to his home. Wants to be able to have wine from California and Maryland wineries shipped directly to his home. Feels this bill is pro-small business and pro-consumer.

(15) Garret Peck, Author of *The Prohibition Hangover: Alcohol in America from Demon Rum to Cult Cabernet* - The author has studied this issue for years and supports the effort to open the wine market to direct ship. Feels that direct shipment represents no threat to the three-tier system. Believes that most states recognize that three-tier and direct ship can co-exist. Maryland should allow direct ship because it is what Maryland consumers want.

(16) Gregory F. Birney, Owner, Cherry Hill Liquors, Elkton, Maryland - Cecil County retailer who specializes in Maryland produced wines and regularly has customers travel great distances to his wine shop in order to obtain hard to find wines. He has had requests to ship these wines directly to consumers. Feels shipping of wine to consumer will complement the three-tier system. Believes Maryland wine consumers deserve convenient access to the wines they desire. Wine retailers deserve to offer better customer service by using direct shipment.

Oppose:

(1) Michele Simon, Research and Policy Director, Marin Institute - One of their primary issues of concern is youth access to alcohol and underage drinking. They feel it would erode the critical three-tier system of alcohol distribution. Maintaining the integrity of the three-tier system is necessary for ensuring the health and safety of the public.

(2) John A. Deitz, Republic National Distributing Company, Kevin P. Dunn and James M. Smith, Reliable Churchill - Members of the Licensed Beverage Distributors of Maryland, Inc. who believe that the bill would undercut Maryland business, eliminate jobs for Maryland, weaken Maryland's regulatory control of alcoholic beverages, and facilitate underage drinking simply to provide a convenience. Feel that any sale over the Internet is one less sale for a Maryland business. Reduced sales means reduced work on many levels. Direct ship is a direct hit on Maryland's control and monitoring of alcoholic beverages. Increases access to alcoholic beverages for minors.

APPENDIX 4

2006 LEGISLATIVE SESSION

House Bill 625

House Bill 625 was introduced by Delegates Petzold, Haddaway, King, Mandel, and Vallario during the 2006 legislative session. A hearing was held on March 6, 2006. House Bill 625 received an unfavorable report by the House Economic Matters Committee by a vote of 17-4.

As stated above, this bill was the first introduced in the Maryland General Assembly. House Bill 625 followed the Model Direct Wine Shipment Bill ("Model Bill") by requiring:

1. Direct wine shipper's license;
2. \$100 annual license fee;
3. Quantity limit of 24 9-liter cases of wine annually to each consumer, although House Bill 625 uses the language of 24 bottles monthly, 24 9-liter cases of wine annually and 24 bottles monthly both equal the same total of 288 bottles per consumer per year;
4. Prohibition on shipping to "dry" or "local option" areas;
5. Shipping label requirement stating: CONTAINS ALCOHOL: SIGNATURE OF PERSON AGE 21 OR OLDER REQUIRED FOR DELIVERY";
6. Shipping to consumer 21 years of age for personal consumption and not for resale;
7. Annual filing of tax reports and payment of alcoholic beverages tax and sales tax;
8. Comptroller authorization to perform audits of direct wine shipper licensee's records;
9. Direct wine shipper licensee consent to the jurisdiction of Comptroller or any other state agency and Maryland courts concerning enforcement, and related laws;
10. Authority given to Comptroller to promulgate rules and regulations;

House Bill 625 differed from the Model Bill in the following respects:

1. Renewal fee in the amount of \$100 rather than \$50 as in Model Bill;
2. Applicants for direct wine shipper license limited to in-state and out-of-state wine manufacturers or importers rather than also including wholesalers, distributors, or retailers as in Model Bill;
3. Consent to jurisdiction of Comptroller and Maryland courts concerning enforcement, includes related laws, but does not refer to regulations as in Model Bill;
4. Criminal sanction for violation of direct wine shipment law is a felony rather than a misdemeanor as in Model Bill.

By: **Delegates Petzold, Haddaway, King, Mandel, and Vallario**

Introduced and read first time: February 2, 2006

Assigned to: Economic Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Alcoholic Beverages - Direct Wine Shipper's License**

3 FOR the purpose of repealing provisions that provided for a direct wine seller's
4 permit; establishing a direct wine shipper's license to be issued by the Office of
5 the Comptroller to certain persons in or outside of the State; requiring a person
6 to be licensed before the person may engage in shipping wine directly to a
7 resident in the State; requiring a direct wine shipper to perform certain actions;
8 prohibiting a direct wine shipper from performing certain actions; providing for
9 the qualifications and requirements of license applicants; providing for the fee
10 and renewal of a license; specifying certain requirements and conditions to
11 receive a direct shipment of wine; authorizing the Office of the Comptroller to
12 adopt certain regulations; prohibiting a person without a license from shipping
13 wine directly to consumers in the State; providing a certain penalty; defining
14 certain terms; altering certain definitions; and generally relating to the
15 establishment of a direct wine shipper's license.

16 BY repealing

17 Article 2B - Alcoholic Beverages
18 Section 7.5-101 through 7.5-110, inclusive, and the title "Title 7.5. Direct Wine
19 Seller's Permit"
20 Annotated Code of Maryland
21 (2005 Replacement Volume)

22 BY repealing and reenacting, with amendments,

23 Article 2B - Alcoholic Beverages
24 Section 2-101(b)(1)(i)
25 Annotated Code of Maryland
26 (2005 Replacement Volume)

27 BY adding to

28 Article 2B - Alcoholic Beverages
29 Section 7.5-101 through 7.5-110, inclusive, to be under the new title "Title 7.5.
30 Direct Wine Shipper's License"
31 Annotated Code of Maryland

1 (2005 Replacement Volume)

2 BY repealing and reenacting, without amendments,
3 Article - Tax - General
4 Section 5-101(a)
5 Annotated Code of Maryland
6 (2004 Replacement Volume and 2005 Supplement)

7 BY repealing and reenacting, with amendments,
8 Article - Tax - General
9 Section 5-101(f) and 5-201(d)
10 Annotated Code of Maryland
11 (2004 Replacement Volume and 2005 Supplement)

12 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
13 MARYLAND, That Section(s) 7.5-101 through 7.5-110, inclusive, and the title "Title
14 7.5. Direct Wine Seller's Permit" of Article 2B - Alcoholic Beverages of the Annotated
15 Code of Maryland be repealed.

16 SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland
17 read as follows:

18 **Article 2B - Alcoholic Beverages**

19 2-101.

20 (b) (1) (i) The Office of the Comptroller shall collect a fee for the issuance
21 or renewal of the following permits:

22 1. \$50 for a solicitor's permit, an individual storage permit,
23 or a commercial nonbeverage permit;

24 2. \$75 for a public storage permit, a public transportation
25 permit, or an import and export permit;

26 3. \$100 for a public storage and transportation permit, a
27 nonresident dealer permit, or a bulk transfer permit;

28 4. \$400 for a family beer and wine facility permit; and

29 5. [\$10] \$100 for a direct wine [seller's permit] SHIPPER'S
30 LICENSE.

31 TITLE 7.5. DIRECT WINE SHIPPER'S LICENSE.

32 7.5-101.

33 (A) IN THIS TITLE THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

1 (B) "DIRECT WINE SHIPPER" MEANS THE HOLDER OF A DIRECT WINE
2 SHIPPER'S LICENSE ISSUED UNDER THIS TITLE.

3 (C) "LICENSE" MEANS A DIRECT WINE SHIPPER'S LICENSE ISSUED BY THE
4 OFFICE OF THE COMPTROLLER.

5 (D) "WINE" INCLUDES BRANDY THAT IS DISTILLED FROM THE PULPY RESIDUE
6 OF THE WINE PRESS, INCLUDING THE SKINS, PIPS, AND STALKS OF GRAPES.

7 7.5-102.

8 A PERSON SHALL BE LICENSED BY THE OFFICE OF THE COMPTROLLER AS A
9 DIRECT WINE SHIPPER BEFORE THE PERSON MAY ENGAGE IN SHIPPING WINE
10 DIRECTLY TO A RESIDENT IN THE STATE.

11 7.5-103.

12 TO QUALIFY FOR A LICENSE, AN APPLICANT SHALL BE:

13 (1) A PERSON LICENSED OUTSIDE OF THE STATE TO ENGAGE IN THE
14 MANUFACTURE OF WINE;

15 (2) AN AUTHORIZED BRAND OWNER OF WINE, A UNITED STATES
16 IMPORTER OF WINE, OR A DESIGNATED MARYLAND AGENT OF A BRAND OWNER OR
17 UNITED STATES IMPORTER; OR

18 (3) A HOLDER OF A CLASS 3 MANUFACTURER'S LICENSE OR A CLASS 4
19 MANUFACTURER'S LICENSE ISSUED UNDER THIS ARTICLE.

20 7.5-104.

21 (A) AN APPLICANT FOR A LICENSE SHALL:

22 (1) SUBMIT TO THE OFFICE OF THE COMPTROLLER A COMPLETED
23 APPLICATION ON A FORM THAT THE OFFICE OF THE COMPTROLLER PROVIDES; AND

24 (2) PAY A FEE OF \$100.

25 (B) THE OFFICE OF THE COMPTROLLER SHALL ISSUE A LICENSE TO EACH
26 APPLICANT WHO MEETS THE REQUIREMENTS OF THIS TITLE FOR A LICENSE.

27 7.5-105.

28 (A) A DIRECT WINE SHIPPER SHALL:

29 (1) ENSURE THAT ALL CONTAINERS OF WINE SHIPPED DIRECTLY TO A
30 RESIDENT IN THE STATE ARE CONSPICUOUSLY LABELED WITH THE WORDS
31 "CONTAINS ALCOHOL; SIGNATURE OF PERSON AGE 21 OR OLDER REQUIRED FOR
32 DELIVERY";

1 (2) REPORT TO THE OFFICE OF THE COMPTROLLER ANNUALLY THE
2 TOTAL OF WINE, BY TYPE, SHIPPED IN THE STATE THE PRECEDING CALENDAR YEAR;

3 (3) PAY ANNUALLY TO THE OFFICE OF THE COMPTROLLER ALL SALES
4 TAXES AND EXCISE TAXES DUE ON SALES TO RESIDENTS OF THE STATE IN THE
5 PRECEDING CALENDAR YEAR, THE AMOUNT OF THE TAXES TO BE CALCULATED AS IF
6 THE SALE WERE MADE AT THE DELIVERY LOCATION;

7 (4) ALLOW THE OFFICE OF THE COMPTROLLER TO PERFORM AN AUDIT
8 OF THE DIRECT WINE SHIPPER'S RECORDS ON REQUEST; AND

9 (5) CONSENT TO THE JURISDICTION OF THE OFFICE OF THE
10 COMPTROLLER OR OTHER STATE UNIT AND THE STATE COURTS CONCERNING
11 ENFORCEMENT OF THIS SECTION AND ANY RELATED LAW.

12 (B) A DIRECT WINE SHIPPER MAY NOT:

13 (1) SHIP MORE THAN 24 BOTTLES PER MONTH TO ANY ONE INDIVIDUAL;
14 OR

15 (2) SHIP WINE TO AN ADDRESS IN AN AREA IN WHICH THE BOARD OF
16 LICENSE COMMISSIONERS FOR THAT AREA DECLARES THAT SHIPMENTS UNDER
17 THIS TITLE ARE PROHIBITED.

18 7.5-106.

19 (A) A DIRECT WINE SHIPPER MAY ANNUALLY RENEW ITS LICENSE, IF THE
20 DIRECT WINE SHIPPER:

21 (1) IS OTHERWISE ENTITLED TO BE LICENSED; AND

22 (2) PAYS TO THE OFFICE OF THE COMPTROLLER A RENEWAL FEE OF
23 \$100.

24 7.5-107.

25 (A) TO RECEIVE A DIRECT SHIPMENT OF WINE, A RESIDENT OF THE STATE
26 MUST BE AT LEAST 21 YEARS OF AGE.

27 (B) A SHIPMENT OF WINE MAY BE ORDERED OR PURCHASED THROUGH A
28 COMPUTER NETWORK.

29 (C) A PERSON WHO RECEIVES A SHIPMENT OF WINE SHALL USE THE
30 SHIPMENT FOR PERSONAL CONSUMPTION ONLY AND MAY NOT RESELL IT.

31 7.5-108.

32 THE OFFICE OF THE COMPTROLLER MAY ADOPT REGULATIONS TO CARRY OUT
33 THIS TITLE.

1 7.5-109.

2 A PERSON WITHOUT A LICENSE MAY NOT SHIP WINE DIRECTLY TO CONSUMERS
3 IN THE STATE.

4 7.5-110.

5 A PERSON WHO VIOLATES THIS TITLE IS GUILTY OF A FELONY AND ON
6 CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 2 YEARS OR A FINE
7 NOT EXCEEDING \$1,000 OR BOTH.

8

Article - Tax - General

9 5-101.

10 (a) In this title the following words have the meanings indicated.

11 (f) "Direct wine [seller] SHIPPER" has the meaning stated in Article 2B, §
12 7.5-101 of the Code.

13 5-201.

14 (d) (1) A person who is a direct wine [seller] SHIPPER shall file with the
15 Office of the Comptroller an annual tax return.

16 (2) The annual tax return shall be due no later than October 15 of each
17 year covering the previous 12 calendar months ending September 30.

18 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
19 July 1, 2006.

Department of Legislative Services
Maryland General Assembly
2006 Session

FISCAL AND POLICY NOTE

House Bill 625
Economic Matters

(Delegate Petzold, *et al.*)

Alcoholic Beverages - Direct Wine Shipper's License

This bill repeals the ability of the Comptroller's Office to issue a direct wine seller's permit and authorizes it to issue a Direct Wine Shipper's License. The annual license fee is \$100.

The bill takes effect July 1, 2006.

Fiscal Summary

State Effect: State annual license fee revenues would increase by \$300 for each new license issued and by \$130 for each license renewed. Potential increase in excise and sales taxes from a potential increase in wine sales. Expenses associated with auditing out-of-state wineries could increase.

Local Effect: None.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: For the purposes of the bill, wine includes brandy that is distilled from the pulpy residue of the wine press, including the skins, pips, and stalks of grapes. The bill requires that a person must be licensed as a direct wine shipper by the Comptroller's Office before the person may engage in shipping wine directly to a resident in the State.

To qualify for a direct wine shipper's license, the applicant must be (1) a person licensed outside of the State to engage in the manufacture of wine; (2) an authorized brand owner

of wine, a U.S. importer of wine, or a designated Maryland agent of a brand owner or U.S. importer; or (3) a holder of a State issued Class 3 manufacturer's (winery) license or a Class 4 manufacturer's (limited winery) license.

The direct wine shipper must (1) ensure that all containers of wine shipped directly to a State resident are conspicuously labeled "contains alcohol; signature of person age 21 or older required for delivery;" (2) annually report to the Comptroller's Office the total of wine, by type, shipped in the State the preceding calendar year; (3) annually pay to the Comptroller's Office all sales and excise taxes due on sales to residents of the State in the preceding calendar year; (4) allow the Comptroller's Office to audit the direct wine shipper's records upon request; and (5) consent to the jurisdiction of the Comptroller's Office or other State unit and the State courts concerning enforcement of this section and any related law. A direct wine shipper is prohibited from shipping more than 24 bottles per month to any one individual or shipping to an address in an area in which the board of license commissioners for that area declares that these shipments are prohibited.

To receive a direct shipment of wine, a State resident must be 21 years old. In addition, the bill stipulates that a wine shipment may be ordered or purchased through a computer network. A person who receives a wine shipment can only use it for personal consumption and not resell it.

A person who violates the laws associated with a direct wine shipper's license would be guilty of a felony and subject to imprisonment of up to two years, a fine of up to \$1,000, or both.

Current Law: The Comptroller's Office is authorized to issue a direct wine seller's permit, for an annual fee of \$10. A direct wine seller's permit is issued to a person or entity that (1) is domiciled outside of the State; (2) is engaged in the manufacture of wine, or is the brand owner, U.S. importer, or designated Maryland agent of the brand owner or U.S. importer of wine sold under this authority; (3) holds and acts within the scope of any alcoholic beverages license or permit required in the state where the applicant is domiciled or by the federal Bureau of Alcohol, Tobacco, and Firearms; and (4) does not hold any alcoholic beverages license or permit issued by the State, and is not owned, as a whole or in part, by another person or entity that holds another alcoholic beverages license or permit issued by the State or one of its political subdivisions within two years before the application.

A direct wine seller's permit authorizes a direct wine seller to sell wine to a personal consumer by receiving and filling orders that the personal consumer transmits by electronic or other means. A direct wine seller, however, may not sell a brand of wine in the State that (1) is distributed in the State by a wholesaler licensed in the State; or (2) was distributed in the State within two years before the application for the direct wine

seller's permit is filed. During a permit year (November 1 – October 31), a direct wine seller may not sell in the State more than 900 liters of wine or more than 108 liters to a single personal consumer. A direct wine seller is required to file an annual tax return.

Wine shipped to a personal consumer must be shipped to a wholesaler licensed in the State that is designated by the Alcohol and Tobacco Tax Bureau, and then delivered by the wholesaler to a retail dealer. The wholesaler and retail dealer are solely facilitators in the shipping process and do not have title to the wine. The personal consumer must take personal delivery of the shipment at the licensed premises of the retail dealer promptly upon receiving notice from the dealer. The wholesaler may impose a service charge at a rate of \$2 per bottle but no more than \$4 per shipment, and the retail dealer may impose a service charge of \$5 per bottle but no more than \$10 per shipment when the consumer takes delivery.

Background: According to its *Alcohol and Tobacco Tax Annual Report*, the Comptroller's Office reports that it issued one direct wine seller's permit in fiscal 2005. The Comptroller's Office advises that it charges a \$200 application fee for new alcoholic beverages licenses it issues and a \$30 application fee for each license it renews.

State Fiscal Effect: To the extent that the Comptroller's Office issues Direct Wine Shipper's Licenses, State annual license fee revenues would increase by \$300 for each new license issued, including the \$100 license fee and a \$200 one-time application fee. For each license renewed, revenues would increase by \$130, including the \$100 license fee and a \$30 renewal application fee. If there is an increase in wine sales as a result of issuing Direct Wine Shipper's Licenses, State excise and sales tax revenues could increase. The increase in taxes cannot be reliably quantified at this time, as it would depend on the increase in wine sales, if any, resulting from the bill.

Repealing the authority of the Comptroller's Office to issue direct wine seller's permits would cause annual revenues from the issuance of these permits to decrease by \$10 for each permit no longer issued.

To the extent that more out-of-state wineries obtain a Direct Wine Shipper's License than those who obtained a direct wine seller's permit, travel expenditures associated with auditing out-of-state wineries' records could increase. This increase in expenditures depends on the number of out-of-state wineries who obtain a Direct Wine Shipper's License, the location of the winery, as well as how often auditors from the Comptroller's Office would need to audit direct wine shippers' records.

Small Business Effect: To the extent that Direct Wine Shipper's Licenses are obtained by small businesses in Maryland, these small businesses could be positively impacted by

a potential increase in sales. To the extent that wine sales decrease at retail locations, these small businesses could be negatively impacted.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Comptroller's Office, Anne Arundel County, Garrett County, Montgomery County, Prince George's County, Department of Legislative Services

Fiscal Note History: First Reader - March 3, 2006
ncs/hlb

Analysis by: Joshua A. Watters

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APPENDIX 5

2008 LEGISLATIVE SESSION

Senate Bill 616

Senate Bill 616 was introduced by Senators Raskin, Astle, Forehand, Frosh, Garagiola, Gladden, Glassman, Jacobs, Kelley, King, Lenett, Madaleno, and Pugh.

A hearing was held on March 7, 2008. Senate Bill 616 received an unfavorable report by the Senate Education, Health & Environmental Matters Committee by a vote of 6-3.

House Bill 1260

House Bill 1260 was introduced by Delegates Hucker, Ali, Aumann, Bobo, Cardin, Carr, V. Clagett, Frick, Gilchrist, Haddaway, Kullen, McComas, Mizeur, Montgomery, Niemann, Ross, Sossi, Stein, Taylor, F. Turner, Vallario, and Waldstrieher.

The number of Delegates sponsoring the legislation increased from five (5) in 2006 to twenty-two (22) in 2008. A hearing was held on February 18, 2008. House Bill 1260 received an unfavorable report by the House Economic Matters Committee by a vote of 17-3.

Senate Bill 616 and House Bill 1260 were identical. The changes from House Bill 625 introduced in 2006 are as follows:

1. Scope of the applicants was expanded to include in-state and out-of-state retailers authorized to sell off-premise;
2. Quantity limit remained the same, but was defined on an annual basis as 24 9-liter cases per consumer consistent with the Model Bill, rather than on a monthly basis; and
3. Renewal fee was reduced from \$100 to \$50 consistent with the Model Bill.

The Comptroller of Maryland submitted the same written testimony to the Senate Education, Health & Environmental Matters Committee in support of Senate Bill 616, and to the House Economic Matters Committee in support of House Bill 1260 with comments about issues not addressed in the bill, such as a common carrier license, prohibition of multiple licenses, and the county dispensaries.

SENATE BILL 616

A1

8lr2315
CF 8lr2710

By: **Senators Raskin, Astle, Forehand, Frosh, Garagiola, Gladden, Glassman, Jacobs, Kelley, King, Lenett, Madaleno, and Pugh**
Introduced and read first time: February 1, 2008
Assigned to: Education, Health, and Environmental Affairs

A BILL ENTITLED

1 AN ACT concerning

2 **Alcoholic Beverages – Direct Wine Shipper’s License**

3 FOR the purpose of repealing provisions that provide for a direct wine seller’s permit;
4 establishing a direct wine shipper’s license to be issued by the Office of the
5 Comptroller to certain persons in or outside of the State; requiring a person to
6 be licensed before the person may engage in shipping wine directly to a resident
7 in the State; requiring a direct wine shipper to perform certain actions;
8 prohibiting a direct wine shipper from performing certain actions; providing for
9 the qualifications and requirements of license applicants; providing for the fee
10 and renewal of a license; specifying certain requirements and conditions to
11 receive a direct shipment of wine; authorizing the Office of the Comptroller to
12 adopt certain regulations; prohibiting a person without a license from shipping
13 wine directly to consumers in the State; providing a certain penalty; defining
14 certain terms; altering certain definitions; and generally relating to the
15 establishment of a direct wine shipper’s license.

16 BY repealing

17 Article 2B – Alcoholic Beverages
18 Section 7.5–101 through 7.5–110 and the title “Title 7.5. Direct Wine Seller’s
19 Permit”
20 Annotated Code of Maryland
21 (2005 Replacement Volume and 2007 Supplement)

22 BY repealing and reenacting, with amendments,

23 Article 2B – Alcoholic Beverages
24 Section 2–101(b)(1)(i)
25 Annotated Code of Maryland
26 (2005 Replacement Volume and 2007 Supplement)

27 BY adding to

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter deleted from existing law.



1 Article 2B – Alcoholic Beverages
 2 Section 7.5–101 through 7.5–110 to be under the new title “Title 7.5. Direct
 3 Wine Shipper’s License”
 4 Annotated Code of Maryland
 5 (2005 Replacement Volume and 2007 Supplement)

6 BY repealing and reenacting, without amendments,
 7 Article – Tax – General
 8 Section 5–101(a)
 9 Annotated Code of Maryland
 10 (2004 Replacement Volume and 2007 Supplement)

11 BY repealing and reenacting, with amendments,
 12 Article – Tax – General
 13 Section 5–101(f) and 5–201(d)
 14 Annotated Code of Maryland
 15 (2004 Replacement Volume and 2007 Supplement)

16 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
 17 MARYLAND, That Section(s) 7.5–101 through 7.5–110 and the title “Title 7.5. Direct
 18 Wine Seller’s Permit” of Article 2B – Alcoholic Beverages of the Annotated Code of
 19 Maryland be repealed.

20 SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland
 21 read as follows:

22 **Article 2B – Alcoholic Beverages**

23 2–101.

24 (b) (1) (i) The Office of the Comptroller shall collect a fee for the
 25 issuance or renewal of the following permits:

26 1. \$50 for a solicitor’s permit, an individual storage
 27 permit, a nonresident winery permit, or a commercial nonbeverage permit;

28 2. \$75 for a public storage permit, a public
 29 transportation permit, or an import and export permit;

30 3. \$100 for a public storage and transportation permit, a
 31 nonresident dealer permit, or a bulk transfer permit;

32 4. \$400 for a family beer and wine facility permit; and

33 5. [~~\$10~~] **\$100** for a direct wine [seller’s permit]

34 **SHIPPER’S LICENSE.**

1 **TITLE 7.5. DIRECT WINE SHIPPER'S LICENSE.**

2 **7.5-101.**

3 (A) **IN THIS TITLE THE FOLLOWING WORDS HAVE THE MEANINGS**
4 **INDICATED.**

5 (B) **"DIRECT WINE SHIPPER" MEANS THE HOLDER OF A DIRECT WINE**
6 **SHIPPER'S LICENSE ISSUED UNDER THIS TITLE.**

7 (C) **"LICENSE" MEANS A DIRECT WINE SHIPPER'S LICENSE ISSUED BY**
8 **THE OFFICE OF THE COMPTROLLER.**

9 (D) **"WINE" INCLUDES BRANDY THAT IS DISTILLED FROM THE PULPY**
10 **RESIDUE OF THE WINE PRESS, INCLUDING THE SKINS, PIPS, AND STALKS OF**
11 **GRAPES.**

12 **7.5-102.**

13 **A PERSON SHALL BE LICENSED BY THE OFFICE OF THE COMPTROLLER AS**
14 **A DIRECT WINE SHIPPER BEFORE THE PERSON MAY ENGAGE IN SHIPPING WINE**
15 **DIRECTLY TO A RESIDENT IN THE STATE.**

16 **7.5-103.**

17 **TO QUALIFY FOR A LICENSE, AN APPLICANT SHALL BE:**

18 (1) **A PERSON LICENSED OUTSIDE OF THE STATE TO ENGAGE IN**
19 **THE MANUFACTURE OF WINE;**

20 (2) **AN AUTHORIZED BRAND OWNER OF WINE, A UNITED STATES**
21 **IMPORTER OF WINE, OR A DESIGNATED MARYLAND AGENT OF A BRAND OWNER**
22 **OR UNITED STATES IMPORTER;**

23 (3) **A HOLDER OF A CLASS 3 MANUFACTURER'S LICENSE OR A**
24 **CLASS 4 MANUFACTURER'S LICENSE ISSUED UNDER THIS ARTICLE; OR**

25 (4) **A PERSON LICENSED BY THE STATE OR OUTSIDE THE STATE**
26 **TO ENGAGE IN THE RETAIL SALE OF WINE FOR CONSUMPTION OFF THE**
27 **PREMISES.**

28 **7.5-104.**

29 (A) **AN APPLICANT FOR A LICENSE SHALL:**

1 (1) SUBMIT TO THE OFFICE OF THE COMPTROLLER A
2 COMPLETED APPLICATION ON A FORM THAT THE OFFICE OF THE
3 COMPTROLLER PROVIDES;

4 (2) PROVIDE TO THE OFFICE OF THE COMPTROLLER A COPY OF
5 ITS CURRENT ALCOHOLIC BEVERAGES LICENSE; AND

6 (3) PAY A FEE OF \$100.

7 (B) THE OFFICE OF THE COMPTROLLER SHALL ISSUE A LICENSE TO
8 EACH APPLICANT WHO MEETS THE REQUIREMENTS OF THIS TITLE FOR A
9 LICENSE.

10 **7.5-105.**

11 (A) A DIRECT WINE SHIPPER SHALL:

12 (1) ENSURE THAT ALL CONTAINERS OF WINE SHIPPED DIRECTLY
13 TO A RESIDENT IN THE STATE ARE CONSPICUOUSLY LABELED WITH THE WORDS
14 "CONTAINS ALCOHOL; SIGNATURE OF PERSON AT LEAST AGE 21 YEARS OLD
15 REQUIRED FOR DELIVERY";

16 (2) REPORT TO THE OFFICE OF THE COMPTROLLER ANNUALLY
17 THE TOTAL OF WINE, BY TYPE, SHIPPED IN THE STATE THE PRECEDING
18 CALENDAR YEAR;

19 (3) PAY ANNUALLY TO THE OFFICE OF THE COMPTROLLER ALL
20 SALES TAXES AND EXCISE TAXES DUE ON SALES TO RESIDENTS OF THE STATE IN
21 THE PRECEDING CALENDAR YEAR, THE AMOUNT OF THE TAXES TO BE
22 CALCULATED AS IF THE SALE WERE MADE AT THE DELIVERY LOCATION;

23 (4) ALLOW THE OFFICE OF THE COMPTROLLER TO PERFORM AN
24 AUDIT OF THE DIRECT WINE SHIPPER'S RECORDS ON REQUEST; AND

25 (5) CONSENT TO THE JURISDICTION OF THE OFFICE OF THE
26 COMPTROLLER OR OTHER STATE UNIT AND THE STATE COURTS CONCERNING
27 ENFORCEMENT OF THIS SECTION AND ANY RELATED LAW.

28 (B) A DIRECT WINE SHIPPER MAY NOT:

29 (1) SHIP MORE THAN 24 9-LITER CASES OF WINE ANNUALLY TO
30 ANY ONE INDIVIDUAL; OR

1 **(2) SHIP WINE TO AN ADDRESS IN AN AREA IN WHICH THE BOARD**
2 **OF LICENSE COMMISSIONERS FOR THAT AREA MAY NOT ISSUE A LICENSE**
3 **AUTHORIZING THE SALE OF WINE.**

4 **7.5-106.**

5 **A DIRECT WINE SHIPPER MAY ANNUALLY RENEW ITS LICENSE, IF THE**
6 **DIRECT WINE SHIPPER:**

7 **(1) IS OTHERWISE ENTITLED TO BE LICENSED;**

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9 **ITS CURRENT ALCOHOLIC BEVERAGES LICENSE; AND**

10 **(3) PAYS TO THE OFFICE OF THE COMPTROLLER A RENEWAL FEE**
11 **OF \$50.**

12 **7.5-107.**

13 **(A) TO RECEIVE A DIRECT SHIPMENT OF WINE, A RESIDENT OF THE**
14 **STATE MUST BE AT LEAST 21 YEARS OF AGE.**

15 **(B) A SHIPMENT OF WINE MAY BE ORDERED OR PURCHASED THROUGH**
16 **A COMPUTER NETWORK.**

17 **(C) A PERSON WHO RECEIVES A SHIPMENT OF WINE SHALL USE THE**
18 **SHIPMENT FOR PERSONAL CONSUMPTION ONLY AND MAY NOT RESELL IT.**

19 **7.5-108.**

20 **THE OFFICE OF THE COMPTROLLER MAY ADOPT REGULATIONS TO CARRY**
21 **OUT THIS TITLE.**

22 **7.5-109.**

23 **A PERSON WITHOUT A LICENSE MAY NOT SHIP WINE DIRECTLY TO**
24 **CONSUMERS IN THE STATE.**

25 **7.5-110.**

26 **A PERSON WHO VIOLATES THIS TITLE IS GUILTY OF A FELONY AND ON**
27 **CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 2 YEARS OR A**
28 **FINE NOT EXCEEDING \$1,000 OR BOTH.**

1

Article - Tax - General

2 5-101.

3 (a) In this title the following words have the meanings indicated.

4 (f) "Direct wine [seller] **SHIPPER**" has the meaning stated in Article 2B, §
5 7.5-101 of the Code.

6 5-201.

7 (d) (1) A person who is a direct wine [seller] **SHIPPER** shall file with the
8 Office of the Comptroller an annual tax return.9 (2) The annual tax return shall be due no later than October 15 of
10 each year covering the previous 12 calendar months ending September 30.11 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
12 July 1, 2008.

Department of Legislative Services
 Maryland General Assembly
 2008 Session

FISCAL AND POLICY NOTE

Senate Bill 616 (Senator Raskin, *et al.*)
 Education, Health, and Environmental Affairs

Alcoholic Beverages - Direct Wine Shipper's License

This bill repeals the ability of the Comptroller’s Office to issue a direct wine seller’s permit and authorizes it to issue a direct wine shipper’s license. A person licensed as a direct wine shipper may engage in shipping wine directly to a resident in the State. The annual license fee is \$100.

The bill takes effect July 1, 2008.

Fiscal Summary

State Effect: General fund license fee revenues could increase by \$90,000 in FY 2009. Sales and excise tax revenues could increase by a significant amount depending on the increase in new wine sales. General fund expenditures associated with auditing direct wine shippers and ensuring compliance with State tax laws could increase.

(in dollars)	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
GF Revenue	\$90,000	\$97,800	\$101,700	\$100,600	\$94,800
GF Expenditure	-	-	-	-	-
Net Effect	\$90,000	\$97,800	\$101,700	\$100,600	\$94,800

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: None.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: The bill requires that a person must be licensed as a direct wine shipper by the Comptroller's Office before the person may engage in shipping wine directly to a resident in the State. For the purposes of the bill, wine includes brandy that is distilled from the pulpy residue of the wine press, including the skins, pips, and stalks of grapes.

To qualify for a direct wine shipper's license, the applicant must be (1) a person licensed outside of the State to engage in the manufacture of wine; (2) an authorized brand owner of wine, a U.S. importer of wine, or a designated Maryland agent of a brand owner or U.S. importer; (3) a holder of a State issued Class 3 manufacturer's (winery) license or a Class 4 manufacturer's (limited winery) license; or (4) a person licensed by the State or outside of the State to engage in the retail sale of wine for consumption off the premises.

The direct wine shipper must (1) ensure that all containers of wine shipped directly to a State resident are conspicuously labeled "contains alcohol; signature of person age 21 or older required for delivery"; (2) annually report to the Comptroller's Office the total of wine, by type, shipped in the State the preceding calendar year; (3) annually pay to the Comptroller's Office all sales and excise taxes due on sales to residents of the State in the preceding calendar year; (4) allow the Comptroller's Office to audit the direct wine shipper's records upon request; and (5) consent to the jurisdiction of the Comptroller's Office or other State unit and the State courts concerning enforcement of this section and any related law. A direct wine shipper is prohibited from shipping more than 24 9-liter cases of wine annually to any one individual or shipping to an address in an area in which the board of license commissioners for that area declares that these shipments are prohibited.

The Comptroller's Office may adopt regulations for the issuance and enforcement of the provisions of this license.

To receive a direct shipment of wine, a State resident must be 21 years old. In addition, the bill stipulates that a wine shipment may be ordered or purchased through a computer network. A person who receives a wine shipment can only use it for personal consumption and not resell it.

A person who violates the laws associated with a direct wine shipper's license would be guilty of a felony and subject to imprisonment of up to two years, a fine of up to \$1,000, or both.

Current Law: The Federal Liquor Law Repeal and Enforcement Act, also referred to as the Webb-Kenyon Act, prohibits the shipment of alcoholic beverages from one state into

another state in violation of any law of the receiving state. Maryland State law provides for a three-tier distribution system and prohibits wineries located inside or outside of the State from delivering wine directly to a resident of the State.

The Comptroller's Office is authorized to issue a direct wine seller's permit, for an annual fee of \$10. A direct wine seller's permit is issued to a person or entity that (1) is domiciled outside of the State; (2) is engaged in the manufacture of wine, or is the brand owner, U.S. importer, or designated Maryland agent of the brand owner or U.S. importer of wine sold under this authority; (3) holds and acts within the scope of any alcoholic beverages license or permit required in the state where the applicant is domiciled or by the federal Bureau of Alcohol, Tobacco, and Firearms; and (4) does not hold any alcoholic beverages license or permit issued by the State, and is not owned, as a whole or in part, by another person or entity that holds another alcoholic beverages license or permit issued by the State or one of its political subdivisions within two years before the application.

A direct wine seller's permit authorizes a direct wine seller to sell wine to a personal consumer by receiving and filling orders that the personal consumer transmits by electronic or other means. A direct wine seller, however, may not sell a brand of wine in the State that (1) is distributed in the State by a wholesaler licensed in the State; or (2) was distributed in the State within two years before the application for the direct wine seller's permit is filed. During a permit year (November 1 – October 31), a direct wine seller may not sell in the State more than 900 liters of wine or more than 108 liters to a single personal consumer. A direct wine seller is required to file an annual tax return.

Wine shipped to a personal consumer must be shipped to a wholesaler licensed in the State that is designated by the Alcohol and Tobacco Tax Bureau, and then delivered by the wholesaler to a retail dealer. The wholesaler and retail dealer are solely facilitators in the shipping process and do not have title to the wine. The personal consumer must take personal delivery of the shipment at the licensed premises of the retail dealer promptly upon receiving notice from the dealer. The wholesaler may impose a service charge at a rate of \$2 per bottle but no more than \$4 per shipment, and the retail dealer may impose a service charge of \$5 per bottle but no more than \$10 per shipment when the consumer takes delivery.

Background: According to its *Alcohol and Tobacco Tax Annual Report*, the Comptroller's Office reports that it did not issue any direct wine seller's permits in fiscal 2007. The Comptroller's Office advises that it charges a \$200 application fee for new alcoholic beverages licenses it issues and a \$30 application fee for each license it renews.

In May 2005, The US Supreme Court in *Granholm v. Heald* struck down laws in Michigan and New York that prohibited direct shipment of wine to consumers within the state from out-of-state businesses but permitted direct shipment to those consumers from in-state businesses. Court cases against wine shipping laws have been filed in at least 13 states, including Arizona, Arkansas, Delaware, Florida, Indiana, Kentucky, Maine, Maryland, Massachusetts, New Jersey, North Carolina, Ohio, and Pennsylvania.

According to industry sources, at least 38 states have passed legislation authorizing the direct shipment of wine to consumers, including Virginia, West Virginia, and the District of Columbia.

State Revenues:

Revenues from Permits Issued

It is uncertain how many of the 5,438 federally licensed wine manufacturers would apply for a direct wine shipper’s license in Maryland. Additionally, the bill would also authorize retailers licensed in other states for off-premises sales to apply for a direct shipper’s license in Maryland. **Exhibit 1** illustrates potential revenue from the issuance of licenses.

Exhibit 1
Projected Direct Wine Shipper’s Licenses

	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
Number of New Licenses Issued	300	250	200	150	100
Number of Licenses Renewed	-	285	521	695	810
Total Number of Permits	300	535	721	845	910
Total Revenue from Licenses	\$90,000	\$97,800	\$101,680	\$100,600	\$94,800

This estimate is based on the experience of other states and includes \$300 for each new license issued, including the \$100 license fee and a \$200 one-time application fee. For each license renewed, revenues would increase by \$80 annually, including the \$50 renewal license fee and a \$30 renewal application fee. This estimate assumes that 5% of licenses issued would not renew.

Sales and Excise Tax

The majority of wine that would be sold by holders of a direct wine shipper's license would have otherwise been sold at a retail location in the State. To the extent that consumer access to additional brands of wine, lower prices offered from nationwide Internet wine retailers, and the convenience of home delivery would result in an increase in per-capita wine consumption, State sales and excise tax would increase. *For illustrative purposes only*, if sales of wine consumed at home were to increase by one-half of 1% (0.5%), general fund revenues from sales and excise tax would increase by approximately \$200,000 annually. For comparative purposes, a 0.5% increase in wine sales equates to an additional five cases purchased per 1,000 residents of legal drinking age in the State. This estimate assumes 100% compliance with sales and excise tax.

A 9-liter case of wine, which includes 12 bottles of 750 milliliters of wine sold at \$12 per bottle, is taxed at a rate of \$9.59 per case. For each case of wine, this tax consists of \$0.95 in State excise tax and \$8.64 in Sales tax.

Receipt of Tax Revenues

Alcoholic beverages licensees in Maryland regularly remit sales and excise taxes to the Comptroller's Office. The bill requires that direct wine shippers pay sales and excise tax annually. Although the total revenue of in-State sales that would be replaced by direct wine sales from out of state cannot be determined, altering the timing of these revenues could have a significant fiscal impact.

State Expenditures: Depending on the volume of direct wine sales and the number of licensed direct wine shippers, the cost of ensuring compliance with State tax laws would increase. Although the Comptroller's Office advises that there would be no increase in expenditures, Legislative Services advises that additional resources would be required.

Based on the experience of other states in implementing the sale of wine directly to consumers, the Comptroller's Office would likely require additional staff to examine the records of direct wine shippers, ensure that the appropriate taxes are being paid, and that the shippers are not selling more than the allowed limits to any one individual. The bill requires that tax returns from direct wine shippers be submitted annually. Because of the seasonal nature of receiving these returns, the personnel requirements cannot be estimated at this time.

Small Business Effect: The bill would authorize both wine retailers and wine manufacturers outside of the State to ship wine directly to Maryland residents. Authorizing the shipment of wine directly to consumers would result in a decline in sales

for all retailers and wholesalers of alcoholic beverages in the State. To the extent that direct wine shipper's licenses are obtained by wineries and retailers in Maryland, these small businesses could be positively impacted by a potential increase in sales.

Additional Information

Prior Introductions: A similar bill, HB 625 of 2006, received an unfavorable report by the House Economic Matters Committee.

Cross File: HB 1260 (Delegate Hucker, *et al.*) – Economic Matters.

Information Source(s): New York State Liquor Authority, New Hampshire State Liquor Commission, National Conference of State Legislatures, Federal Alcohol and Tobacco Tax and Trade Bureau, Comptroller's Office, Department of Legislative Services

Fiscal Note History: First Reader - February 18, 2008
mll/hlb

Analysis by: Erik P. Timme

Direct Inquiries to:
(410) 946-5510
(301) 970-5510

HOUSE BILL 1260

A1

8lr2710
CF SB 616

By: **Delegates Hucker, Ali, Aumann, Bobo, Cardin, Carr, V. Clagett, Frick, Gilchrist, Haddaway, Kullen, McComas, Mizeur, Montgomery, Niemann, Ross, Sossi, Stein, Taylor, F. Turner, Vallario, and Waldstreicher**

Introduced and read first time: February 8, 2008

Assigned to: Economic Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Alcoholic Beverages – Direct Wine Shipper’s License**

3 FOR the purpose of repealing provisions that provide for a direct wine seller’s permit;
4 establishing a direct wine shipper’s license to be issued by the Office of the
5 Comptroller to certain persons in or outside of the State; requiring a person to
6 be licensed before the person may engage in shipping wine directly to a resident
7 in the State; requiring a direct wine shipper to perform certain actions;
8 prohibiting a direct wine shipper from performing certain actions; providing for
9 the qualifications and requirements of license applicants; providing for the fee
10 and renewal of a license; specifying certain requirements and conditions to
11 receive a direct shipment of wine; authorizing the Office of the Comptroller to
12 adopt certain regulations; prohibiting a person without a license from shipping
13 wine directly to consumers in the State; providing a certain penalty; defining
14 certain terms; altering certain definitions; and generally relating to the
15 establishment of a direct wine shipper’s license.

16 BY repealing

17 Article 2B – Alcoholic Beverages

18 Section 7.5–101 through 7.5–110 and the title “Title 7.5. Direct Wine Seller’s
19 Permit”

20 Annotated Code of Maryland

21 (2005 Replacement Volume and 2007 Supplement)

22 BY repealing and reenacting, with amendments,

23 Article 2B – Alcoholic Beverages

24 Section 2–101(b)(1)(i)

25 Annotated Code of Maryland

26 (2005 Replacement Volume and 2007 Supplement)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 BY adding to
2 Article 2B – Alcoholic Beverages
3 Section 7.5–101 through 7.5–110 to be under the new title “Title 7.5. Direct
4 Wine Shipper’s License”
5 Annotated Code of Maryland
6 (2005 Replacement Volume and 2007 Supplement)

7 BY repealing and reenacting, without amendments,
8 Article – Tax – General
9 Section 5–101(a)
10 Annotated Code of Maryland
11 (2004 Replacement Volume and 2007 Supplement)

12 BY repealing and reenacting, with amendments,
13 Article – Tax – General
14 Section 5–101(f) and 5–201(d)
15 Annotated Code of Maryland
16 (2004 Replacement Volume and 2007 Supplement)

17 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
18 MARYLAND, That Section(s) 7.5–101 through 7.5–110 and the title “Title 7.5. Direct
19 Wine Seller’s Permit” of Article 2B – Alcoholic Beverages of the Annotated Code of
20 Maryland be repealed.

21 SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland
22 read as follows:

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25 (b) (1) (i) The Office of the Comptroller shall collect a fee for the
26 issuance or renewal of the following permits:

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28 permit, a nonresident winery permit, or a commercial nonbeverage permit;

29 2. \$75 for a public storage permit, a public
30 transportation permit, or an import and export permit;

31 3. \$100 for a public storage and transportation permit, a
32 nonresident dealer permit, or a bulk transfer permit;

33 4. \$400 for a family beer and wine facility permit; and

1 5. [~~\$10~~] **\$100** for a direct wine [seller's permit]
2 **SHIPPER'S LICENSE.**

3 **TITLE 7.5. DIRECT WINE SHIPPER'S LICENSE.**

4 **7.5-101.**

5 (A) **IN THIS TITLE THE FOLLOWING WORDS HAVE THE MEANINGS**
6 **INDICATED.**

7 (B) **"DIRECT WINE SHIPPER" MEANS THE HOLDER OF A DIRECT WINE**
8 **SHIPPER'S LICENSE ISSUED UNDER THIS TITLE.**

9 (C) **"LICENSE" MEANS A DIRECT WINE SHIPPER'S LICENSE ISSUED BY**
10 **THE OFFICE OF THE COMPTROLLER.**

11 (D) **"WINE" INCLUDES BRANDY THAT IS DISTILLED FROM THE PULPY**
12 **RESIDUE OF THE WINE PRESS, INCLUDING THE SKINS, PIPS, AND STALKS OF**
13 **GRAPES.**

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16 **A DIRECT WINE SHIPPER BEFORE THE PERSON MAY ENGAGE IN SHIPPING WINE**
17 **DIRECTLY TO A RESIDENT IN THE STATE.**

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19 **TO QUALIFY FOR A LICENSE, AN APPLICANT SHALL BE:**

20 (1) **A PERSON LICENSED OUTSIDE OF THE STATE TO ENGAGE IN**
21 **THE MANUFACTURE OF WINE;**

22 (2) **AN AUTHORIZED BRAND OWNER OF WINE, A UNITED STATES**
23 **IMPORTER OF WINE, OR A DESIGNATED MARYLAND AGENT OF A BRAND OWNER**
24 **OR UNITED STATES IMPORTER;**

25 (3) **A HOLDER OF A CLASS 3 MANUFACTURER'S LICENSE OR A**
26 **CLASS 4 MANUFACTURER'S LICENSE ISSUED UNDER THIS ARTICLE; OR**

27 (4) **A PERSON LICENSED BY THE STATE OR OUTSIDE THE STATE**
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29 **PREMISES.**

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10 EACH APPLICANT WHO MEETS THE REQUIREMENTS OF THIS TITLE FOR A
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23 THE PRECEDING CALENDAR YEAR, THE AMOUNT OF THE TAXES TO BE
24 CALCULATED AS IF THE SALE WERE MADE AT THE DELIVERY LOCATION;

25 (4) ALLOW THE OFFICE OF THE COMPTROLLER TO PERFORM AN
26 AUDIT OF THE DIRECT WINE SHIPPER'S RECORDS ON REQUEST; AND

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28 COMPTROLLER OR OTHER STATE UNIT AND THE STATE COURTS CONCERNING
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13 OF \$50.

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15 (A) TO RECEIVE A DIRECT SHIPMENT OF WINE, A RESIDENT OF THE
16 STATE MUST BE AT LEAST 21 YEARS OF AGE.

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18 A COMPUTER NETWORK.

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20 SHIPMENT FOR PERSONAL CONSUMPTION ONLY AND MAY NOT RESELL IT.

21 **7.5-108.**

22 THE OFFICE OF THE COMPTROLLER MAY ADOPT REGULATIONS TO CARRY
23 OUT THIS TITLE.

24 **7.5-109.**

25 A PERSON WITHOUT A LICENSE MAY NOT SHIP WINE DIRECTLY TO
26 CONSUMERS IN THE STATE.

27 **7.5-110.**

Department of Legislative Services
 Maryland General Assembly
 2008 Session

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 Economic Matters

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Bill Summary: The bill requires that a person must be licensed as a direct wine shipper by the Comptroller's Office before the person may engage in shipping wine directly to a resident in the State. For the purposes of the bill, wine includes brandy that is distilled from the pulpy residue of the wine press, including the skins, pips, and stalks of grapes.

To qualify for a direct wine shipper's license, the applicant must be (1) a person licensed outside of the State to engage in the manufacture of wine; (2) an authorized brand owner of wine, a U.S. importer of wine, or a designated Maryland agent of a brand owner or U.S. importer; (3) a holder of a State issued Class 3 manufacturer's (winery) license or a Class 4 manufacturer's (limited winery) license; or (4) a person licensed by the State or outside of the State to engage in the retail sale of wine for consumption off the premises.

The direct wine shipper must (1) ensure that all containers of wine shipped directly to a State resident are conspicuously labeled "contains alcohol; signature of person age 21 or older required for delivery"; (2) annually report to the Comptroller's Office the total of wine, by type, shipped in the State the preceding calendar year; (3) annually pay to the Comptroller's Office all sales and excise taxes due on sales to residents of the State in the preceding calendar year; (4) allow the Comptroller's Office to audit the direct wine shipper's records upon request; and (5) consent to the jurisdiction of the Comptroller's Office or other State unit and the State courts concerning enforcement of this section and any related law. A direct wine shipper is prohibited from shipping more than 24 9-liter cases of wine annually to any one individual or shipping to an address in an area in which the board of license commissioners for that area declares that these shipments are prohibited.

The Comptroller's Office may adopt regulations for the issuance and enforcement of the provisions of this license.

To receive a direct shipment of wine, a State resident must be 21 years old. In addition, the bill stipulates that a wine shipment may be ordered or purchased through a computer network. A person who receives a wine shipment can only use it for personal consumption and not resell it.

A person who violates the laws associated with a direct wine shipper's license would be guilty of a felony and subject to imprisonment of up to two years, a fine of up to \$1,000, or both.

Current Law: The Federal Liquor Law Repeal and Enforcement Act, also referred to as the Webb-Kenyon Act, prohibits the shipment of alcoholic beverages from one state into

another state in violation of any law of the receiving state. Maryland State law provides for a three-tier distribution system and prohibits wineries located inside or outside of the State from delivering wine directly to a resident of the State.

The Comptroller's Office is authorized to issue a direct wine seller's permit, for an annual fee of \$10. A direct wine seller's permit is issued to a person or entity that (1) is domiciled outside of the State; (2) is engaged in the manufacture of wine, or is the brand owner, U.S. importer, or designated Maryland agent of the brand owner or U.S. importer of wine sold under this authority; (3) holds and acts within the scope of any alcoholic beverages license or permit required in the state where the applicant is domiciled or by the federal Bureau of Alcohol, Tobacco, and Firearms; and (4) does not hold any alcoholic beverages license or permit issued by the State, and is not owned, as a whole or in part, by another person or entity that holds another alcoholic beverages license or permit issued by the State or one of its political subdivisions within two years before the application.

A direct wine seller's permit authorizes a direct wine seller to sell wine to a personal consumer by receiving and filling orders that the personal consumer transmits by electronic or other means. A direct wine seller, however, may not sell a brand of wine in the State that (1) is distributed in the State by a wholesaler licensed in the State; or (2) was distributed in the State within two years before the application for the direct wine seller's permit is filed. During a permit year (November 1 – October 31), a direct wine seller may not sell in the State more than 900 liters of wine or more than 108 liters to a single personal consumer. A direct wine seller is required to file an annual tax return.

Wine shipped to a personal consumer must be shipped to a wholesaler licensed in the State that is designated by the Alcohol and Tobacco Tax Bureau, and then delivered by the wholesaler to a retail dealer. The wholesaler and retail dealer are solely facilitators in the shipping process and do not have title to the wine. The personal consumer must take personal delivery of the shipment at the licensed premises of the retail dealer promptly upon receiving notice from the dealer. The wholesaler may impose a service charge at a rate of \$2 per bottle but no more than \$4 per shipment, and the retail dealer may impose a service charge of \$5 per bottle but no more than \$10 per shipment when the consumer takes delivery.

Background: According to its *Alcohol and Tobacco Tax Annual Report*, the Comptroller's Office reports that it did not issue any direct wine seller's permits in fiscal 2007. The Comptroller's Office advises that it charges a \$200 application fee for new alcoholic beverages licenses it issues and a \$30 application fee for each license it renews.

In May 2005, The US Supreme Court in *Granholm v. Heald* struck down laws in Michigan and New York that prohibited direct shipment of wine to consumers within the state from out-of-state businesses but permitted direct shipment to those consumers from in-state businesses. Court cases against wine shipping laws have been filed in at least 13 states, including Arizona, Arkansas, Delaware, Florida, Indiana, Kentucky, Maine, Maryland, Massachusetts, New Jersey, North Carolina, Ohio, and Pennsylvania.

According to industry sources, at least 38 states have passed legislation authorizing the direct shipment of wine to consumers, including Virginia, West Virginia, and the District of Columbia.

State Revenues:

Revenues from Permits Issued

It is uncertain how many of the 5,438 federally licensed wine manufacturers would apply for a direct wine shipper’s license in Maryland. Additionally, the bill would also authorize retailers licensed in other states for off-premises sales to apply for a direct shipper’s license in Maryland. **Exhibit 1** illustrates potential revenue from the issuance of licenses.

**Exhibit 1
Projected Direct Wine Shipper’s Licenses**

	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
Number of New Licenses Issued	300	250	200	150	100
Number of Licenses Renewed	-	285	521	695	810
Total Number of Permits	300	535	721	845	910
Total Revenue from Licenses	\$90,000	\$97,800	\$101,680	\$100,600	\$94,800

This estimate is based on the experience of other states and includes \$300 for each new license issued, including the \$100 license fee and a \$200 one-time application fee. For each license renewed, revenues would increase by \$80 annually, including the \$50 renewal license fee and a \$30 renewal application fee. This estimate assumes that 5% of licenses issued would not renew.

Sales and Excise Tax

The majority of wine that would be sold by holders of a direct wine shipper's license would have otherwise been sold at a retail location in the State. To the extent that consumer access to additional brands of wine, lower prices offered from nationwide Internet wine retailers, and the convenience of home delivery would result in an increase in per-capita wine consumption, State sales and excise tax would increase. *For illustrative purposes only*, if sales of wine consumed at home were to increase by one-half of 1% (0.5%), general fund revenues from sales and excise tax would increase by approximately \$200,000 annually. For comparative purposes, a 0.5% increase in wine sales equates to an additional five cases purchased per 1,000 residents of legal drinking age in the State. This estimate assumes 100% compliance with sales and excise tax.

A 9-liter case of wine, which includes 12 bottles of 750 milliliters of wine sold at \$12 per bottle, is taxed at a rate of \$9.59 per case. For each case of wine, this tax consists of \$0.95 in State excise tax and \$8.64 in Sales tax.

Receipt of Tax Revenues

Alcoholic beverages licensees in Maryland regularly remit sales and excise taxes to the Comptroller's Office. The bill requires that direct wine shippers pay sales and excise tax annually. Although the total revenue of in-State sales that would be replaced by direct wine sales from out of state cannot be determined, altering the timing of these revenues could have a significant fiscal impact.

State Expenditures: Depending on the volume of direct wine sales and the number of licensed direct wine shippers, the cost of ensuring compliance with State tax laws would increase. Although the Comptroller's Office advises that there would be no increase in expenditures, Legislative Services advises that additional resources would be required.

Based on the experience of other states in implementing the sale of wine directly to consumers, the Comptroller's Office would likely require additional staff to examine the records of direct wine shippers, ensure that the appropriate taxes are being paid, and that the shippers are not selling more than the allowed limits to any one individual. The bill requires that tax returns from direct wine shippers be submitted annually. Because of the seasonal nature of receiving these returns, the personnel requirements cannot be estimated at this time.

Small Business Effect: The bill would authorize both wine retailers and wine manufacturers outside of the State to ship wine directly to Maryland residents. Authorizing the shipment of wine directly to consumers would result in a decline in sales

for all retailers and wholesalers of alcoholic beverages in the State. To the extent that direct wine shipper's licenses are obtained by wineries and retailers in Maryland, these small businesses could be positively impacted by a potential increase in sales.

Additional Information

Prior Introductions: A similar bill, HB 625 of 2006, received an unfavorable report by the House Economic Matters Committee.

Cross File: SB 616 (Senator Raskin, *et al.*) – Education, Health, and Environmental Affairs.

Information Source(s): New York State Liquor Authority, New Hampshire State Liquor Commission, National Conference of State Legislatures, Federal Alcohol and Tobacco Tax and Trade Bureau, Comptroller's Office, Department of Legislative Services

Fiscal Note History: First Reader - February 17, 2008
ncs/hlb

Analysis by: Erik P. Timme

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APPENDIX 6

2009 LEGISLATIVE SESSION

Senate Bill 338

Senate Bill 338 was introduced by Senators Raskin, Astle, Forehand, Frosh, Garagiola, Glassman, Greenip, Harrington, Harris, Jacobs, Kelley, King, Kramer, Lenett, Madaleno, Muse, Pinsky, Pugh, and Zirkin.

The number of Senators sponsoring the legislation increased from thirteen (13) in 2008 to nineteen (19) in 2009. A hearing was held on February 18, 2009 in the Senate Education, Health & Environmental Matters Committee. No further action was taken.

House Bill 1262

House Bill 1262 was introduced by seventy-five (75) delegates.¹

Compared to the Senate, there was a disproportionate increase in the number of Delegates sponsoring the legislation from twenty-two (22) in 2008 to seventy-five (75) in 2009. A hearing was held on February 23, 2009. House Bill 1262 received an unfavorable report by the House Economic Matters Committee on a vote of 16-5.

Senate Bill 338 and House Bill 1262 were identical, except that House Bill 1262 contained a provision, which Senate Bill 338 did not, adding a direct wine shipper license to the exceptions to the prohibition of multiple licenses in § 9-102(a) of Article 2B. Other than this one difference between the bills, they were the same as Senate Bill 616 and House Bill 1260 introduced in 2008.

¹ Delegates Hucker, Ali, Anderson, Aumann, Barnes, Bartlett, Beidle, Bobo, Bohanan, Branch, Cardin, Carr, Carter, V. Clagett, Conaway, Costa, Donoghue, Dumais, Dwyer, Elmore, Feldman, Frick, Frush, George, Gilchrist, Glenn, Gutierrez, Haddaway, Hecht, Heller, Holmes, Howard, Hubbard, Ivey, Kach, Kaiser, Kipke, Kramer, Krebs, Kullen, Lafferty, Lee, Malone, Manno, McComas, McConkey, McDonough, Mizeur, Montgomery, Myers, Nathan-Pulliam, Niemann, Pena-Melnyk, Proctor, Ramirez, Reznik, Rice, Robinson, Ross, Schuh, Schuler, Shewell, Simmons, Sossi, Stein, Stull, Tarrant, F. Turner, V. Turner, Valderrama, Vallario, Waldstreicher, Walkup, Weir, and Weldon.

SENATE BILL 338

A1
SB 616/08 – EHE

9lr0936

By: **Senators Raskin, Astle, Forehand, Frosh, Garagiola, Glassman, Greenip, Harrington, Harris, Jacobs, Kelley, King, Kramer, Lenett, Madaleno, Muse, Pinsky, Pugh, and Zirkin**

Introduced and read first time: January 29, 2009

Assigned to: Education, Health, and Environmental Affairs

A BILL ENTITLED

1 AN ACT concerning

2 **Alcoholic Beverages – Direct Wine Shipper’s License**

3 FOR the purpose of repealing provisions that provide for a direct wine seller’s permit;
4 establishing a direct wine shipper’s license to be issued by the Office of the
5 Comptroller to certain persons in or outside of the State; requiring a person to
6 be licensed before the person may engage in shipping wine directly to a resident
7 in the State; requiring a direct wine shipper to perform certain actions;
8 prohibiting a direct wine shipper from performing certain actions; providing for
9 the qualifications and requirements of license applicants; providing for the fee
10 and renewal of a license; specifying certain requirements and conditions to
11 receive a direct shipment of wine; authorizing the Office of the Comptroller to
12 adopt certain regulations; prohibiting a person without a license from shipping
13 wine directly to consumers in the State; providing a certain penalty; defining
14 certain terms; altering certain definitions; and generally relating to the
15 establishment of a direct wine shipper’s license.

16 BY repealing

17 Article 2B – Alcoholic Beverages

18 Section 7.5–101 through 7.5–110 and the title “Title 7.5. Direct Wine Seller’s
19 Permit”

20 Annotated Code of Maryland

21 (2005 Replacement Volume and 2008 Supplement)

22 BY repealing and reenacting, with amendments,

23 Article 2B – Alcoholic Beverages

24 Section 2–101(b)(1)(i)

25 Annotated Code of Maryland

26 (2005 Replacement Volume and 2008 Supplement)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 BY adding to
 2 Article 2B – Alcoholic Beverages
 3 Section 7.5–101 through 7.5–110 to be under the new title “Title 7.5. Direct
 4 Wine Shipper’s License”
 5 Annotated Code of Maryland
 6 (2005 Replacement Volume and 2008 Supplement)

7 BY repealing and reenacting, without amendments,
 8 Article – Tax – General
 9 Section 5–101(a)
 10 Annotated Code of Maryland
 11 (2004 Replacement Volume and 2008 Supplement)

12 BY repealing and reenacting, with amendments,
 13 Article – Tax – General
 14 Section 5–101(f) and 5–201(d)
 15 Annotated Code of Maryland
 16 (2004 Replacement Volume and 2008 Supplement)

17 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
 18 MARYLAND, That Section(s) 7.5–101 through 7.5–110 and the title “Title 7.5. Direct
 19 Wine Seller’s Permit” of Article 2B – Alcoholic Beverages of the Annotated Code of
 20 Maryland be repealed.

21 SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland
 22 read as follows:

23 **Article 2B – Alcoholic Beverages**

24 2–101.

25 (b) (1) (i) The Office of the Comptroller shall collect a fee for the
 26 issuance or renewal of the following permits:

27 1. \$50 for a solicitor’s permit, an individual storage
 28 permit, a nonresident winery permit, or a commercial nonbeverage permit;

29 2. \$75 for a public storage permit, a public
 30 transportation permit, or an import and export permit;

31 3. \$100 for a public storage and transportation permit, a
 32 nonresident dealer permit, or a bulk transfer permit;

33 4. \$400 for a family beer and wine facility permit; and

34 5. [~~\$10~~] **\$100** for a direct wine [seller’s permit]

35 **SHIPPER’S LICENSE.**

1 **TITLE 7.5. DIRECT WINE SHIPPER'S LICENSE.**

2 **7.5-101.**

3 (A) **IN THIS TITLE THE FOLLOWING WORDS HAVE THE MEANINGS**
4 **INDICATED.**

5 (B) **"DIRECT WINE SHIPPER" MEANS THE HOLDER OF A DIRECT WINE**
6 **SHIPPER'S LICENSE ISSUED UNDER THIS TITLE.**

7 (C) **"LICENSE" MEANS A DIRECT WINE SHIPPER'S LICENSE ISSUED BY**
8 **THE OFFICE OF THE COMPTROLLER.**

9 (D) **"WINE" INCLUDES BRANDY THAT IS DISTILLED FROM THE PULPY**
10 **RESIDUE OF THE WINE PRESS, INCLUDING THE SKINS, PIPS, AND STALKS OF**
11 **GRAPES.**

12 **7.5-102.**

13 **A PERSON SHALL BE LICENSED BY THE OFFICE OF THE COMPTROLLER AS**
14 **A DIRECT WINE SHIPPER BEFORE THE PERSON MAY ENGAGE IN SHIPPING WINE**
15 **DIRECTLY TO A RESIDENT IN THE STATE.**

16 **7.5-103.**

17 **TO QUALIFY FOR A LICENSE, AN APPLICANT SHALL BE:**

18 (1) **A PERSON LICENSED OUTSIDE OF THE STATE TO ENGAGE IN**
19 **THE MANUFACTURE OF WINE;**

20 (2) **AN AUTHORIZED BRAND OWNER OF WINE, A UNITED STATES**
21 **IMPORTER OF WINE, OR A DESIGNATED MARYLAND AGENT OF A BRAND OWNER**
22 **OR UNITED STATES IMPORTER;**

23 (3) **A HOLDER OF A CLASS 3 MANUFACTURER'S LICENSE OR A**
24 **CLASS 4 MANUFACTURER'S LICENSE ISSUED UNDER THIS ARTICLE; OR**

25 (4) **A PERSON LICENSED BY THE STATE OR OUTSIDE THE STATE**
26 **TO ENGAGE IN THE RETAIL SALE OF WINE FOR CONSUMPTION OFF THE**
27 **PREMISES.**

28 **7.5-104.**

1 (A) AN APPLICANT FOR A LICENSE SHALL:

2 (1) SUBMIT TO THE OFFICE OF THE COMPTROLLER A
3 COMPLETED APPLICATION ON A FORM THAT THE OFFICE OF THE
4 COMPTROLLER PROVIDES;

5 (2) PROVIDE TO THE OFFICE OF THE COMPTROLLER A COPY OF
6 ITS CURRENT ALCOHOLIC BEVERAGES LICENSE; AND

7 (3) PAY A FEE OF \$100.

8 (B) THE OFFICE OF THE COMPTROLLER SHALL ISSUE A LICENSE TO
9 EACH APPLICANT WHO MEETS THE REQUIREMENTS OF THIS TITLE FOR A
10 LICENSE.

11 **7.5-105.**

12 (A) A DIRECT WINE SHIPPER SHALL:

13 (1) ENSURE THAT ALL CONTAINERS OF WINE SHIPPED DIRECTLY
14 TO A RESIDENT IN THE STATE ARE CONSPICUOUSLY LABELED WITH THE WORDS
15 "CONTAINS ALCOHOL; SIGNATURE OF PERSON AT LEAST 21 YEARS OF AGE
16 REQUIRED FOR DELIVERY";

17 (2) REPORT TO THE OFFICE OF THE COMPTROLLER ANNUALLY
18 THE TOTAL OF WINE, BY TYPE, SHIPPED IN THE STATE THE PRECEDING
19 CALENDAR YEAR;

20 (3) PAY ANNUALLY TO THE OFFICE OF THE COMPTROLLER ALL
21 SALES TAXES AND EXCISE TAXES DUE ON SALES TO RESIDENTS OF THE STATE IN
22 THE PRECEDING CALENDAR YEAR, THE AMOUNT OF THE TAXES TO BE
23 CALCULATED AS IF THE SALE WERE MADE AT THE DELIVERY LOCATION;

24 (4) ALLOW THE OFFICE OF THE COMPTROLLER TO PERFORM AN
25 AUDIT OF THE DIRECT WINE SHIPPER'S RECORDS ON REQUEST; AND

26 (5) CONSENT TO THE JURISDICTION OF THE OFFICE OF THE
27 COMPTROLLER OR OTHER STATE UNIT AND THE STATE COURTS CONCERNING
28 ENFORCEMENT OF THIS SECTION AND ANY RELATED LAW.

29 (B) A DIRECT WINE SHIPPER MAY NOT:

30 (1) SHIP MORE THAN 24 9-LITER CASES OF WINE ANNUALLY TO
31 ANY ONE INDIVIDUAL; OR

1 **(2) SHIP WINE TO AN ADDRESS IN AN AREA IN WHICH THE BOARD**
2 **OF LICENSE COMMISSIONERS FOR THAT AREA MAY NOT ISSUE A LICENSE**
3 **AUTHORIZING THE SALE OF WINE.**

4 **7.5-106.**

5 **A DIRECT WINE SHIPPER MAY ANNUALLY RENEW ITS LICENSE IF THE**
6 **DIRECT WINE SHIPPER:**

7 **(1) IS OTHERWISE ENTITLED TO BE LICENSED;**

8 **(2) PROVIDES TO THE OFFICE OF THE COMPTROLLER A COPY OF**
9 **ITS CURRENT ALCOHOLIC BEVERAGES LICENSE; AND**

10 **(3) PAYS TO THE OFFICE OF THE COMPTROLLER A RENEWAL FEE**
11 **OF \$50.**

12 **7.5-107.**

13 **(A) TO RECEIVE A DIRECT SHIPMENT OF WINE, A RESIDENT OF THE**
14 **STATE MUST BE AT LEAST 21 YEARS OF AGE.**

15 **(B) A SHIPMENT OF WINE MAY BE ORDERED OR PURCHASED THROUGH**
16 **A COMPUTER NETWORK.**

17 **(C) A PERSON WHO RECEIVES A SHIPMENT OF WINE SHALL USE THE**
18 **SHIPMENT FOR PERSONAL CONSUMPTION ONLY AND MAY NOT RESELL IT.**

19 **7.5-108.**

20 **THE OFFICE OF THE COMPTROLLER MAY ADOPT REGULATIONS TO CARRY**
21 **OUT THIS TITLE.**

22 **7.5-109.**

23 **A PERSON WITHOUT A LICENSE MAY NOT SHIP WINE DIRECTLY TO**
24 **CONSUMERS IN THE STATE.**

25 **7.5-110.**

26 **A PERSON WHO VIOLATES THIS TITLE IS GUILTY OF A FELONY AND ON**
27 **CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 2 YEARS OR A**
28 **FINE NOT EXCEEDING \$1,000 OR BOTH.**

Department of Legislative Services
Maryland General Assembly
2009 Session

FISCAL AND POLICY NOTE

Senate Bill 338 (Senator Raskin, *et al.*)
Education, Health, and Environmental Affairs

Alcoholic Beverages - Direct Wine Shipper's License

This bill repeals the ability of the Comptroller's Office to issue a direct wine seller's permit and requires it to issue a direct wine shipper's license. A person licensed as a direct wine shipper may engage in shipping wine directly to a resident in the State. The annual license fee is \$100.

The bill takes effect July 1, 2009.

Fiscal Summary

State Effect: General fund revenues increase by \$90,000 in FY 2010. Sales and excise tax revenues may increase by a significant amount depending on the increase in new wine sales. General fund expenditures increase by \$21,900 in FY 2010. Future years reflect annualization and inflation.

(in dollars)	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
GF Revenue	\$90,000	\$97,800	\$101,700	\$100,600	\$94,800
GF Expenditure	\$21,900	\$28,400	\$29,700	\$31,000	\$32,400
Net Effect	\$68,100	\$69,400	\$72,000	\$69,600	\$62,400

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: None.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: The bill requires that a person be licensed as a direct wine shipper by the Comptroller's Office before the person may engage in shipping wine directly to a resident in the State. For the purposes of the bill, wine includes brandy that is distilled from the pulpy residue of the wine press, including the skins, pips, and stalks of grapes.

To qualify for a direct wine shipper's license, the applicant must be (1) a person licensed outside of the State to engage in the manufacture of wine; (2) an authorized brand owner of wine, a U.S. importer of wine, or a designated Maryland agent of a brand owner or U.S. importer; (3) a holder of a State issued Class 3 manufacturer's (winery) license or a Class 4 manufacturer's (limited winery) license; or (4) a person licensed by the State or outside of the State to engage in the retail sale of wine for consumption off the premises.

The direct wine shipper must (1) ensure that all containers of wine shipped directly to a State resident are conspicuously labeled "contains alcohol; signature of person at least 21 years of age required for delivery"; (2) annually report to the Comptroller's Office the total of wine, by type, shipped in the State the preceding calendar year; (3) annually pay to the Comptroller's Office all sales and excise taxes due on sales to residents of the State in the preceding calendar year; (4) allow the Comptroller's Office to audit the direct wine shipper's records upon request; and (5) consent to the jurisdiction of the Comptroller's Office or other State unit and the State courts concerning enforcement of this section and any related law. A direct wine shipper is prohibited from shipping more than 24 9-liter cases of wine annually to any one individual or shipping to an address in an area in which the board of license commissioners may not issue a license authorizing the sale of wine.

The Comptroller's Office may adopt regulations for the issuance and enforcement of the provisions of this license.

To receive a direct shipment of wine, a State resident must be 21 years old. In addition, the bill stipulates that a wine shipment may be ordered or purchased through a computer network. A person who receives a wine shipment can only use it for personal consumption and not resell it.

A person who violates the laws associated with a direct wine shipper's license would be guilty of a felony and subject to imprisonment of up to two years, a fine of up to \$1,000, or both.

Current Law: The Federal Liquor Law Repeal and Enforcement Act, also referred to as the Webb-Kenyon Act, prohibits the shipment of alcoholic beverages from one state into another state in violation of any law of the receiving state. Maryland State law provides

for a three-tier distribution system and prohibits wineries located inside or outside of the State from delivering wine directly to a resident of the State.

The Comptroller's Office is authorized to issue a direct wine seller's permit, for an annual fee of \$10. A direct wine seller's permit can be issued to a person or entity that (1) is domiciled outside of the State; (2) is engaged in the manufacture of wine, or is the brand owner, U.S. importer, or designated Maryland agent of the brand owner or U.S. importer of wine sold under this authority; (3) holds and acts within the scope of any alcoholic beverages license or permit required in the state where the applicant is domiciled or by the federal Bureau of Alcohol, Tobacco, and Firearms; and (4) does not hold any alcoholic beverages license or permit issued by the State within two years before the application, and is not owned, as a whole or in part, by another person or entity that holds another alcoholic beverages license or permit issued by the State or one of its political subdivisions within two years before the application.

A direct wine seller's permit authorizes a direct wine seller to sell wine to a personal consumer by receiving and filling orders that the personal consumer transmits by electronic or other means. A direct wine seller, however, may not sell a brand of wine in the State that (1) is distributed in the State by a wholesaler licensed in the State; or (2) was distributed in the State within two years before the application for the direct wine seller's permit is filed. During a permit year (November 1 to October 31), a direct wine seller may not sell in the State more than 900 liters of wine or more than 108 liters to a single personal consumer. A direct wine seller is required to file an annual tax return.

Wine shipped to a personal consumer must be shipped to a wholesaler licensed in the State that is designated by the federal Alcohol and Tobacco Tax Bureau, and then delivered by the wholesaler to a retail dealer. The wholesaler and retail dealer are solely facilitators in the shipping process and do not have title to the wine. The personal consumer must take personal delivery of the shipment at the licensed premises of the retail dealer promptly upon receiving notice from the dealer. The wholesaler may impose a service charge at a rate of \$2 per bottle but no more than \$4 per shipment, and the retail dealer may impose a service charge of \$5 per bottle but no more than \$10 per shipment when the consumer takes delivery.

Background: In May 2005, The U.S. Supreme Court in *Granholm v. Heald* struck down laws in Michigan and New York that prohibited direct shipment of wine to consumers within the state from out-of-state businesses but permitted direct shipment to those consumers from in-state businesses. Court cases against wine shipping laws have been filed in at least 24 states, including Arizona, Arkansas, California, Delaware, Florida, Illinois, Indiana, Kentucky, Maine, Maryland, Massachusetts, Missouri, New Jersey, North Carolina, Ohio, Oklahoma, Pennsylvania, Rhode Island, Tennessee, Texas, Virginia, and Washington.

At least 35 states have passed legislation authorizing the direct shipment of wine to consumers, including Virginia, West Virginia, and the District of Columbia.

State Revenues: According to the *Alcohol and Tobacco Tax Annual Report*, the Comptroller’s Office issued two direct wine seller’s permits in fiscal 2008. The Comptroller’s Office advises that it charges a \$200 application fee for new alcoholic beverages licenses it issues and a \$30 application fee for each license it renews.

Revenues from Permits Issued

It is uncertain how many of the 6,200 federally licensed wine manufacturers would apply for a direct wine shipper’s license in Maryland. Additionally, the bill would also authorize retailers licensed in other states for off-premises sales to apply for a direct shipper’s license in Maryland. **Exhibit 1** illustrates potential revenues from the issuance of licenses.

Exhibit 1
Potential Revenues from Direct Wine Shipper’s Licenses

	<u>FY 2010</u>	<u>FY 2011</u>	<u>FY 2012</u>	<u>FY 2013</u>	<u>FY 2014</u>
Number of New Licenses Issued	300	250	200	150	100
Number of Licenses Renewed	-	285	521	695	810
Total Number of Permits	300	535	721	845	910
Total Revenue from Licenses	\$90,000	\$97,800	\$101,700	\$100,600	\$94,800

This estimate is based on the experience of other states and includes \$300 for each new license issued, including the \$100 license fee and a \$200 one-time application fee. For each license renewed, revenues would increase by \$80 annually, including the \$50 renewal license fee and a \$30 renewal application fee. This estimate assumes that 5% of licenses issued would not be renewed. As a point of reference, Virginia has issued 870 in and out of state wine shipper’s licenses.

Sales and Excise Tax

The majority of wine that would be sold by holders of a direct wine shipper's license would have otherwise been sold at a retail location in the State. To the extent that consumer access to additional brands of wine, lower prices offered from nationwide Internet wine retailers, and the convenience of home delivery would result in an increase in per-capita wine consumption, State sales and excise tax would increase. *For illustrative purposes only*, if sales of wine consumed at home were to increase by one-half of 1% (0.5%), general fund revenues from sales and excise tax would increase by approximately \$200,000 annually. For comparative purposes, a 0.5% increase in wine sales equates to an additional five cases purchased per 1,000 residents of legal drinking age in the State. This estimate assumes 100% compliance with sales and excise tax requirements.

A 9-liter case of wine, which includes 12 bottles of 750 milliliters of wine sold at \$12 per bottle, is taxed at a rate of \$9.59 per case. For each case of wine, this tax consists of \$0.95 in State excise tax and \$8.64 in Sales tax.

Receipt of Tax Revenues

Alcoholic beverages licensees in Maryland regularly remit sales and excise taxes to the Comptroller's Office. The bill requires that direct wine shippers pay sales and excise tax annually. Although the total revenue of in-State sales that would be replaced by direct wine sales from out of state cannot be determined, altering the timing of these revenues could have a significant fiscal impact.

State Expenditures: Due to an expected increase in the volume of direct wine sales and the number of licensed direct wine shippers, the cost of ensuring compliance with State tax laws is expected to increase. Based on the experience of other states in implementing the sale of wine directly to consumers, the general fund expenditures for the Comptroller's Office will increase by approximately \$21,900 in fiscal 2010, which reflects a 90-day start-up delay. This estimate reflects the cost of hiring one contractual revenue examiner to review the records of direct wine shippers, ensure that the appropriate taxes are being paid, and that the shippers are not selling more than the allowed limits to any one individual. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses. Future year expenditures reflect full salaries with 4.4% annual increases and 1% annual increases in ongoing operating expenses.

Small Business Effect: The bill authorizes both wine retailers and wine manufacturers outside of the State to ship wine directly to Maryland residents. Authorizing the shipment of wine directly to consumers may result in a decline in sales for certain

retailers and wholesalers of alcoholic beverages in the State. To the extent that direct wine shipper's licenses are obtained by wineries and retailers in Maryland, these small businesses could be positively impacted by a potential increase in sales.

Additional Information

Prior Introductions: SB 616 of 2008 received an unfavorable report from the Senate Education, Health, and Environmental Affairs Committee. Its cross file, HB 1260, received an unfavorable report from the House Economic Matters Committee.

Cross File: None.

Information Source(s): Comptroller's Office, Wine Institute, Department of Legislative Services

Fiscal Note History: First Reader - February 16, 2009
mlm/hlb

Analysis by: Michael Sanelli

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(410) 946-5510
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HOUSE BILL 1262

A1
HB 1260/08 – ECM

9lr1431

By: **Delegates Hucker, Ali, Anderson, Aumann, Barnes, Bartlett, Beidle, Bobo, Bohanan, Branch, Cardin, Carr, Carter, V. Clagett, Conaway, Costa, Donoghue, Dumais, Dwyer, Elmore, Feldman, Frick, Frush, George, Gilchrist, Glenn, Gutierrez, Haddaway, Hecht, Heller, Holmes, Howard, Hubbard, Ivey, Kach, Kaiser, Kipke, Kramer, Krebs, Kullen, Lafferty, Lee, Malone, Manno, McComas, McConkey, McDonough, Mizeur, Montgomery, Myers, Nathan-Pulliam, Niemann, Pena-Melnyk, Proctor, Ramirez, Reznik, Rice, Robinson, Ross, Schuh, Schuler, Shewell, Simmons, Sossi, Stein, Stull, Tarrant, F. Turner, V. Turner, Valderrama, Vallario, Waldstreicher, Walkup, Weir, and Weldon**

Introduced and read first time: February 13, 2009

Assigned to: Economic Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Alcoholic Beverages – Direct Wine Shipper’s License**

3 FOR the purpose of repealing provisions that provide for a direct wine seller’s permit;
4 establishing a direct wine shipper’s license to be issued by the Office of the
5 Comptroller to certain persons in or outside of the State; requiring a person to
6 be licensed before the person may engage in shipping wine directly to a resident
7 in the State; requiring a direct wine shipper to perform certain actions;
8 prohibiting a direct wine shipper from performing certain actions; providing for
9 the qualifications and requirements of license applicants; providing for the fee
10 and renewal of a license; specifying certain requirements and conditions to
11 receive a direct shipment of wine; authorizing the Office of the Comptroller to
12 adopt certain regulations; prohibiting a person without a license from shipping
13 wine directly to consumers in the State; providing a certain exception to a
14 certain licensing provision; providing a certain penalty; defining certain terms;
15 altering certain definitions; and generally relating to the establishment of a
16 direct wine shipper’s license.

17 BY repealing

18 Article 2B – Alcoholic Beverages

19 Section 7.5–101 through 7.5–110 and the title “Title 7.5. Direct Wine Seller’s
20 Permit”

21 Annotated Code of Maryland

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (2005 Replacement Volume and 2008 Supplement)

2 BY repealing and reenacting, with amendments,
3 Article 2B – Alcoholic Beverages
4 Section 2–101(b)(1)(i) and 9–102(a)
5 Annotated Code of Maryland
6 (2005 Replacement Volume and 2008 Supplement)

7 BY adding to
8 Article 2B – Alcoholic Beverages
9 Section 7.5–101 through 7.5–110 to be under the new title “Title 7.5. Direct
10 Wine Shipper’s License”
11 Annotated Code of Maryland
12 (2005 Replacement Volume and 2008 Supplement)

13 BY repealing and reenacting, without amendments,
14 Article – Tax – General
15 Section 5–101(a)
16 Annotated Code of Maryland
17 (2004 Replacement Volume and 2008 Supplement)

18 BY repealing and reenacting, with amendments,
19 Article – Tax – General
20 Section 5–101(f) and 5–201(d)
21 Annotated Code of Maryland
22 (2004 Replacement Volume and 2008 Supplement)

23 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
24 MARYLAND, That Section(s) 7.5–101 through 7.5–110 and the title “Title 7.5. Direct
25 Wine Seller’s Permit” of Article 2B – Alcoholic Beverages of the Annotated Code of
26 Maryland be repealed.

27 SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland
28 read as follows:

29 **Article 2B – Alcoholic Beverages**

30 2–101.

31 (b) (1) (i) The Office of the Comptroller shall collect a fee for the
32 issuance or renewal of the following permits:

33 1. \$50 for a solicitor’s permit, an individual storage
34 permit, a nonresident winery permit, or a commercial nonbeverage permit;

35 2. \$75 for a public storage permit, a public
36 transportation permit, or an import and export permit;

1 3. \$100 for a public storage and transportation permit, a
2 nonresident dealer permit, or a bulk transfer permit;

3 4. \$400 for a family beer and wine facility permit; and

4 5. [\$10] **\$100** for a direct wine [seller's permit]
5 **SHIPPER'S LICENSE.**

6 **TITLE 7.5. DIRECT WINE SHIPPER'S LICENSE.**

7 **7.5-101.**

8 (A) **IN THIS TITLE THE FOLLOWING WORDS HAVE THE MEANINGS**
9 **INDICATED.**

10 (B) **"DIRECT WINE SHIPPER" MEANS THE HOLDER OF A DIRECT WINE**
11 **SHIPPER'S LICENSE ISSUED UNDER THIS TITLE.**

12 (C) **"LICENSE" MEANS A DIRECT WINE SHIPPER'S LICENSE ISSUED BY**
13 **THE OFFICE OF THE COMPTROLLER.**

14 (D) **"WINE" INCLUDES BRANDY THAT IS DISTILLED FROM THE PULPY**
15 **RESIDUE OF THE WINE PRESS, INCLUDING THE SKINS, PIPS, AND STALKS OF**
16 **GRAPES.**

17 **7.5-102.**

18 **A PERSON SHALL BE LICENSED BY THE OFFICE OF THE COMPTROLLER AS**
19 **A DIRECT WINE SHIPPER BEFORE THE PERSON MAY ENGAGE IN SHIPPING WINE**
20 **DIRECTLY TO A RESIDENT IN THE STATE.**

21 **7.5-103.**

22 **TO QUALIFY FOR A LICENSE, AN APPLICANT SHALL BE:**

23 (1) **A PERSON LICENSED OUTSIDE OF THE STATE TO ENGAGE IN**
24 **THE MANUFACTURE OF WINE;**

25 (2) **AN AUTHORIZED BRAND OWNER OF WINE, A UNITED STATES**
26 **IMPORTER OF WINE, OR A DESIGNATED MARYLAND AGENT OF A BRAND OWNER**
27 **OR UNITED STATES IMPORTER;**

28 (3) **A HOLDER OF A CLASS 3 MANUFACTURER'S LICENSE OR A**
29 **CLASS 4 MANUFACTURER'S LICENSE ISSUED UNDER THIS ARTICLE; OR**

1 **(4) A PERSON LICENSED BY THE STATE OR OUTSIDE THE STATE**
2 **TO ENGAGE IN THE RETAIL SALE OF WINE FOR CONSUMPTION OFF THE**
3 **PREMISES.**

4 **7.5-104.**

5 **(A) AN APPLICANT FOR A LICENSE SHALL:**

6 **(1) SUBMIT TO THE OFFICE OF THE COMPTROLLER A**
7 **COMPLETED APPLICATION ON A FORM THAT THE OFFICE OF THE**
8 **COMPTROLLER PROVIDES;**

9 **(2) PROVIDE TO THE OFFICE OF THE COMPTROLLER A COPY OF**
10 **THE CURRENT ALCOHOLIC BEVERAGES LICENSE OF THE APPLICANT; AND**

11 **(3) PAY A FEE OF \$100.**

12 **(B) THE OFFICE OF THE COMPTROLLER SHALL ISSUE A LICENSE TO**
13 **EACH APPLICANT WHO MEETS THE REQUIREMENTS OF THIS TITLE FOR A**
14 **LICENSE.**

15 **7.5-105.**

16 **(A) A DIRECT WINE SHIPPER SHALL:**

17 **(1) ENSURE THAT ALL CONTAINERS OF WINE SHIPPED DIRECTLY**
18 **TO A RESIDENT IN THE STATE ARE CONSPICUOUSLY LABELED WITH THE WORDS**
19 **“CONTAINS ALCOHOL; SIGNATURE OF PERSON AT LEAST AGE 21 YEARS OLD**
20 **REQUIRED FOR DELIVERY”;**

21 **(2) REPORT TO THE OFFICE OF THE COMPTROLLER ANNUALLY**
22 **THE TOTAL OF WINE, BY TYPE, SHIPPED IN THE STATE THE PRECEDING**
23 **CALENDAR YEAR;**

24 **(3) PAY ANNUALLY TO THE OFFICE OF THE COMPTROLLER ALL**
25 **SALES TAXES AND EXCISE TAXES DUE ON SALES TO RESIDENTS OF THE STATE IN**
26 **THE PRECEDING CALENDAR YEAR, THE AMOUNT OF THE TAXES TO BE**
27 **CALCULATED AS IF THE SALE WERE MADE AT THE DELIVERY LOCATION;**

28 **(4) ALLOW THE OFFICE OF THE COMPTROLLER TO PERFORM AN**
29 **AUDIT OF THE DIRECT WINE SHIPPER’S RECORDS ON REQUEST; AND**

1 **(5) CONSENT TO THE JURISDICTION OF THE OFFICE OF THE**
2 **COMPTROLLER OR OTHER STATE UNIT AND THE STATE COURTS CONCERNING**
3 **ENFORCEMENT OF THIS SECTION AND ANY RELATED LAW.**

4 **(B) A DIRECT WINE SHIPPER MAY NOT:**

5 **(1) SHIP MORE THAN 24 9-LITER CASES OF WINE ANNUALLY TO**
6 **ANY ONE INDIVIDUAL; OR**

7 **(2) SHIP WINE TO AN ADDRESS IN AN AREA IN WHICH THE BOARD**
8 **OF LICENSE COMMISSIONERS FOR THAT AREA MAY NOT ISSUE A LICENSE**
9 **AUTHORIZING THE SALE OF WINE.**

10 **7.5-106.**

11 **A DIRECT WINE SHIPPER MAY ANNUALLY RENEW ITS LICENSE, IF THE**
12 **DIRECT WINE SHIPPER:**

13 **(1) IS OTHERWISE ENTITLED TO BE LICENSED;**

14 **(2) PROVIDES TO THE OFFICE OF THE COMPTROLLER A COPY OF**
15 **ITS CURRENT ALCOHOLIC BEVERAGES LICENSE; AND**

16 **(3) PAYS TO THE OFFICE OF THE COMPTROLLER A RENEWAL FEE**
17 **OF \$50.**

18 **7.5-107.**

19 **(A) TO RECEIVE A DIRECT SHIPMENT OF WINE, A RESIDENT OF THE**
20 **STATE MUST BE AT LEAST 21 YEARS OF AGE.**

21 **(B) A SHIPMENT OF WINE MAY BE ORDERED OR PURCHASED THROUGH**
22 **A COMPUTER NETWORK.**

23 **(C) A PERSON WHO RECEIVES A SHIPMENT OF WINE SHALL USE THE**
24 **SHIPMENT FOR PERSONAL CONSUMPTION ONLY AND MAY NOT RESELL IT.**

25 **7.5-108.**

26 **THE OFFICE OF THE COMPTROLLER MAY ADOPT REGULATIONS TO CARRY**
27 **OUT THIS TITLE.**

28 **7.5-109.**

Department of Legislative Services
 Maryland General Assembly
 2009 Session

FISCAL AND POLICY NOTE

House Bill 1262 (Delegate Hucker, *et al.*)
 Economic Matters

Alcoholic Beverages - Direct Wine Shipper's License

This bill repeals the ability of the Comptroller’s Office to issue a direct wine seller’s permit and requires it to issue a direct wine shipper’s license. A person licensed as a direct wine shipper may engage in shipping wine directly to a resident in the State. The annual license fee is \$100.

The bill takes effect July 1, 2009.

Fiscal Summary

State Effect: General fund revenues increase by \$90,000 in FY 2010. Sales and excise tax revenues may increase by a significant amount depending on the increase in new wine sales. General fund expenditures increase by \$21,900 in FY 2010. Future years reflect annualization and inflation.

(in dollars)	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
GF Revenue	\$90,000	\$97,800	\$101,700	\$100,600	\$94,800
GF Expenditure	\$21,900	\$28,400	\$29,700	\$31,000	\$32,400
Net Effect	\$68,100	\$69,400	\$72,000	\$69,600	\$62,400

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: None.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: The bill requires that a person be licensed as a direct wine shipper by the Comptroller's Office before the person may engage in shipping wine directly to a resident in the State. For the purposes of the bill, wine includes brandy that is distilled from the pulpy residue of the wine press, including the skins, pips, and stalks of grapes.

To qualify for a direct wine shipper's license, the applicant must be (1) a person licensed outside of the State to engage in the manufacture of wine; (2) an authorized brand owner of wine, a U.S. importer of wine, or a designated Maryland agent of a brand owner or U.S. importer; (3) a holder of a State issued Class 3 manufacturer's (winery) license or a Class 4 manufacturer's (limited winery) license; or (4) a person licensed by the State or outside of the State to engage in the retail sale of wine for consumption off the premises.

The direct wine shipper must (1) ensure that all containers of wine shipped directly to a State resident are conspicuously labeled "contains alcohol; signature of person at least 21 years of age required for delivery"; (2) annually report to the Comptroller's Office the total of wine, by type, shipped in the State the preceding calendar year; (3) annually pay to the Comptroller's Office all sales and excise taxes due on sales to residents of the State in the preceding calendar year; (4) allow the Comptroller's Office to audit the direct wine shipper's records upon request; and (5) consent to the jurisdiction of the Comptroller's Office or other State unit and the State courts concerning enforcement of this section and any related law. A direct wine shipper is prohibited from shipping more than 24 9-liter cases of wine annually to any one individual or shipping to an address in an area in which the board of license commissioners may not issue a license authorizing the sale of wine.

The Comptroller's Office may adopt regulations for the issuance and enforcement of the provisions of this license.

To receive a direct shipment of wine, a State resident must be 21 years old. In addition, the bill stipulates that a wine shipment may be ordered or purchased through a computer network. A person who receives a wine shipment can only use it for personal consumption and not resell it.

A person who violates the laws associated with a direct wine shipper's license would be guilty of a felony and subject to imprisonment of up to two years, a fine of up to \$1,000, or both.

Current Law: The Federal Liquor Law Repeal and Enforcement Act, also referred to as the Webb-Kenyon Act, prohibits the shipment of alcoholic beverages from one state into another state in violation of any law of the receiving state. Maryland State law provides

for a three-tier distribution system and prohibits wineries located inside or outside of the State from delivering wine directly to a resident of the State.

The Comptroller's Office is authorized to issue a direct wine seller's permit, for an annual fee of \$10. A direct wine seller's permit can be issued to a person or entity that (1) is domiciled outside of the State; (2) is engaged in the manufacture of wine, or is the brand owner, U.S. importer, or designated Maryland agent of the brand owner or U.S. importer of wine sold under this authority; (3) holds and acts within the scope of any alcoholic beverages license or permit required in the state where the applicant is domiciled or by the federal Bureau of Alcohol, Tobacco, and Firearms; and (4) does not hold any alcoholic beverages license or permit issued by the State within two years before the application, and is not owned, as a whole or in part, by another person or entity that holds another alcoholic beverages license or permit issued by the State or one of its political subdivisions within two years before the application.

A direct wine seller's permit authorizes a direct wine seller to sell wine to a personal consumer by receiving and filling orders that the personal consumer transmits by electronic or other means. A direct wine seller, however, may not sell a brand of wine in the State that (1) is distributed in the State by a wholesaler licensed in the State; or (2) was distributed in the State within two years before the application for the direct wine seller's permit is filed. During a permit year (November 1 to October 31), a direct wine seller may not sell in the State more than 900 liters of wine or more than 108 liters to a single personal consumer. A direct wine seller is required to file an annual tax return.

Wine shipped to a personal consumer must be shipped to a wholesaler licensed in the State that is designated by the federal Alcohol and Tobacco Tax Bureau, and then delivered by the wholesaler to a retail dealer. The wholesaler and retail dealer are solely facilitators in the shipping process and do not have title to the wine. The personal consumer must take personal delivery of the shipment at the licensed premises of the retail dealer promptly upon receiving notice from the dealer. The wholesaler may impose a service charge at a rate of \$2 per bottle but no more than \$4 per shipment, and the retail dealer may impose a service charge of \$5 per bottle but no more than \$10 per shipment when the consumer takes delivery.

Background: In May 2005, The U.S. Supreme Court in *Granholm v. Heald* struck down laws in Michigan and New York that prohibited direct shipment of wine to consumers within the state from out-of-state businesses but permitted direct shipment to those consumers from in-state businesses. Court cases against wine shipping laws have been filed in at least 24 states, including Arizona, Arkansas, California, Delaware, Florida, Illinois, Indiana, Kentucky, Maine, Maryland, Massachusetts, Missouri, New Jersey, North Carolina, Ohio, Oklahoma, Pennsylvania, Rhode Island, Tennessee, Texas, Virginia, and Washington.

At least 35 states have passed legislation authorizing the direct shipment of wine to consumers, including Virginia, West Virginia, and the District of Columbia.

State Revenues: According to the *Alcohol and Tobacco Tax Annual Report*, the Comptroller’s Office issued two direct wine seller’s permits in fiscal 2008. The Comptroller’s Office advises that it charges a \$200 application fee for new alcoholic beverages licenses it issues and a \$30 application fee for each license it renews.

Revenues from Permits Issued

It is uncertain how many of the 6,200 federally licensed wine manufacturers would apply for a direct wine shipper’s license in Maryland. Additionally, the bill would also authorize retailers licensed in other states for off-premises sales to apply for a direct shipper’s license in Maryland. **Exhibit 1** illustrates potential revenues from the issuance of licenses.

Exhibit 1
Potential Revenues from Direct Wine Shipper’s Licenses

	<u>FY 2010</u>	<u>FY 2011</u>	<u>FY 2012</u>	<u>FY 2013</u>	<u>FY 2014</u>
Number of New Licenses Issued	300	250	200	150	100
Number of Licenses Renewed	-	285	521	695	810
Total Number of Permits	300	535	721	845	910
Total Revenue from Licenses	\$90,000	\$97,800	\$101,700	\$100,600	\$94,800

This estimate is based on the experience of other states and includes \$300 for each new license issued, including the \$100 license fee and a \$200 one-time application fee. For each license renewed, revenues would increase by \$80 annually, including the \$50 renewal license fee and a \$30 renewal application fee. This estimate assumes that 5% of licenses issued would not be renewed. As a point of reference, Virginia has issued 870 in and out of state wine shipper’s licenses.

Sales and Excise Tax

The majority of wine that would be sold by holders of a direct wine shipper’s license would have otherwise been sold at a retail location in the State. To the extent that consumer access to additional brands of wine, lower prices offered from nationwide Internet wine retailers, and the convenience of home delivery would result in an increase

in per-capita wine consumption, State sales and excise tax would increase. *For illustrative purposes only*, if sales of wine consumed at home were to increase by one-half of 1% (0.5%), general fund revenues from sales and excise tax would increase by approximately \$200,000 annually. For comparative purposes, a 0.5% increase in wine sales equates to an additional five cases purchased per 1,000 residents of legal drinking age in the State. This estimate assumes 100% compliance with sales and excise tax requirements.

A 9-liter case of wine, which includes 12 bottles of 750 milliliters of wine sold at \$12 per bottle, is taxed at a rate of \$9.59 per case. For each case of wine, this tax consists of \$0.95 in State excise tax and \$8.64 in Sales tax.

Receipt of Tax Revenues

Alcoholic beverages licensees in Maryland regularly remit sales and excise taxes to the Comptroller's Office. The bill requires that direct wine shippers pay sales and excise tax annually. Although the total revenue of in-State sales that would be replaced by direct wine sales from out of state cannot be determined, altering the timing of these revenues could have a significant fiscal impact.

State Expenditures: Due to an expected increase in the volume of direct wine sales and the number of licensed direct wine shippers, the cost of ensuring compliance with State tax laws is expected to increase. Based on the experience of other states in implementing the sale of wine directly to consumers, the general fund expenditures for the Comptroller's Office will increase by approximately \$21,900 in fiscal 2010, which reflects a 90-day start-up delay. This estimate reflects the cost of hiring one contractual revenue examiner to review the records of direct wine shippers, ensure that the appropriate taxes are being paid, and that the shippers are not selling more than the allowed limits to any one individual. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses. Future year expenditures reflect full salaries with 4.4% annual increases and 1% annual increases in ongoing operating expenses.

Small Business Effect: The bill authorizes both wine retailers and wine manufacturers outside of the State to ship wine directly to Maryland residents. Authorizing the shipment of wine directly to consumers may result in a decline in sales for certain retailers and wholesalers of alcoholic beverages in the State. To the extent that direct wine shipper's licenses are obtained by wineries and retailers in Maryland, these small businesses could be positively impacted by a potential increase in sales.

Additional Information

Prior Introductions: HB 1260 of 2008 received an unfavorable report from the House Economic Matters Committee. Its cross file, SB 616, received an unfavorable report from the Senate Education, Health, and Environmental Affairs Committee.

Cross File: None.

Information Source(s): Comptroller's Office, Judiciary (Administrative Office of the Courts), Department of Public Safety and Correctional Services, Department of Legislative Services

Fiscal Note History: First Reader - February 19, 2009
mlm/hlb

Analysis by: Michael Sanelli

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APPENDIX 7

2010 LEGISLATIVE SESSION

Senate Bill 566

Senate Bill 566 was introduced by Senators Raskin, Pugh, Astle, Brinkley, Colburn, Dyson, Forehand, Frosh, Garagiola, Gladden, Glassman, Harrington, Harris, Jacobs, Jones, Kelley, King, Kittleman, Kramer, Lenett, Madaleno, Mooney, Muse, Pinsky, Robey, and Zirkin.

The number of Senators sponsoring the legislation increased from nineteen (19) in 2009 to twenty-six (26) in 2010. A hearing was held by Senate Education, Health, and Environmental Matters Committee on March 17, 2010. No further action was taken by the committee.

House Bill 716

House Bill 716 was introduced by eighty (80) delegates.¹ The number of Delegates sponsoring the legislation increased marginally from seventy-five (75) in 2009 to eighty (80) in 2010. A hearing was held on March 5, 2010. House Bill 716 received an unfavorable report by the House Economic Matters Committee by a vote of 12-8 with 3 delegates excused. There are 24 members in the House Economic Matters Committee, so a majority vote of 13 was needed to pass the bill out of committee. Since Chairman Derek Davis does not vote, the 12-8 vote fell one vote short of House Bill 716 receiving a favorable report.

Senate Bill 566 and House Bill 716 were identical. The 2010 legislative bills differed from the 2009 bills in the following respects:

1. The provision stating that a person may not be a direct wine shipper without a license issued by the Comptroller before that person may ship wine was amended to include an agent acting on that person's behalf;
2. Tax filing reports are filed monthly rather than annually;
3. Tax returns and payment of the alcoholic beverages tax and sales tax are filed monthly rather than annually;

¹ Delegates Krysiak, Hucker, Ali, Anderson, Aumann, Barnes, Bartlett, Benson, Bobo, Bohanan, Cane, Cardin, Carr, G. Claggett, Conaway, Conway, Costa, Dumais, Dwyer, Elliott, Elmore, Feldman, Frank, Frick, Frush, Gaines, George, Gilchrist, Glenn, Gutierrez, Haddaway, Hecht, Heller, Holmes, Howard, Hubbard, Ivey, Jennings, Kach, Kaiser, Kipke, Kramer, Krebs, Kullen, Lafferty, Lee, Levi, Malone, Manno, McComas, McConkey, McIntosh, Mizeur, Montgomery, Morhaim, Nathan-Pulliam, Niemann, Pena-Melnyk, Pendergrass, Proctor, Ramirez, Reznik, Rice, Robinson, Rosenberg, Ross, Schuh, Shank, Shewell, Simmons, Smigiel, Stein, Stocksdale, Stull, Tarrant, F. Turner, Valerrama, Vallario, Waldstreicher, and Weir.

4. Prohibiting a direct wine shipper licensee from shipping wine to an area in which the Board of License Commissioners may not issue a retail license for selling wine was changed to prohibiting delivery on Sunday;
5. Requiring a common carrier to use a shipping label clearly indicating the name of the direct shipper and name of recipient, and to obtain the signature of the consumer, and photographic identification that the consumer is at least 21 years old;
6. Prohibiting a "person" from directly shipping wine without a license was changed to "business entity";
7. Providing an exception for direct wine shipment to consumers in Montgomery County in § 15-204(b) of Article 2B.

SENATE BILL 566

A1

01r0582
CF 01r0406

By: **Senators Raskin, Pugh, Astle, Brinkley, Colburn, Dyson, Forehand, Frosh, Garagiola, Gladden, Glassman, Harrington, Harris, Jacobs, Jones, Kelley, King, Kittleman, Kramer, Lenett, Madaleno, Mooney, Muse, Pinsky, Robey, and Zirkin**

Introduced and read first time: February 4, 2010

Assigned to: Education, Health, and Environmental Affairs

A BILL ENTITLED

1 AN ACT concerning

2 **Alcoholic Beverages – Direct Wine Shipper’s License**

3 FOR the purpose of repealing provisions that provide for a direct wine seller’s permit;
4 establishing a direct wine shipper’s license to be issued by the Office of the
5 Comptroller; requiring a person to be licensed before the person or the person’s
6 agent may engage in shipping wine directly to a personal consumer in the State;
7 requiring an applicant to meet certain qualifications for a license, submit an
8 application and a copy of its current alcoholic beverages license to the Office of
9 the Comptroller, and pay a certain fee; requiring a direct wine shipper to
10 perform certain actions; prohibiting a direct wine shipper from shipping more
11 than a certain amount of wine annually to any one personal consumer or make
12 deliveries on Sunday; requiring a direct wine shipper to meet certain
13 requirements to renew the license; specifying certain requirements for receiving
14 a direct shipment of wine; allowing a shipment of wine to be ordered or
15 purchased through a computer network; authorizing the Office of the
16 Comptroller to adopt certain regulations; prohibiting a person without a license
17 from shipping wine directly to personal consumers in the State; providing a
18 certain penalty; defining certain terms; making certain technical corrections;
19 altering a certain definition; and generally relating to the establishment of a
20 direct wine shipper’s license.

21 BY repealing

22 Article 2B – Alcoholic Beverages

23 Section 7.5–101 through 7.5–110 and the title “Title 7.5. Direct Wine Seller’s
24 Permit”

25 Annotated Code of Maryland

26 (2005 Replacement Volume and 2009 Supplement)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 BY repealing and reenacting, with amendments,
 2 Article 2B – Alcoholic Beverages
 3 Section 2–101(b)(1)(i), 9–102(a), and 15–204(b)
 4 Annotated Code of Maryland
 5 (2005 Replacement Volume and 2009 Supplement)

6 BY adding to
 7 Article 2B – Alcoholic Beverages
 8 Section 7.5–101 through 7.5–111 to be under the new title “Title 7.5. Direct
 9 Wine Shipper’s License”
 10 Annotated Code of Maryland
 11 (2005 Replacement Volume and 2009 Supplement)

12 BY repealing and reenacting, without amendments,
 13 Article – Tax – General
 14 Section 5–101(a)
 15 Annotated Code of Maryland
 16 (2004 Replacement Volume and 2009 Supplement)

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 18 Article – Tax – General
 19 Section 5–101(f) and 5–201(d)
 20 Annotated Code of Maryland
 21 (2004 Replacement Volume and 2009 Supplement)

22 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
 23 MARYLAND, That Section(s) 7.5–101 through 7.5–110 and the title “Title 7.5. Direct
 24 Wine Seller’s Permit” of Article 2B – Alcoholic Beverages of the Annotated Code of
 25 Maryland be repealed.

26 SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland
 27 read as follows:

28 **Article 2B – Alcoholic Beverages**

29 2–101.

30 (b) (1) (i) The Office of the Comptroller shall collect a fee for the
 31 issuance or renewal of the following permits:

32 1. \$50 for a solicitor’s permit, an individual storage
 33 permit, a nonresident winery permit, or a commercial nonbeverage permit;

34 2. \$75 for a public storage permit, a public
 35 transportation permit, or an import and export permit;

36 3. \$200 for a public storage and transportation permit, a
 37 nonresident dealer’s permit, a resident dealer’s permit, or a bulk transfer permit;

- 1 4. \$400 for a family beer and wine facility permit; and
2 5. [\$10] **\$100** for a direct wine [seller's permit]
3 **SHIPPER'S LICENSE.**

4 **TITLE 7.5. DIRECT WINE SHIPPER'S LICENSE.**

5 **7.5-101.**

6 (A) **IN THIS TITLE THE FOLLOWING WORDS HAVE THE MEANINGS**
7 **INDICATED.**

8 (B) **"DIRECT WINE SHIPPER" MEANS THE HOLDER OF A DIRECT WINE**
9 **SHIPPER'S LICENSE ISSUED UNDER THIS TITLE.**

10 (C) **"LICENSE" MEANS A DIRECT WINE SHIPPER'S LICENSE ISSUED BY**
11 **THE OFFICE OF THE COMPTROLLER.**

12 (D) **"WINE" INCLUDES BRANDY THAT IS DISTILLED FROM THE PULPY**
13 **RESIDUE OF THE WINE PRESS, INCLUDING THE SKINS, PIPS, AND STALKS OF**
14 **GRAPES.**

15 **7.5-102.**

16 **A PERSON SHALL BE LICENSED BY THE OFFICE OF THE COMPTROLLER AS**
17 **A DIRECT WINE SHIPPER BEFORE THE PERSON OR THE PERSON'S AGENT MAY**
18 **ENGAGE IN SHIPPING WINE DIRECTLY TO A PERSONAL CONSUMER IN THE**
19 **STATE.**

20 **7.5-103.**

21 **TO QUALIFY FOR A LICENSE, AN APPLICANT SHALL BE:**

22 (1) **A PERSON LICENSED OUTSIDE OF THE STATE TO ENGAGE IN**
23 **THE MANUFACTURE OF WINE;**

24 (2) **AN AUTHORIZED BRAND OWNER OF WINE, A UNITED STATES**
25 **IMPORTER OF WINE, OR A DESIGNATED MARYLAND AGENT OF A BRAND OWNER**
26 **OR UNITED STATES IMPORTER;**

27 (3) **A HOLDER OF A CLASS 3 MANUFACTURER'S LICENSE OR A**
28 **CLASS 4 MANUFACTURER'S LICENSE ISSUED UNDER THIS ARTICLE; OR**

1 **(4) A PERSON LICENSED BY THE STATE OR OUTSIDE THE STATE**
2 **TO ENGAGE IN THE RETAIL SALE OF WINE FOR CONSUMPTION OFF THE**
3 **PREMISES.**

4 **7.5-104.**

5 **(A) AN APPLICANT FOR A LICENSE SHALL:**

6 **(1) SUBMIT TO THE OFFICE OF THE COMPTROLLER A**
7 **COMPLETED APPLICATION ON A FORM THAT THE OFFICE OF THE**
8 **COMPTROLLER PROVIDES;**

9 **(2) PROVIDE TO THE OFFICE OF THE COMPTROLLER A COPY OF**
10 **THE APPLICANT'S CURRENT ALCOHOLIC BEVERAGES LICENSE; AND**

11 **(3) PAY A FEE OF \$100.**

12 **(B) THE OFFICE OF THE COMPTROLLER SHALL ISSUE A LICENSE TO**
13 **EACH APPLICANT WHO MEETS THE REQUIREMENTS OF THIS TITLE FOR A**
14 **LICENSE.**

15 **7.5-105.**

16 **(A) A DIRECT WINE SHIPPER SHALL:**

17 **(1) ENSURE THAT ALL CONTAINERS OF WINE SHIPPED DIRECTLY**
18 **TO A PERSONAL CONSUMER IN THE STATE ARE CONSPICUOUSLY LABELED WITH**
19 **THE WORDS "CONTAINS ALCOHOL: SIGNATURE OF PERSON AT LEAST 21 YEARS**
20 **OF AGE REQUIRED FOR DELIVERY";**

21 **(2) REPORT MONTHLY TO THE OFFICE OF THE COMPTROLLER**
22 **THE TOTAL AMOUNT OF WINE, BY TYPE, SHIPPED IN THE STATE, THE PRICE**
23 **CHARGED, AND THE NAME AND ADDRESS OF EACH PURCHASER;**

24 **(3) PAY MONTHLY TO THE OFFICE OF THE COMPTROLLER ALL**
25 **SALES TAXES AND EXCISE TAXES DUE ON SALES TO PERSONAL CONSUMERS IN**
26 **THE STATE, THE AMOUNT OF THE TAXES TO BE CALCULATED AS IF THE SALE**
27 **WERE MADE AT THE DELIVERY LOCATION;**

28 **(4) ALLOW THE OFFICE OF THE COMPTROLLER TO PERFORM AN**
29 **AUDIT OF THE DIRECT WINE SHIPPER'S RECORDS ON REQUEST; AND**

1 **(5) CONSENT TO THE JURISDICTION OF THE OFFICE OF THE**
2 **COMPTROLLER OR OTHER STATE UNIT AND THE STATE COURTS CONCERNING**
3 **ENFORCEMENT OF THIS SECTION AND ANY RELATED LAW.**

4 **(B) A DIRECT WINE SHIPPER MAY NOT:**

5 **(1) SHIP MORE THAN 24 9-LITER CASES OF WINE ANNUALLY TO**
6 **ANY ONE PERSONAL CONSUMER; OR**

7 **(2) DELIVER WINE ON SUNDAY TO AN ADDRESS IN THE STATE.**

8 **7.5-106.**

9 **A DIRECT WINE SHIPPER MAY ANNUALLY RENEW ITS LICENSE IF THE**
10 **DIRECT WINE SHIPPER:**

11 **(1) IS OTHERWISE ENTITLED TO BE LICENSED;**

12 **(2) PROVIDES TO THE OFFICE OF THE COMPTROLLER A COPY OF**
13 **ITS CURRENT ALCOHOLIC BEVERAGES LICENSE; AND**

14 **(3) PAYS TO THE OFFICE OF THE COMPTROLLER A RENEWAL FEE**
15 **OF \$50.**

16 **7.5-107.**

17 **(A) TO RECEIVE A DIRECT SHIPMENT OF WINE, A PERSONAL CONSUMER**
18 **OF THE STATE MUST BE AT LEAST 21 YEARS OLD.**

19 **(B) A SHIPMENT OF WINE MAY BE ORDERED OR PURCHASED THROUGH**
20 **A COMPUTER NETWORK.**

21 **(C) A PERSON WHO RECEIVES A SHIPMENT OF WINE SHALL USE THE**
22 **SHIPMENT FOR PERSONAL CONSUMPTION ONLY AND MAY NOT RESELL IT.**

23 **7.5-108.**

24 **(A) A SHIPMENT MADE IN ACCORDANCE WITH THIS TITLE SHALL BE**
25 **MADE BY A COMMON CARRIER AND BE ACCOMPANIED BY A SHIPPING LABEL**
26 **THAT CLEARLY INDICATES THE NAME OF THE DIRECT SHIPPER AND THE NAME**
27 **AND ADDRESS OF THE RECIPIENT.**

1 **(B) TO COMPLETE DELIVERY OF A SHIPMENT, THE COMMON CARRIER**
2 **SHALL REQUIRE FROM A PERSONAL CONSUMER AT THE ADDRESS LISTED ON**
3 **THE SHIPPING LABEL:**

4 **(1) THE SIGNATURE OF THE PERSONAL CONSUMER; AND**

5 **(2) PHOTOGRAPHIC IDENTIFICATION SHOWING THAT THE**
6 **PERSONAL CONSUMER IS AT LEAST 21 YEARS OLD.**

7 **7.5-109.**

8 **THE OFFICE OF THE COMPTROLLER MAY ADOPT REGULATIONS TO CARRY**
9 **OUT THIS TITLE.**

10 **7.5-110.**

11 **A BUSINESS ENTITY WITHOUT A LICENSE MAY NOT SHIP WINE DIRECTLY**
12 **TO PERSONAL CONSUMERS IN THE STATE.**

13 **7.5-111.**

14 **A PERSON WHO VIOLATES THIS TITLE IS GUILTY OF A FELONY AND ON**
15 **CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 2 YEARS OR A**
16 **FINE NOT EXCEEDING \$1,000 OR BOTH.**

17 **9-102.**

18 (a) No more than one license provided by this article, except by way of
19 renewal or as otherwise provided in this section, shall be issued in any county or
20 Baltimore City, to any person, or for the use of any partnership, corporation,
21 unincorporated association, or limited liability company, in Baltimore City or any
22 county of the State, and no more than one license shall be issued for the same
23 premises except as provided in §§ 2-201 through 2-208, 2-301, [and] 6-701, **AND**
24 **TITLE 7.5** of this article, and nothing herein shall be construed to apply to §
25 6-201(r)(4), (15), and (17), § 7-101(b) and (c), § 8-202(g)(2)(ii) and (iii), § 8-217(e), §
26 8-508, or § 12-202 of this article.

27 **15-204.**

28 (b) (1) Provided, that in Montgomery County no person, firm, or
29 corporation shall keep for sale any alcoholic beverage not purchased from the
30 Department of Liquor Control for Montgomery County, provided, however, that
31 nothing in this subsection shall apply to a holder of a Class F license or a holder of a
32 Class 1 beer, wine and liquor, Class 2 wine and liquor, Class 3 beer and wine, Class 4

1 beer, or Class 5 wine wholesaler's license, who may not sell or deliver any alcoholic
2 beverage in Montgomery County for resale except to a county liquor dispensary.

3 (2) Notwithstanding paragraph (1) of this subsection:

4 (i) 1. A holder of a Class 6 limited wine wholesaler's license
5 or of a nonresident winery permit may sell or deliver wine directly to a county liquor
6 dispensary, restaurant, or other retail dealer in Montgomery County; and

7 [(ii)] 2. A county liquor dispensary, restaurant, or other retail
8 dealer in Montgomery County may purchase wine directly from a holder of a Class 6
9 limited wine wholesaler's license or of a nonresident winery permit; AND

10 (II) A HOLDER OF A DIRECT WINE SHIPPER'S LICENSE MAY
11 SHIP WINE DIRECTLY TO A PERSONAL CONSUMER IN MONTGOMERY COUNTY.

12 **Article – Tax – General**

13 5–101.

14 (a) In this title the following words have the meanings indicated.

15 (f) “Direct wine [seller] **SHIPPER**” has the meaning stated in Article 2B, §
16 7.5–101 of the Code.

17 5–201.

18 (d) [(1)] A person who is a direct wine [seller] **SHIPPER** shall file with the
19 Office of the Comptroller [an annual] **A MONTHLY** tax return.

20 [(2)] The annual tax return shall be due no later than October 15 of
21 each year covering the previous 12 calendar months ending September 30.]

22 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
23 July 1, 2010.

Department of Legislative Services
2010 Session

FISCAL AND POLICY NOTE

Senate Bill 566 (Senator Raskin, *et al.*)
Education, Health, and Environmental Affairs

Alcoholic Beverages - Direct Wine Shipper's License

This bill repeals the direct wine seller's permit and instead establishes a direct wine shipper's license to be issued by the Comptroller's Office. A person licensed as a direct wine shipper may engage in shipping wine directly to a resident in the State. The initial license fee is \$100.

The bill takes effect July 1, 2010.

Fiscal Summary

State Effect: General fund revenues increase by \$90,000 in FY 2011. Sales and excise tax revenues may increase by a significant amount depending on the increase in new wine sales. General fund expenditures increase by \$38,600 in FY 2011. Future years reflect annualization and inflation.

(in dollars)	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015
GF Revenue	\$90,000	\$97,800	\$101,700	\$100,600	\$94,800
GF Expenditure	\$38,600	\$44,500	\$46,400	\$48,400	\$50,600
Net Effect	\$51,400	\$53,300	\$55,300	\$52,200	\$44,200

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: The majority of counties indicated there would be no effect. However, Montgomery County indicated a significant loss of revenue based on the assumption that consumers will purchase wine from direct wine shippers instead of from the county dispensary.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: The bill requires that a person be licensed as a direct wine shipper by the Comptroller's Office before the person may engage in shipping wine directly to a personal consumer in the State. For the purposes of the bill, wine includes brandy that is distilled from the pulpy residue of the wine press, including the skins, pips, and stalks of grapes.

To qualify for a direct wine shipper's license, the applicant must be (1) a person licensed outside of the State to engage in the manufacture of wine; (2) an authorized brand owner of wine, a U.S. importer of wine, or a designated Maryland agent of a brand owner or U.S. importer; (3) a holder of a State issued Class 3 manufacturer's (winery) license or a Class 4 manufacturer's (limited winery) license; or (4) a person licensed by the State or outside of the State to engage in the retail sale of wine for consumption off the premises.

The direct wine shipper must (1) ensure that all containers of wine shipped directly to a personal consumer are conspicuously labeled "Contains Alcohol; Signature of Person at Least 21 Years of Age Required for Delivery"; (2) monthly report to the Comptroller's Office the total amount of wine, by type, shipped in the State, the price charged, and the name and address of each purchaser; (3) monthly pay to the Comptroller's Office all sales and excise taxes due on sales to personal consumers in the State, calculating the amount of the taxes as if the sale were made at the delivery location; (4) allow the Comptroller's Office to audit the direct wine shipper's records upon request; and (5) consent to the jurisdiction of the Comptroller's Office or other State unit and the State courts concerning enforcement of this section and any related law. A direct wine shipper is prohibited from shipping more than 24 9-liter cases of wine annually to any one individual or delivering wine on Sunday to an address in the State.

The Comptroller's Office may adopt regulations for the issuance and enforcement of the provisions of this license.

To receive a direct shipment of wine, a personal consumer in the State must be at least 21 years old. In addition, the bill stipulates that a wine shipment may be ordered or purchased through a computer network. A person who receives a wine shipment can only use it for personal consumption and not resell it.

A shipment must be made by a common carrier and be accompanied by a shipping label that clearly indicates the name of the direct shipper and the name and address of the recipient. To complete delivery of a shipment, the common carrier must require the signature of the individual and photo identification demonstrating that the individual is at least 21 years old.

The bill specifies that a holder of a direct wine shipper's license may ship wine directly to a personal consumer in Montgomery County.

A person who violates the laws associated with a direct wine shipper's license would be guilty of a felony and subject to imprisonment of up to two years, a fine of up to \$1,000, or both.

Current Law: The Federal Liquor Law Repeal and Enforcement Act, also referred to as the Webb-Kenyon Act, prohibits the shipment of alcoholic beverages from one state into another state in violation of any law of the receiving state. Maryland State law provides for a three-tier distribution system and prohibits wineries located inside or outside of the State from delivering wine directly to a resident of the State.

The Comptroller's Office is authorized to issue a direct wine seller's permit, for an annual fee of \$10. A direct wine seller's permit can be issued to a person or entity that (1) is domiciled outside of the State; (2) is engaged in the manufacture of wine, or is the brand owner, U.S. importer, or designated Maryland agent of the brand owner or U.S. importer of wine sold under this authority; (3) holds and acts within the scope of any alcoholic beverages license or permit required in the state where the applicant is domiciled or by the federal Bureau of Alcohol, Tobacco, and Firearms; and (4) does not hold any alcoholic beverages license or permit issued by the State within two years before the application, and is not owned, as a whole or in part, by another person or entity that holds another alcoholic beverages license or permit issued by the State or one of its political subdivisions within two years before the application.

A direct wine seller's permit authorizes a direct wine seller to sell wine to a personal consumer by receiving and filling orders that the personal consumer transmits by electronic or other means. A direct wine seller, however, may not sell a brand of wine in the State that (1) is distributed in the State by a wholesaler licensed in the State; or (2) was distributed in the State within two years before the application for the direct wine seller's permit is filed. During a permit year (November 1 to October 31), a direct wine seller may not sell in the State more than 900 liters of wine or more than 108 liters to a single personal consumer. A direct wine seller is required to file an annual tax return.

Wine shipped to a personal consumer must be shipped to a wholesaler licensed in the State that is designated by the federal Alcohol and Tobacco Tax Bureau, and then delivered by the wholesaler to a retail dealer. The wholesaler and retail dealer are solely facilitators in the shipping process and do not have title to the wine. The personal consumer must take personal delivery of the shipment at the licensed premises of the retail dealer promptly upon receiving notice from the dealer. The wholesaler may impose a service charge at a rate of \$2 per bottle but no more than \$4 per shipment, and the retail

dealer may impose a service charge of \$5 per bottle but no more than \$10 per shipment when the consumer takes delivery.

Unless otherwise specified, in Montgomery County, no person, firm, or corporation may keep for sale any alcoholic beverage not purchased from the Montgomery County Department of Liquor Control. A holder of a Class 6 limited wine wholesaler's license or of a nonresident winery permit may sell or deliver wine directly to a county liquor dispensary, restaurant or other retail dealer in Montgomery County. A county liquor dispensary, restaurant, or other retail dealer in Montgomery County may purchase wine directly from a holder of a Class 6 limited wine wholesaler's license or of a nonresident winery permit.

Background: In May 2005, the U.S. Supreme Court in *Granholm v. Heald* struck down laws in Michigan and New York that prohibited direct shipment of wine to consumers within the state from out-of-state businesses but permitted direct shipment to those consumers from in-state businesses. Court cases against wine shipping laws have been filed in at least 24 states, including Arizona, Arkansas, California, Delaware, Florida, Illinois, Indiana, Kentucky, Maine, Maryland, Massachusetts, Missouri, New Jersey, North Carolina, Ohio, Oklahoma, Pennsylvania, Rhode Island, Tennessee, Texas, Virginia, and Washington.

At least 35 states have passed legislation authorizing the direct shipment of wine to consumers, including Virginia, West Virginia, and the District of Columbia.

State Revenues: According to the *Alcohol and Tobacco Tax Annual Report*, the Comptroller's Office issued three direct wine seller's permits in fiscal 2009. The Comptroller's Office advises that it generally charges a \$200 application fee for new alcoholic beverages licenses it issues and a \$30 application fee for each license it renews.

Revenues from Permits Issued

It is uncertain how many of the 6,725 federally licensed wine manufacturers would apply for a direct wine shipper's license in Maryland. Additionally, the bill would also authorize retailers licensed in other states for off-premises sales to apply for a direct shipper's license in Maryland. **Exhibit 1** illustrates potential revenues from the issuance of licenses.

Exhibit 1
Potential Revenues from Direct Wine Shipper's Licenses

	<u>FY 2011</u>	<u>FY 2012</u>	<u>FY 2013</u>	<u>FY 2014</u>	<u>FY 2015</u>
Number of New Licenses Issued	300	250	200	150	100
Number of Licenses Renewed	-	285	521	695	810
Total Number of Permits	300	535	721	845	910
Total Revenue from Licenses	\$90,000	\$97,800	\$101,700	\$100,600	\$94,800

This estimate is based on the experience of other states and includes \$300 for each new license issued, including the \$100 license fee and a \$200 one-time application fee. For each license renewed, revenues would increase by \$80 annually, including the \$50 renewal license fee and a \$30 renewal application fee. This estimate assumes that 5% of licenses issued would not be renewed. As a point of reference, Virginia has currently issued 849 in and out of state wine shipper's licenses.

Sales and Excise Tax

The majority of wine that would be sold by holders of a direct wine shipper's license would have otherwise been sold at a retail location in the State. To the extent that consumer access to additional brands of wine, lower prices offered from nationwide Internet wine retailers, and the convenience of home delivery would result in an increase in per-capita wine consumption, State sales and excise tax would increase.

For illustrative purposes only, if sales of wine consumed at home were to increase by one-half of 1% (0.5%), general fund revenues from sales and excise tax would increase by approximately \$550,000 annually, assuming an average per case cost of \$360 (\$30 per bottle). For comparative purposes, a 0.5% increase in wine sales equates to an additional five cases purchased per 1,000 residents of legal drinking age in the State. This estimate assumes 100% compliance with sales and excise tax requirements.

A 9-liter case of wine, which includes 12 bottles of 750 milliliters of wine sold at \$30 per bottle, is taxed at a rate of \$22.56 per case. For each case of wine, this tax consists of \$0.96 in State excise tax and \$21.60 in sales tax.

Under another set of assumptions, general fund revenues from sales and excise tax could increase by approximately \$200,000, assuming an average per case cost of \$144. A 9-liter case of wine, which includes 12 bottles of 750 milliliters of wine sold at \$12 per

bottle, is taxed at a rate of \$9.59 per case. For each case of wine, this tax consists of \$0.95 in State excise tax and \$8.64 in sales tax.

State Expenditures: Due to an expected increase in the volume of direct wine sales and the number of licensed direct wine shippers, the cost of ensuring compliance with State tax laws is expected to increase. Based on the experience of other states in implementing the sale of wine directly to consumers, the general fund expenditures for the Comptroller's Office will increase by approximately \$38,600 in fiscal 2011, which reflects a 90-day start-up delay. This estimate reflects the cost of hiring one *contractual revenue examiner* to review the records of direct wine shippers, ensure that the appropriate taxes are being paid, and that the shippers are not selling more than the allowed limits to any one individual; and one *part-time tax consultant* to handle anticipated additional administrative hearings. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses. Future year expenditures reflect full salaries with 4.4% annual increases and 1% annual increases in ongoing operating expenses.

Small Business Effect: The bill authorizes both wine retailers and wine manufacturers outside of the State to ship wine directly to Maryland residents. Authorizing the shipment of wine directly to consumers may result in a decline in sales for certain retailers and wholesalers of alcoholic beverages in the State. To the extent that direct wine shipper's licenses are obtained by wineries and retailers in Maryland, these small businesses could be positively impacted by a potential increase in sales.

Additional Information

Prior Introductions: HB 1262 of 2009 received an unfavorable report from the House Economic Matters Committee. Its cross file, SB 338, received a hearing in the Senate Education, Health, and Environmental Affairs Committee, but no further action was taken. SB 616 of 2008 received an unfavorable report from the Senate Education, Health, and Environmental Affairs Committee. Its cross file, HB 1260, received an unfavorable report from the House Economic Matters Committee.

Cross File: HB 716 (Delegate Krysiak, *et al.*) - Economic Matters.

Information Source(s): Anne Arundel, Baltimore, Charles, Frederick, Montgomery, and Somerset counties; Comptroller's Office; Judiciary (Administrative Office of the Courts); Department of Legislative Services

Fiscal Note History: First Reader - March 4, 2010
ncs/hlb

Analysis by: Jennifer K. Botts

Direct Inquiries to:
(410) 946-5510
(301) 970-5510

HOUSE BILL 716

A1

01r0406
CF SB 566

By: **Delegates Krysiak, Hucker, Ali, Anderson, Aumann, Barnes, Bartlett, Benson, Bobo, Bohanan, Cane, Cardin, Carr, G. Clagett, Conaway, Conway, Costa, Dumais, Dwyer, Elliott, Elmore, Feldman, Frank, Frick, Frush, Gaines, George, Gilchrist, Glenn, Gutierrez, Haddaway, Hecht, Heller, Holmes, Howard, Hubbard, Ivey, Jennings, Kach, Kaiser, Kipke, Kramer, Krebs, Kullen, Lafferty, Lee, Levi, Malone, Manno, McComas, McConkey, McIntosh, Mizeur, Montgomery, Morhaim, Nathan-Pulliam, Niemann, Pena-Melnyk, Pendergrass, Proctor, Ramirez, Reznik, Rice, Robinson, Rosenberg, Ross, Schuh, Shank, Shewell, Simmons, Smigiel, Stein, Stocksdale, Stull, Tarrant, F. Turner, Valderrama, Vallario, Waldstreicher, and Weir**

Introduced and read first time: February 4, 2010

Assigned to: Economic Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Alcoholic Beverages – Direct Wine Shipper’s License**

3 FOR the purpose of repealing provisions that provide for a direct wine seller’s permit;
4 establishing a direct wine shipper’s license to be issued by the Office of the
5 Comptroller; requiring a person to be licensed before the person or the person’s
6 agent may engage in shipping wine directly to a personal consumer in the State;
7 requiring an applicant to meet certain qualifications for a license, submit an
8 application and a copy of its current alcoholic beverages license to the Office of
9 the Comptroller, and pay a certain fee; requiring a direct wine shipper to
10 perform certain actions; prohibiting a direct wine shipper from shipping more
11 than a certain amount of wine annually to any one personal consumer or make
12 deliveries on Sunday; requiring a direct wine shipper to meet certain
13 requirements to renew the license; specifying certain requirements for receiving
14 a direct shipment of wine; allowing a shipment of wine to be ordered or
15 purchased through a computer network; authorizing the Office of the
16 Comptroller to adopt certain regulations; prohibiting a person without a license
17 from shipping wine directly to personal consumers in the State; providing a
18 certain penalty; defining certain terms; making certain technical corrections;
19 altering a certain definition; and generally relating to the establishment of a
20 direct wine shipper’s license.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 BY repealing
2 Article 2B – Alcoholic Beverages
3 Section 7.5–101 through 7.5–110 and the title “Title 7.5. Direct Wine Seller’s
4 Permit”
5 Annotated Code of Maryland
6 (2005 Replacement Volume and 2009 Supplement)

7 BY repealing and reenacting, with amendments,
8 Article 2B – Alcoholic Beverages
9 Section 2–101(b)(1)(i), 9–102(a), and 15–204(b)
10 Annotated Code of Maryland
11 (2005 Replacement Volume and 2009 Supplement)

12 BY adding to
13 Article 2B – Alcoholic Beverages
14 Section 7.5–101 through 7.5–111 to be under the new title “Title 7.5. Direct
15 Wine Shipper’s License”
16 Annotated Code of Maryland
17 (2005 Replacement Volume and 2009 Supplement)

18 BY repealing and reenacting, without amendments,
19 Article – Tax – General
20 Section 5–101(a)
21 Annotated Code of Maryland
22 (2004 Replacement Volume and 2009 Supplement)

23 BY repealing and reenacting, with amendments,
24 Article – Tax – General
25 Section 5–101(f) and 5–201(d)
26 Annotated Code of Maryland
27 (2004 Replacement Volume and 2009 Supplement)

28 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
29 MARYLAND, That Section(s) 7.5–101 through 7.5–110 and the title “Title 7.5. Direct
30 Wine Seller’s Permit” of Article 2B – Alcoholic Beverages of the Annotated Code of
31 Maryland be repealed.

32 SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland
33 read as follows:

34 **Article 2B – Alcoholic Beverages**

35 2–101.

36 (b) (1) (i) The Office of the Comptroller shall collect a fee for the
37 issuance or renewal of the following permits:

1 1. \$50 for a solicitor's permit, an individual storage
2 permit, a nonresident winery permit, or a commercial nonbeverage permit;

3 2. \$75 for a public storage permit, a public
4 transportation permit, or an import and export permit;

5 3. \$200 for a public storage and transportation permit, a
6 nonresident dealer's permit, a resident dealer's permit, or a bulk transfer permit;

7 4. \$400 for a family beer and wine facility permit; and

8 5. [\$10] **\$100** for a direct wine [seller's permit]
9 **SHIPPER'S LICENSE.**

10 **TITLE 7.5. DIRECT WINE SHIPPER'S LICENSE.**

11 **7.5-101.**

12 **(A) IN THIS TITLE THE FOLLOWING WORDS HAVE THE MEANINGS**
13 **INDICATED.**

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15 **SHIPPER'S LICENSE ISSUED UNDER THIS TITLE.**

16 **(C) "LICENSE" MEANS A DIRECT WINE SHIPPER'S LICENSE ISSUED BY**
17 **THE OFFICE OF THE COMPTROLLER.**

18 **(D) "WINE" INCLUDES BRANDY THAT IS DISTILLED FROM THE PULPY**
19 **RESIDUE OF THE WINE PRESS, INCLUDING THE SKINS, PIPS, AND STALKS OF**
20 **GRAPES.**

21 **7.5-102.**

22 **A PERSON SHALL BE LICENSED BY THE OFFICE OF THE COMPTROLLER AS**
23 **A DIRECT WINE SHIPPER BEFORE THE PERSON OR THE PERSON'S AGENT MAY**
24 **ENGAGE IN SHIPPING WINE DIRECTLY TO A PERSONAL CONSUMER IN THE**
25 **STATE.**

26 **7.5-103.**

27 **TO QUALIFY FOR A LICENSE, AN APPLICANT SHALL BE:**

28 **(1) A PERSON LICENSED OUTSIDE OF THE STATE TO ENGAGE IN**
29 **THE MANUFACTURE OF WINE;**

1 **(2) AN AUTHORIZED BRAND OWNER OF WINE, A UNITED STATES**
2 **IMPORTER OF WINE, OR A DESIGNATED MARYLAND AGENT OF A BRAND OWNER**
3 **OR UNITED STATES IMPORTER;**

4 **(3) A HOLDER OF A CLASS 3 MANUFACTURER'S LICENSE OR A**
5 **CLASS 4 MANUFACTURER'S LICENSE ISSUED UNDER THIS ARTICLE; OR**

6 **(4) A PERSON LICENSED BY THE STATE OR OUTSIDE THE STATE**
7 **TO ENGAGE IN THE RETAIL SALE OF WINE FOR CONSUMPTION OFF THE**
8 **PREMISES.**

9 **7.5-104.**

10 **(A) AN APPLICANT FOR A LICENSE SHALL:**

11 **(1) SUBMIT TO THE OFFICE OF THE COMPTROLLER A**
12 **COMPLETED APPLICATION ON A FORM THAT THE OFFICE OF THE**
13 **COMPTROLLER PROVIDES;**

14 **(2) PROVIDE TO THE OFFICE OF THE COMPTROLLER A COPY OF**
15 **THE APPLICANT'S CURRENT ALCOHOLIC BEVERAGES LICENSE; AND**

16 **(3) PAY A FEE OF \$100.**

17 **(B) THE OFFICE OF THE COMPTROLLER SHALL ISSUE A LICENSE TO**
18 **EACH APPLICANT WHO MEETS THE REQUIREMENTS OF THIS TITLE FOR A**
19 **LICENSE.**

20 **7.5-105.**

21 **(A) A DIRECT WINE SHIPPER SHALL:**

22 **(1) ENSURE THAT ALL CONTAINERS OF WINE SHIPPED DIRECTLY**
23 **TO A PERSONAL CONSUMER IN THE STATE ARE CONSPICUOUSLY LABELED WITH**
24 **THE WORDS "CONTAINS ALCOHOL: SIGNATURE OF PERSON AT LEAST 21 YEARS**
25 **OF AGE REQUIRED FOR DELIVERY";**

26 **(2) REPORT MONTHLY TO THE OFFICE OF THE COMPTROLLER**
27 **THE TOTAL AMOUNT OF WINE, BY TYPE, SHIPPED IN THE STATE, THE PRICE**
28 **CHARGED, AND THE NAME AND ADDRESS OF EACH PURCHASER;**

29 **(3) PAY MONTHLY TO THE OFFICE OF THE COMPTROLLER ALL**
30 **SALES TAXES AND EXCISE TAXES DUE ON SALES TO PERSONAL CONSUMERS IN**

1 THE STATE, THE AMOUNT OF THE TAXES TO BE CALCULATED AS IF THE SALE
2 WERE MADE AT THE DELIVERY LOCATION;

3 (4) ALLOW THE OFFICE OF THE COMPTROLLER TO PERFORM AN
4 AUDIT OF THE DIRECT WINE SHIPPER'S RECORDS ON REQUEST; AND

5 (5) CONSENT TO THE JURISDICTION OF THE OFFICE OF THE
6 COMPTROLLER OR OTHER STATE UNIT AND THE STATE COURTS CONCERNING
7 ENFORCEMENT OF THIS SECTION AND ANY RELATED LAW.

8 (B) A DIRECT WINE SHIPPER MAY NOT:

9 (1) SHIP MORE THAN 24 9-LITER CASES OF WINE ANNUALLY TO
10 ANY ONE PERSONAL CONSUMER; OR

11 (2) DELIVER WINE ON SUNDAY TO AN ADDRESS IN THE STATE.

12 7.5-106.

13 A DIRECT WINE SHIPPER MAY ANNUALLY RENEW ITS LICENSE IF THE
14 DIRECT WINE SHIPPER:

15 (1) IS OTHERWISE ENTITLED TO BE LICENSED;

16 (2) PROVIDES TO THE OFFICE OF THE COMPTROLLER A COPY OF
17 ITS CURRENT ALCOHOLIC BEVERAGES LICENSE; AND

18 (3) PAYS TO THE OFFICE OF THE COMPTROLLER A RENEWAL FEE
19 OF \$50.

20 7.5-107.

21 (A) TO RECEIVE A DIRECT SHIPMENT OF WINE, A PERSONAL CONSUMER
22 OF THE STATE MUST BE AT LEAST 21 YEARS OLD.

23 (B) A SHIPMENT OF WINE MAY BE ORDERED OR PURCHASED THROUGH
24 A COMPUTER NETWORK.

25 (C) A PERSON WHO RECEIVES A SHIPMENT OF WINE SHALL USE THE
26 SHIPMENT FOR PERSONAL CONSUMPTION ONLY AND MAY NOT RESELL IT.

27 7.5-108.

1 (A) A SHIPMENT MADE IN ACCORDANCE WITH THIS TITLE SHALL BE
2 MADE BY A COMMON CARRIER AND BE ACCOMPANIED BY A SHIPPING LABEL
3 THAT CLEARLY INDICATES THE NAME OF THE DIRECT SHIPPER AND THE NAME
4 AND ADDRESS OF THE RECIPIENT.

5 (B) TO COMPLETE DELIVERY OF A SHIPMENT, THE COMMON CARRIER
6 SHALL REQUIRE FROM A PERSONAL CONSUMER AT THE ADDRESS LISTED ON
7 THE SHIPPING LABEL:

8 (1) THE SIGNATURE OF THE PERSONAL CONSUMER; AND

9 (2) PHOTOGRAPHIC IDENTIFICATION SHOWING THAT THE
10 PERSONAL CONSUMER IS AT LEAST 21 YEARS OLD.

11 **7.5-109.**

12 THE OFFICE OF THE COMPTROLLER MAY ADOPT REGULATIONS TO CARRY
13 OUT THIS TITLE.

14 **7.5-110.**

15 A BUSINESS ENTITY WITHOUT A LICENSE MAY NOT SHIP WINE DIRECTLY
16 TO PERSONAL CONSUMERS IN THE STATE.

17 **7.5-111.**

18 A PERSON WHO VIOLATES THIS TITLE IS GUILTY OF A FELONY AND ON
19 CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 2 YEARS OR A
20 FINE NOT EXCEEDING \$1,000 OR BOTH.

21 **9-102.**

22 (a) No more than one license provided by this article, except by way of
23 renewal or as otherwise provided in this section, shall be issued in any county or
24 Baltimore City, to any person, or for the use of any partnership, corporation,
25 unincorporated association, or limited liability company, in Baltimore City or any
26 county of the State, and no more than one license shall be issued for the same
27 premises except as provided in §§ 2-201 through 2-208, 2-301, [and] 6-701, AND
28 **TITLE 7.5** of this article, and nothing herein shall be construed to apply to §
29 6-201(r)(4), (15), and (17), § 7-101(b) and (c), § 8-202(g)(2)(ii) and (iii), § 8-217(e), §
30 8-508, or § 12-202 of this article.

31 **15-204.**

1 (b) (1) Provided, that in Montgomery County no person, firm, or
2 corporation shall keep for sale any alcoholic beverage not purchased from the
3 Department of Liquor Control for Montgomery County, provided, however, that
4 nothing in this subsection shall apply to a holder of a Class F license or a holder of a
5 Class 1 beer, wine and liquor, Class 2 wine and liquor, Class 3 beer and wine, Class 4
6 beer, or Class 5 wine wholesaler's license, who may not sell or deliver any alcoholic
7 beverage in Montgomery County for resale except to a county liquor dispensary.

8 (2) Notwithstanding paragraph (1) of this subsection:

9 (i) 1. A holder of a Class 6 limited wine wholesaler's license
10 or of a nonresident winery permit may sell or deliver wine directly to a county liquor
11 dispensary, restaurant, or other retail dealer in Montgomery County; and

12 [(ii)] 2. A county liquor dispensary, restaurant, or other retail
13 dealer in Montgomery County may purchase wine directly from a holder of a Class 6
14 limited wine wholesaler's license or of a nonresident winery permit; AND

15 (II) A HOLDER OF A DIRECT WINE SHIPPER'S LICENSE MAY
16 SHIP WINE DIRECTLY TO A PERSONAL CONSUMER IN MONTGOMERY COUNTY.

17 **Article – Tax – General**

18 5–101.

19 (a) In this title the following words have the meanings indicated.

20 (f) “Direct wine [seller] **SHIPPER**” has the meaning stated in Article 2B, §
21 7.5–101 of the Code.

22 5–201.

23 (d) [(1)] A person who is a direct wine [seller] **SHIPPER** shall file with the
24 Office of the Comptroller [an annual] **A MONTHLY** tax return.

25 [(2)] The annual tax return shall be due no later than October 15 of
26 each year covering the previous 12 calendar months ending September 30.]

27 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
28 July 1, 2010.

Department of Legislative Services
2010 Session

FISCAL AND POLICY NOTE

House Bill 716
Economic Matters

(Delegate Krysiak, *et al.*)

Alcoholic Beverages - Direct Wine Shipper's License

This bill repeals the direct wine seller’s permit and instead establishes a direct wine shipper’s license to be issued by the Comptroller’s Office. A person licensed as a direct wine shipper may engage in shipping wine directly to a resident in the State. The initial license fee is \$100.

The bill takes effect July 1, 2010.

Fiscal Summary

State Effect: General fund revenues increase by \$90,000 in FY 2011. Sales and excise tax revenues may increase by a significant amount depending on the increase in new wine sales. General fund expenditures increase by \$38,600 in FY 2011. Future years reflect annualization and inflation.

(in dollars)	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015
GF Revenue	\$90,000	\$97,800	\$101,700	\$100,600	\$94,800
GF Expenditure	\$38,600	\$44,500	\$46,400	\$48,400	\$50,600
Net Effect	\$51,400	\$53,300	\$55,300	\$52,200	\$44,200

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: The majority of counties indicated there would be no effect. However, Montgomery County indicated a significant loss of revenue based on the assumption that consumers will purchase wine from direct wine shippers instead of from the county dispensary.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: The bill requires that a person be licensed as a direct wine shipper by the Comptroller's Office before the person may engage in shipping wine directly to a personal consumer in the State. For the purposes of the bill, wine includes brandy that is distilled from the pulpy residue of the wine press, including the skins, pips, and stalks of grapes.

To qualify for a direct wine shipper's license, the applicant must be (1) a person licensed outside of the State to engage in the manufacture of wine; (2) an authorized brand owner of wine, a U.S. importer of wine, or a designated Maryland agent of a brand owner or U.S. importer; (3) a holder of a State issued Class 3 manufacturer's (winery) license or a Class 4 manufacturer's (limited winery) license; or (4) a person licensed by the State or outside of the State to engage in the retail sale of wine for consumption off the premises.

The direct wine shipper must (1) ensure that all containers of wine shipped directly to a personal consumer are conspicuously labeled "Contains Alcohol; Signature of Person at Least 21 Years of Age Required for Delivery"; (2) monthly report to the Comptroller's Office the total amount of wine, by type, shipped in the State, the price charged, and the name and address of each purchaser; (3) monthly pay to the Comptroller's Office all sales and excise taxes due on sales to personal consumers in the State, calculating the amount of the taxes as if the sale were made at the delivery location; (4) allow the Comptroller's Office to audit the direct wine shipper's records upon request; and (5) consent to the jurisdiction of the Comptroller's Office or other State unit and the State courts concerning enforcement of this section and any related law. A direct wine shipper is prohibited from shipping more than 24 9-liter cases of wine annually to any one individual or delivering wine on Sunday to an address in the State.

The Comptroller's Office may adopt regulations for the issuance and enforcement of the provisions of this license.

To receive a direct shipment of wine, a personal consumer in the State must be at least 21 years old. In addition, the bill stipulates that a wine shipment may be ordered or purchased through a computer network. A person who receives a wine shipment can only use it for personal consumption and not resell it.

A shipment must be made by a common carrier and be accompanied by a shipping label that clearly indicates the name of the direct shipper and the name and address of the recipient. To complete delivery of a shipment, the common carrier must require the signature of the individual and photo identification demonstrating that the individual is at least 21 years old.

The bill specifies that a holder of a direct wine shipper's license may ship wine directly to a personal consumer in Montgomery County.

A person who violates the laws associated with a direct wine shipper's license would be guilty of a felony and subject to imprisonment of up to two years, a fine of up to \$1,000, or both.

Current Law: The Federal Liquor Law Repeal and Enforcement Act, also referred to as the Webb-Kenyon Act, prohibits the shipment of alcoholic beverages from one state into another state in violation of any law of the receiving state. Maryland State law provides for a three-tier distribution system and prohibits wineries located inside or outside of the State from delivering wine directly to a resident of the State.

The Comptroller's Office is authorized to issue a direct wine seller's permit, for an annual fee of \$10. A direct wine seller's permit can be issued to a person or entity that (1) is domiciled outside of the State; (2) is engaged in the manufacture of wine, or is the brand owner, U.S. importer, or designated Maryland agent of the brand owner or U.S. importer of wine sold under this authority; (3) holds and acts within the scope of any alcoholic beverages license or permit required in the state where the applicant is domiciled or by the federal Bureau of Alcohol, Tobacco, and Firearms; and (4) does not hold any alcoholic beverages license or permit issued by the State within two years before the application, and is not owned, as a whole or in part, by another person or entity that holds another alcoholic beverages license or permit issued by the State or one of its political subdivisions within two years before the application.

A direct wine seller's permit authorizes a direct wine seller to sell wine to a personal consumer by receiving and filling orders that the personal consumer transmits by electronic or other means. A direct wine seller, however, may not sell a brand of wine in the State that (1) is distributed in the State by a wholesaler licensed in the State; or (2) was distributed in the State within two years before the application for the direct wine seller's permit is filed. During a permit year (November 1 to October 31), a direct wine seller may not sell in the State more than 900 liters of wine or more than 108 liters to a single personal consumer. A direct wine seller is required to file an annual tax return.

Wine shipped to a personal consumer must be shipped to a wholesaler licensed in the State that is designated by the federal Alcohol and Tobacco Tax Bureau, and then delivered by the wholesaler to a retail dealer. The wholesaler and retail dealer are solely facilitators in the shipping process and do not have title to the wine. The personal consumer must take personal delivery of the shipment at the licensed premises of the retail dealer promptly upon receiving notice from the dealer. The wholesaler may impose a service charge at a rate of \$2 per bottle but no more than \$4 per shipment, and the retail

dealer may impose a service charge of \$5 per bottle but no more than \$10 per shipment when the consumer takes delivery.

Unless otherwise specified, in Montgomery County, no person, firm, or corporation may keep for sale any alcoholic beverage not purchased from the Montgomery County Department of Liquor Control. A holder of a Class 6 limited wine wholesaler's license or of a nonresident winery permit may sell or deliver wine directly to a county liquor dispensary, restaurant or other retail dealer in Montgomery County. A county liquor dispensary, restaurant, or other retail dealer in Montgomery County may purchase wine directly from a holder of a Class 6 limited wine wholesaler's license or of a nonresident winery permit.

Background: In May 2005, the U.S. Supreme Court in *Granholm v. Heald* struck down laws in Michigan and New York that prohibited direct shipment of wine to consumers within the state from out-of-state businesses but permitted direct shipment to those consumers from in-state businesses. Court cases against wine shipping laws have been filed in at least 24 states, including Arizona, Arkansas, California, Delaware, Florida, Illinois, Indiana, Kentucky, Maine, Maryland, Massachusetts, Missouri, New Jersey, North Carolina, Ohio, Oklahoma, Pennsylvania, Rhode Island, Tennessee, Texas, Virginia, and Washington.

At least 35 states have passed legislation authorizing the direct shipment of wine to consumers, including Virginia, West Virginia, and the District of Columbia.

State Revenues: According to the *Alcohol and Tobacco Tax Annual Report*, the Comptroller's Office issued three direct wine seller's permits in fiscal 2009. The Comptroller's Office advises that it generally charges a \$200 application fee for new alcoholic beverages licenses it issues and a \$30 application fee for each license it renews.

Revenues from Permits Issued

It is uncertain how many of the 6,725 federally licensed wine manufacturers would apply for a direct wine shipper's license in Maryland. Additionally, the bill would also authorize retailers licensed in other states for off-premises sales to apply for a direct shipper's license in Maryland. **Exhibit 1** illustrates potential revenues from the issuance of licenses.

Exhibit 1
Potential Revenues from Direct Wine Shipper's Licenses

	<u>FY 2011</u>	<u>FY 2012</u>	<u>FY 2013</u>	<u>FY 2014</u>	<u>FY 2015</u>
Number of New Licenses Issued	300	250	200	150	100
Number of Licenses Renewed	-	285	521	695	810
Total Number of Permits	300	535	721	845	910
Total Revenue from Licenses	\$90,000	\$97,800	\$101,700	\$100,600	\$94,800

This estimate is based on the experience of other states and includes \$300 for each new license issued, including the \$100 license fee and a \$200 one-time application fee. For each license renewed, revenues would increase by \$80 annually, including the \$50 renewal license fee and a \$30 renewal application fee. This estimate assumes that 5% of licenses issued would not be renewed. As a point of reference, Virginia has currently issued 849 in and out of state wine shipper's licenses.

Sales and Excise Tax

The majority of wine that would be sold by holders of a direct wine shipper's license would have otherwise been sold at a retail location in the State. To the extent that consumer access to additional brands of wine, lower prices offered from nationwide Internet wine retailers, and the convenience of home delivery would result in an increase in per-capita wine consumption, State sales and excise tax would increase.

For illustrative purposes only, if sales of wine consumed at home were to increase by one-half of 1% (0.5%), general fund revenues from sales and excise tax would increase by approximately \$550,000 annually, assuming an average per case cost of \$360 (\$30 per bottle). For comparative purposes, a 0.5% increase in wine sales equates to an additional five cases purchased per 1,000 residents of legal drinking age in the State. This estimate assumes 100% compliance with sales and excise tax requirements.

A 9-liter case of wine, which includes 12 bottles of 750 milliliters of wine sold at \$30 per bottle, is taxed at a rate of \$22.56 per case. For each case of wine, this tax consists of \$0.96 in State excise tax and \$21.60 in sales tax.

Under another set of assumptions, general fund revenues from sales and excise tax could increase by approximately \$200,000, assuming an average per case cost of \$144. A 9-liter case of wine, which includes 12 bottles of 750 milliliters of wine sold at \$12 per

bottle, is taxed at a rate of \$9.59 per case. For each case of wine, this tax consists of \$0.95 in State excise tax and \$8.64 in sales tax.

State Expenditures: Due to an expected increase in the volume of direct wine sales and the number of licensed direct wine shippers, the cost of ensuring compliance with State tax laws is expected to increase. Based on the experience of other states in implementing the sale of wine directly to consumers, the general fund expenditures for the Comptroller's Office will increase by approximately \$38,600 in fiscal 2011, which reflects a 90-day start-up delay. This estimate reflects the cost of hiring one *contractual revenue examiner* to review the records of direct wine shippers, ensure that the appropriate taxes are being paid, and that the shippers are not selling more than the allowed limits to any one individual; and one *part-time tax consultant* to handle anticipated additional administrative hearings. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses. Future year expenditures reflect full salaries with 4.4% annual increases and 1% annual increases in ongoing operating expenses.

Small Business Effect: The bill authorizes both wine retailers and wine manufacturers outside of the State to ship wine directly to Maryland residents. Authorizing the shipment of wine directly to consumers may result in a decline in sales for certain retailers and wholesalers of alcoholic beverages in the State. To the extent that direct wine shipper's licenses are obtained by wineries and retailers in Maryland, these small businesses could be positively impacted by a potential increase in sales.

Additional Information

Prior Introductions: HB 1262 of 2009 received an unfavorable report from the House Economic Matters Committee. Its cross file, SB 338, received a hearing in the Senate Education, Health, and Environmental Affairs Committee, but no further action was taken. SB 616 of 2008 received an unfavorable report from the Senate Education, Health, and Environmental Affairs Committee. Its cross file, HB 1260, received an unfavorable report from the House Economic Matters Committee.

Cross File: SB 566 (Senator Raskin, *et al.*) - Education, Health, and Environmental Affairs.

Information Source(s): Anne Arundel, Baltimore, Charles, Frederick, Montgomery, and Somerset counties; Comptroller's Office; Judiciary (Administrative Office of the Courts); Department of Legislative Services

Fiscal Note History: First Reader - March 4, 2010
ncs/hlb

Analysis by: Jennifer K. Botts

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APPENDIX 8

SURVEY QUESTIONS - STATE REGULATORS

Overall response rate: 47%
(18 of the 37 states (& D.C.) responded)

1. Survey question:

Do you require an out-of-state winery to obtain a license or permit for direct wine shipment to a consumer in your state?

(Response Rate - 94%)

<u>% License</u>	<u>% Permit</u>	<u>% N/A</u>
11.8	82.4	5.9

2. Survey question:

Do you require an out-of-state retailer to obtain a license or permit for direct wine shipment to a consumer in your state?

(Response Rate - 72%)

<u>% License</u>	<u>% Permit</u>	<u>% N/A</u>
12.5	6.3	81.3

3. Survey question:

Which of the following are allowed to direct ship wine to consumers in your state?

(Response Rate - 94%)

<u>% Out-of-State Wineries</u>	<u>% Out-of-State Retailers</u>	<u>% In-State Wineries</u>	<u>% In-State Retailers</u>
100	17.6	94.1	35.3

4. Survey question:

How many direct wine shipper licenses or permits were issued to out-of-state wineries during 2009?

(Response Rate - 61%)

5. Survey question:

How many direct wine shipper licenses or permits were issued to out-of-state retailers during 2009?

(Response Rate - 56%)

	<u>Out-of-State Wineries</u> <u># of Licenses/Permits</u>
California	429
Indiana	102
Maine	221
Nebraska	249
Nevada	1,700
Ohio	564
Texas	900
Vermont	287
Washington	921
Wisconsin	493

6. Survey question:

Are common carriers required to obtain a license or permit for direct wine shipment to consumers in your state?

(Response Rate - 89%)

<u>% Yes</u>	<u>% No</u>
37.5	62.5

7. Survey question:

Does your direct wine shipment law exonerate a common carrier from liability if it delivers wine without obtaining an adult signature?

(Response Rate - 83%)

<u>% Yes</u>	<u>% No</u>
13.3	86.7

8. Survey question:

How many incidents have there been of a common carrier not obtaining an adult signature, if required, since your direct wine shipment was enacted?

(Response Rate – 72%)

<u>% 0</u>	<u>% 1-5</u>	<u>% 6-10</u>	<u>% 11-15</u>	<u>% >16</u>
84.6	15.4	0	0	0

9. Survey question:

Do you have any “dry” jurisdictions in your state where direct wine shipments are not permitted?

(Response Rate – 89%)

<u>% Yes</u>	<u>% No</u>
12.5	87.5

10. Survey question:

Has your direct wine shipment law been amended by the legislature?

(Response Rate – 33%)

<u>% Yes</u>	<u>% No</u>
16.7	83.3

11. Survey question:

If yes, how many times has your direct wine shipment law been amended?

(Response Rate – 22%)

<u>% 0</u>	<u>% 1-3</u>	<u>% 4-6</u>	<u>% >6</u>
75.0	25.0	0	0

12. Survey question:

Have any regulations been promulgated for your direct wine shipment law?

(Response Rate – 27%)

<u>% Yes</u>	<u>% No</u>
20.0	80.0

13. Survey question:

For any of the following issues that apply to the regulation and enforcement of your direct wine shipment law, please indicate how much of a problem the particular issue has been for your agency:

(Response Rate – 78%)

	<u>% Strong</u>	<u>% Moderate</u>	<u>% Minimal</u>	<u>% N/A</u>
-Quantity Limitations Violated	0	0	21.4	78.6
-Underage Access to Direct Wine Shipment	0	0	21.4	78.6
-Problems with Tax Collection	0	0	14.3	85.7
-Unable to Enforce Law (Out-of-state Direct Wine Shipper)	0	0	14.3	85.7
-Delinquent Tax Return Filing	0	0	21.4	78.6
-Common Carrier Violation	0	0	14.3	85.7

14. Survey question:

How many criminal sanctions have been prosecuted for violations of your direct wine shipment law during 2009?

(Response Rate – 44%)

<u>% 0</u>	<u>% 1-5</u>	<u>% 6-10</u>	<u>% 11-15</u>	<u>% >16</u>
100	0	0	0	0

15. Survey question:

How many violations have you charged under the direct wine shipment law during 2009?

(Response Rate – 50%)

<u>% 0</u>	<u>% 1-5</u>	<u>% 6-10</u>	<u>% 11-15</u>	<u>% >16</u>
88.9	11.1	0	0	0

16. Survey question:

How many administrative hearings have been held for violation of your direct wine shipment law during 2009?

(Response Rate – 44%)

<u>% 0</u>	<u>% 1-5</u>	<u>% 6-10</u>	<u>% 11-15</u>	<u>% >16</u>
100	0	0	0	0

17. Survey question:

How many license or permit suspensions or revocations have been imposed for violations of your direct wine shipment law during 2009?

(Response Rate - 44%)

$\frac{\% 0}{100}$	$\frac{\% 1-5}{0}$	$\frac{\% 6-10}{0}$	$\frac{\% 11-15}{0}$	$\frac{\% >16}{0}$
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18. Survey question:

How many statutory penalties have been imposed for violations of your direct wine shipment law during 2009?

(Response Rate - 44%)

$\frac{\% 0}{100}$	$\frac{\% 1-5}{0}$	$\frac{\% 6-10}{0}$	$\frac{\% 11-15}{0}$	$\frac{\% >16}{0}$
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19. Survey question:

Is temperance stated in your statute as an explicit objective of legislative policy?

(Response Rate - 72%)

$\frac{\% \text{ Yes}}{23.1}$	$\frac{\% \text{ No}}{76.9}$
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APPENDIX 9 - STATES - DIRECT WINE SHIPMENT LAWS - BASIC PROVISIONS

STATE				Out-of-State		Tax Return Filing			Tax Bond	Common Carrier Permit	Records Requirement	Quantity Limits	Comments
	License	Permit	Annual Fee	Wineries	Retailers	Monthly	Quarterly	Annually					
ALASKA				X	X							Reasonable Amount Limited Service Area	No permit - consumer importation. Beer, wine and liquor may be directly shipped
ARIZONA	X		\$200	X		X					2 Years	2 cases (9L) per year	Domestic Farm Winery License issued if winery produces less than 40,000 gallons annually
CALIFORNIA		X	\$10	X	Reciprocity			X		No Permit Monthly Delivery Reports		No limits for wineries - Retailers under reciprocity limited to 2 cases (9L)	
COLORADO		X	\$50	X		X						No quantity limit	
CONNECTICUT		X	\$315	X		X			X			5 gallons every 2 months	Need distributor license
DISTRICT OF COLUMBIA				X	X							1 case (9L) per month	No permit - consumer importation Beer, wine and liquor may be directly shipped
FLORIDA												No quantity limit	Monthly shipping report required Florida sales tax must be paid by out-of-state shippers
GEORGIA		X	\$50	X		X						12 cases (9L) by household per year	
HAWAII		X	\$48-\$120	X		X						6 cases (9L) by household per year	
IDAHO		X	\$50	X	X	X			X			24 cases (9L) per year	
ILLINOIS	X		\$150-\$1,000	X		X			X			12 cases (9L) per year	
INDIANA		X	\$100			X			X			24 cases (9L) per year	
IOWA	X		\$25			X			X	X		No quantity limit	

APPENDIX 9 - STATES - DIRECT WINE SHIPMENT LAWS - BASIC PROVISIONS

STATE	License	Permit	Annual Fee	Out-of-State		Tax Return Filing			Tax Bond	Common Carrier Permit	Records Requirement	Quantity Limits	Comments
				Wineries	Retailers	Monthly	Quarterly	Annually					
KANSAS	X		\$50	X		X			X			12 cases (9L) per year	
LOUISIANA		X	\$150	X	X	X						4 cases (9L) by household per year	
MAINE	X		\$200	X			X					12 cases (9L) per year	
MICHIGAN		X	\$100	X			X					1,500 cases (9L) per winery per year	
MINNESOTA				X	X							2 cases (9L) per year	No permit - consumer importation
MISSOURI	X		\$0	X	Reciprocity			X		X	3 years	2 cases (9L) per month	
NEBRASKA	X		\$500	X	X			X				1 case (9L) per month	
NEVADA			\$50	X	X							12 cases (9L) per year	Need Certificate of Compliance
NEW HAMPSHIRE		X	\$100-Wineries \$500-Retailers	X	X	X				Monthly Delivery Signature Forms	3 years	5 cases (9L) by address per year	
NEW MEXICO				X	X							2 cases (9L) per month	No permit - Reciprocity
NEW YORK	X		\$125	X Reciprocity		X *Farm, special farm, micro or out-of-state wineries may apply for annual filing	X*			No Permit Acknowledgement of Receipt for each delivery	3 years	36 cases (9L) per year	Direct wine shipper must register as distributor
NORTHCAROLINA		X	\$0	X			X			Approval Required		2 cases (9L) per month	
NORTH DAKOTA	X		\$50	X	X			X				3 cases (9L) per month	Beer, wine and liquor may be direct shipped subject to quantity limitations

APPENDIX 9 - STATES - DIRECT WINE SHIPMENT LAWS - BASIC PROVISIONS

STATE	License	Permit	Annual Fee	Out-of-State		Tax Return Filing			Tax Bond	Common Carrier Permit	Records Requirement	Quantity Limits	Comments
				Wineries	Retailers	Monthly	Quarterly	Annually					
OHIO		X	\$25-\$50 Product Registration Fee	X				X			24 cases (9L) per year		
OREGON		X	\$50	X	X	X			X Waivers if sell less than 40,000 gallons in Oregon each year	1.5 years	2 cases (9L) per month		
RHODE ISLAND											Reasonable Amount	No permit - on-site requirement	
SOUTH CAROLINA	X		\$600 Biennially	X				X			2 cases (9L) per month		
TENNESSEE	X		\$150			X					1 case (9L) per month, not to exceed 3 cases (9L) per year		
TEXAS		X	\$470 Biennially	X			X		X	X	5 years	9 gallons per month or 36 gallons per year (est. 15 cases)	\$ 470 - 2-year permit fee; \$150 license set by legislature and \$320 is surcharge set by Board
VERMONT		X	\$300					X Semi-Annual			5 years	12 cases (9L) per year	
VIRGINIA	X		\$95	X	X	X				No Permit - Must be Approved	2 years	2 cases (9L) per month	
WASHINGTON		X	\$100			X						No quantity limit	
WEST VIRGINIA	X		\$150	X	X	X				X	2 years	2 cases (9L) per month	
WISCONSIN		X	\$100	X			X		X			12 cases (9L) per year	
WYOMING	X		\$50	X	X	X				X		2 cases (9L) by household per year	

APPENDIX 10

SURVEY QUESTIONS - UNDERAGE ACCESS

1. Survey question:

Direct wine shipment will lead to an increase in underage access to wine.

	<u>% Strongly Disagree</u>	<u>%Disagree</u>	<u>% Neither Agree or Disagree</u>	<u>%Agree</u>	<u>%Strongly Agree</u>
<u>In-State Licensees:</u>					
1. Maryland Wineries (Response Rate - 90.5%)	84.2	15.8	0	0	0
2. Maryland Wholesalers (Response Rate - 77%)	43.3	16.7	10.0	10.0	20.0
3. Maryland Retailers (Response Rate - 62.7%)	12.5	15.6	6.3	9.4	56.3
4. Maryland Alcohol Mfg. (Response Rate - 100%)	57.1	28.6	0	0	14.3
<u>In-State Licensees:</u>	<u>% Mean: 49.3</u>	<u>% Mean: 19.2</u>	<u>% Mean: 4.0</u>	<u>% Mean: 4.9</u>	<u>% Mean: 22.6</u>

Other Respondents:

5. Maryland Liquor Boards (Response Rate - 70%)	0	0	14.3	57.1	28.6
6. Maryland Nonresident Wineries (Response Rate - 65%)	61.5	38.5	0	0	0
7. Maryland Consumers "A" (Response Rate - 86.9%)	72.4	18.2	6.4	1.2	1.9
8. Maryland Consumers "B" (Response Rate - 86.6%)	83.9	12.3	2.2	0.8	0.7

Maryland Consumers: % Mean: 78.2 % Mean: 15.2 % Mean: 4.3 % Mean: 1.0 % Mean: 1.3

2. Survey question:

Have there been any documented incidents of direct wine shipment to a minor?

State Regulators

(Response Rate - 72%)

<u>% Yes</u>	<u>% No</u>
15.4	84.6

3. Survey question:

If so, how many documented incidents of direct wine shipment to minors have you had in your state?

State Regulators

(Response Rate - 17%)

<u>% 0</u>	<u>% 1-5</u>	<u>% 6-10</u>	<u>% 11-15</u>	<u>% >16</u>
33.3	66.7	0	0	0

APPENDIX 11

SURVEY QUESTIONS – MARYLAND CONSUMERS “A” MARYLAND CONSUMERS “B”

Maryland Consumers “A”: random sample of Maryland consumers at-large
 Maryland Consumers “B”: random sample of consumer members of MBBWL

1. Survey question:

How many times did you attend the following in 2009?

Maryland Consumers “A”
 (Response Rate: 97%)

	<u>% 0</u>	<u>% 1</u>	<u>% 2</u>	<u>% 3-5</u>	<u>% >5</u>
Maryland Wine Festivals	39.4	31.7	18.0	9.4	1.5
California Wine Festivals	83.1	10.7	3.4	1.7	1.1
Wine Festivals in Other States	53.8	26.6	11.1	6.8	1.8
Foreign Wine Festivals	89.8	6.6	2.0	0.8	0.7

Maryland Consumers “B”
 (Response Rate: 97%)

	<u>% 0</u>	<u>%1</u>	<u>%2</u>	<u>% 3-5</u>	<u>%>5</u>
Maryland Wine Festivals	30.2	33.9	21.5	11.7	2.7
California Wine Festivals	81.2	10.9	5.5	1.6	0.8
Wine Festivals in Other States	56.3	24.5	12.3	6.1	0.8
Foreign Wine Festivals	92.1	5.9	1.4	0.2	0.4

% Mean: 65.7 %Mean: 18.9 %Mean: 9.4 %Mean: 4.8 %Mean: 1.2

2. Survey question:

Estimate how much you spent on wine during the festivals in 2009?

3. Survey question:

How many times did you visit the following in 2009?

Maryland Consumers “A”
 (Response Rate: 95%)

	<u>% 0</u>	<u>% 1</u>	<u>% 2</u>	<u>% 3-5</u>	<u>% >5</u>
Maryland Wineries	36.0	20.7	19.7	15.8	7.8
California Wineries	70.6	9.4	4.2	6.8	8.8
Wineries in Other States	38.2	18.5	14.9	16.0	12.4
Foreign Wineries	83.7	5.9	4.0	3.8	2.6

Maryland Consumers "B"
(Response Rate: 95%)

	<u>% 0</u>	<u>% 1</u>	<u>% 2</u>	<u>% 3-5</u>	<u>% >5</u>
Maryland Wineries	33.6	19.0	18.3	19.4	9.7
California Wineries	68.2	7.3	6.2	6.6	11.7
Wineries in Other States	40.3	17.3	15.3	15.3	11.7
Foreign Wineries	86.1	4.1	3.3	4.1	2.5

% Mean: 57.1 %Mean: 12.8 %Mean: 10.7 %Mean: 11.0 %Mean: 8.4

4. Survey question:

Estimate how much you spent on wine during the winery visits in 2009?

5. Survey question:

If direct wine shipment became legal in Maryland, which of the following sources do you think you would use to purchase wine? (check all that apply)

	Maryland Consumers "A" (Response Rate: 98%)	Maryland Consumers "B" (Response Rate: 98%)	<u>%Mean</u>
%In-State Wineries	74.5	77.5	76.0
%In-State Retailers	60.8	66.8	63.8
%Out-of-State Wineries	88.5	88.6	88.6
%Out-of-State Retailers	45.1	47.3	46.2
%None of the Above	1.5	1.3	1.4

6. Survey question:

How many different retail package stores do you visit in a given month to purchase wine?

Maryland Consumers "A"
(Response Rate: 95%)

	<u>% 0</u>	<u>% 1</u>	<u>% 2</u>	<u>%3-5</u>	<u>%>5</u>
In county of residence	7.9	27.9	39.1	21.7	3.4
In other Maryland counties	44.8	29.1	18.0	6.8	1.3
Outside of Maryland	46.3	25.2	14.1	10.9	3.5

Maryland Consumers "B"
(Response Rate: 94%)

	<u>% 0</u>	<u>% 1</u>	<u>% 2</u>	<u>% 3-5</u>	<u>% >5</u>
In county of residence	7.6	24.5	38.5	25.7	3.7
In other Maryland counties	38.5	31.2	19.7	9.0	1.6
Outside of Maryland	47.0	18.7	17.0	11.9	5.5

5. Survey question:

If you could purchase a bottle of wine for the same price online or from a Maryland retail store, where would you purchase the wine?

	<u>% Online Store</u>	<u>% Maryland Retail Store</u>
Maryland Consumers "A" (Response Rate: 95%)	31.1	68.9
Maryland Consumers "B" (Response Rate: 93%)	31.7	68.3
	<u>% Mean: 31.4</u>	<u>%Mean: 68.6</u>

6. Survey question:

If direct wine shipment to consumers became legal in Maryland, how likely is it that you would check the price online before purchasing wine at your local retail store?

	<u>% Very likely</u>	<u>% Likely</u>	<u>%Not Likely</u>
Maryland Consumers "A" (Response Rate: 95%)	47.2	27.3	25.5
Maryland Consumers "B" (Response Rate: 93%)	44.4	27.9	27.7
	<u>% Mean: 45.8</u>	<u>%Mean: 27.6</u>	<u>%Mean: 26.6</u>

7. Survey question:

How many times did you request a wine that a Maryland retailer did not carry in 2009?

	<u>% 0</u>	<u>%1-5</u>	<u>%6-10</u>	<u>%11-15</u>	<u>%>15</u>
Maryland Consumers "A" (Response Rate: 94%)	20.2	46.7	18.5	5.9	8.8
Maryland Consumers "B" (Response Rate: 93%)	17.5	41.9	21.0	5.8	13.8
	<u>% Mean: 18.8</u>	<u>%Mean: 44.3</u>	<u>%Mean: 19.7</u>	<u>%Mean: 5.9</u>	<u>%Mean: 11.3</u>

8. Survey question:

If a wine is not carried by a retailer, how likely is it you will ask the retailer to order that wine from the wholesaler?

	<u>%Very likely</u>	<u>% Likely</u>	<u>%Not Likely</u>
Maryland Consumers "A" (Response Rate: 94%)	23.4	30.5	46.2
Maryland Consumers "B" (Response Rate: 93%)	23.2	30.0	46.8
	<u>% Mean: 23.3</u>	<u>%Mean: 30.2</u>	<u>%Mean: 46.5</u>

9. Survey question:

What wine have you requested that a Maryland retailer does not carry?

10. Survey question:

If a Maryland retailer does not carry a wine you wish to purchase, how likely is it you will purchase a substitute?

	<u>%Very likely</u>	<u>% Likely</u>	<u>%Not Likely</u>
Maryland Consumers "A" (Response Rate: 94%)	13.2	47.0	39.8
Maryland Consumers "B" (Response Rate: 93%)	11.1	42.4	46.4
	<u>% Mean: 12.2</u>	<u>%Mean: 44.7</u>	<u>%Mean: 43.1</u>

11. Survey question:

In a given month, how much do you spend at retail package stores for the following?

	<u>\$ Beer</u>	<u>\$Wine</u>	<u>\$ Distilled Spirits</u>
Maryland Consumers "A" (Response Rate: 83%)	40.45	153.39	39.36
Maryland Consumers "B" (Response Rate: 84%)	40.61	137.19	36.91
	<u>\$ Mean: 40.53</u>	<u>\$ Mean: 145.29</u>	<u>\$ Mean: 38.14</u>

12. Survey question:

Of the amount spent on wine, what percentage was spent on the following? (choices need to add up to 100%)

	<u>% Maryland Wine</u>	<u>% CA Wine</u>	<u>% Wine Other States</u>	<u>%Foreign Imports</u>
Maryland Consumers "A" (Response Rate: 83%)	18.6	40.5	24.3	35.04
Maryland Consumers "B" (Response Rate: 84%)	19.9	39.0	21.4	34.29
	<u>% Mean: 19.3</u>	<u>%Mean: 39.8</u>	<u>%Mean: 22.9</u>	<u>%Mean: 34.7</u>

13. Survey question:

If direct wine shipment became legal in Maryland, rank the following reasons (from 1 to 7) as to why you would use direct wine shipment. (1=strongest; 7=weakest – only one answer per choice)

Maryland Consumers "A"
(Response Rate: 86%)

	<u>% 1</u>	<u>% 2</u>	<u>% 3</u>	<u>% 4</u>	<u>% 5</u>	<u>% 6</u>	<u>% 7</u>
Lower Price	22.6	11.6	16.3	17.9	11.2	8.2	12.1
Convenience of Delivery	32.5	22.7	12.4	13.5	6.4	6.3	6.3
Not Available at Local Retailer	54.5	15.3	11.3	7.7	5.8	2.7	2.6
Convenience of Ordering 24/7	26.0	14.1	13.6	14.2	12.6	8.7	10.8
Gift Baskets/Packages	12.9	8.2	9.2	11.3	10.8	18.3	29.2
Wine of the Month Club	19.8	11.9	10.4	10.3	7.7	15.5	24.3
Purchase Directly at Winery	36.2	17.5	13.9	10.7	7.7	6.5	7.4

Maryland Consumers "B"
(Response Rate: 86%)

	<u>% 1</u>	<u>% 2</u>	<u>% 3</u>	<u>% 4</u>	<u>% 5</u>	<u>% 6</u>	<u>% 7</u>
Lower Price	14.8	12.9	14.4	16.8	12.7	11.2	17.2
Convenience of Delivery	17.3	20.1	16.8	15.5	12.6	11.0	6.8
Not Available at Local Retailer	47.0	16.1	13.1	10.1	5.7	4.4	3.6
Convenience of Ordering 24/7	10.2	11.7	15.5	18.6	19.6	12.3	12.2
Gift Baskets/Packages	6.7	7.1	9.1	12.4	13.0	23.3	28.4
Wine of the Month Club	14.1	13.2	12.7	10.4	10.9	17.6	21.2
Purchase Directly at Winery	23.9	18.1	14.8	12.5	14.1	9.1	7.4

14. Survey question:

Do you subscribe to the Wine Spectator or Wine & Spirits Magazine?

	<u>% Wine Spectator</u>	<u>% Wine & Spirits</u>	<u>% Both</u>	<u>% Neither</u>
Maryland Consumers "A" (Response Rate: 86%)	23.8	1.1	4.7	70.4
Maryland Consumers "B" (Response Rate: 86%)	25.5	1.9	4.5	68.2
	<u>% Mean: 24.6</u>	<u>%Mean: 1.5</u>	<u>%Mean: 4.6</u>	<u>%Mean: 69.3</u>

15. Survey question:

What type of influence do the 100 Top Wines listed by the Wine Spectator or Wine & Spirits Magazine each year have on your wine purchasing decisions?

Wine Spectator

	<u>% Significant</u>	<u>% Moderate</u>	<u>% Minimal</u>	<u>% No Effect</u>
Maryland Consumers "A" (Response Rate: 78%)	10.9	30.1	24.6	34.4
Maryland Consumers "B" (Response Rate: 80%)	11.3	29.9	27.6	31.2
	<u>% Mean: 11.1</u>	<u>%Mean: 30.0</u>	<u>%Mean: 26.1</u>	<u>%Mean: 32.8</u>

Wine & Spirits

	<u>% Significant</u>	<u>% Moderate</u>	<u>% Minimal</u>	<u>% No Effect</u>
Maryland Consumers "A" (Response Rate: 78%)	2.2	15.7	24.5	57.6
Maryland Consumers "B" (Response Rate: 80%)	2.6	15.1	28.0	54.2
	<u>% Mean: 2.4</u>	<u>%Mean: 15.4</u>	<u>%Mean: 26.3</u>	<u>%Mean: 55.9</u>

16. Survey question:

Do you believe consumer demand is influenced by the 100 Top Wines listed by the Wine Spectator or Wine & Spirits Magazine each year?

	<u>% Yes</u>	<u>% No</u>
Maryland Wineries (Response Rate: 76%)	43.8	56.3
Maryland Retailers (Response Rate: 73%)	62.2	37.8
Maryland Nonresident Wineries (Response Rate: 55%)	54.5	45.5
	<u>% Mean: 53.5</u>	<u>%Mean: 46.5</u>

17. Survey question:

What type of effect do the 100 Top Wines listed by the Wine Spectator or Wine & Spirits Magazine each year have on your wine buying decisions?

Wine Spectator

	<u>% Significant</u>	<u>% Moderate</u>	<u>% Minimal</u>	<u>% No Effect</u>
Maryland Retailers (Response Rate: 73%)	21.6	35.1	35.1	8.1

Wine & Spirits

	<u>% Significant</u>	<u>% Moderate</u>	<u>% Minimal</u>	<u>% No Effect</u>
Maryland Retailers (Response Rate: 71%)	11.1	36.1	30.6	22.2

18. Survey question:

In which Maryland County do you reside?

	% Maryland Consumers "A" (Response Rate: 87%)	% Maryland Consumers "B" (Response Rate: 86%)
Allegany	0.5	0.4
Anne Arundel	11.1	12.8
Baltimore	12.7	17.4
Baltimore City	5.0	10.3
Calvert	1.1	1.0
Caroline	0.4	0.2
Carroll	6.1	6.2
Cecil	3.3	1.2
Charles	2.8	1.3
Dorchester	0.5	0.5
Frederick	5.2	4.4
Garrett	1.4	0
Harford	1.8	2.4
Howard	6.6	10.6
Kent	0	0.2
Montgomery	28.0	21.5
Prince George's	6.8	4.5
Queen Anne's	0.7	0.9
Saint Mary's	0.5	0.7
Somerset	0	0.1
Talbot	3.3	1.0
Washington	1.0	0.9
Wicomico	0.9	0.9
Worcester	0.3	0.7

19. Survey question:

How did you find out about this consumer questionnaire?

	<u>%Comptroller's website</u>	<u>%Media</u>	<u>%Friend</u>	<u>%Member Assoc.</u>	<u>%Other</u>
Maryland Consumers "A" (Response Rate: 85%)	7.3	48.9	45.8	.09	.09
Maryland Consumers "B" (Response Rate: 55%)	14.3	36.6	52.3	48.0	16.0
	<u>% Mean: 10.8</u>	<u>%Mean: 42.8</u>	<u>%Mean: 49.1</u>	<u>%Mean: 24.0</u>	<u>%Mean: 8.0</u>

20. Survey question:

Please indicate your age range:

	<u>% 21-29</u>	<u>% 30-39</u>	<u>% 40-49</u>	<u>% 50-59</u>	<u>% 60-69</u>	<u>% >70</u>
Maryland Consumers "A" (Response Rate: 86%)	7.5	17.9	25.8	24.2	19.9	4.7
Maryland Consumers "B" (Response Rate: 86%)	10.1	22.7	23.0	25.1	15.6	3.4
	<u>%Mean: 8.8</u>	<u>%Mean: 20.3</u>	<u>%Mean: 24.4</u>	<u>%Mean: 24.6</u>	<u>%Mean: 17.8</u>	<u>%Mean: 4.1</u>

21. Survey question:

Please indicate your gender:

	<u>%Male</u>	<u>% Female</u>
Maryland Consumers "A" (Response Rate: 86%)	51.8	48.2
Maryland Consumers "B" (Response Rate: 85%)	55.8	44.2
	<u>%Mean: 53.8</u>	<u>%Mean: 46.2</u>

22. Survey question:

What is the level of your household income?

	<u>% Not Want Answer</u>	<u>% <\$25K</u>	<u>% \$25K-50K</u>	<u>% \$51K-100K</u>	<u>% \$101K-200K</u>	<u>% >\$200K</u>
Maryland Consumers "A" (Response Rate: 83%)	11.6	0.2	4.4	24.6	40.6	18.6
Maryland Consumers "B" (Response Rate: 84%)	11.7	0.6	4.5	24.2	41.4	17.5
	<u>%Mean: 11.7</u>	<u>%Mean: 0.4</u>	<u>%Mean: 4.5</u>	<u>%Mean: 24.4</u>	<u>%Mean: 41.0</u>	<u>%Mean: 18.0</u>

**Appendix 12
Comptroller of Maryland
Wine and Spirits Study**

Bottle Rank	Winery	Varietal	Wine Label	Appellation	Published Price	Wholesale Price (MD Bev Jrn)	Average Retail Price (x1.5)	Maryland Wholesaler	Winery Website	Wine Club? Y/N	Wine Club Price	variance	Available via on-line Retail? Y/N	# of outlets (entries) offer the wine?	Approx. Price range (ex-tax) across vintages	Comments
1	Cakebread Cellars	SB	Napa Valley	California	\$59	19.99	\$29.99	Republic National	http://www.cakebread.com/	Y			Y	50/165	22.89-29.99	12% Discount on all wines Five 4- or 6-bottle shipments/yr Four 6-bottle shipments/yr
2	Cakebread Cellars	CH	Napa Valley	California	\$92	17.99	\$26.99	Republic National	http://www.cakebread.com/	Y	\$37.00	\$10.02	Y	50/223	32.75-40.99	""
3	Cakebread Cellars	CS	Napa Valley	California	\$131	50.66	\$75.99	Republic National	http://www.cakebread.com/	Y	\$61.00	-\$14.99	Y	41/69	59.29-82.99	""
4	Sonoma-Cutrer Vineyards	CH	Russian River Ranches	California	\$47	14.66	\$21.99	Reliable-Churchill	http://www.sonomacutrer.com	Y	\$23.00	\$1.01	Y	10/30	17.68-21.99	Three \$180-200 shipments/yr
5	Sonoma-Cutrer Vineyards	CH	Sonoma Coast	California	\$44	16.66	\$24.99	Reliable-Churchill	http://www.sonomacutrer.com	Y	\$24.00	-\$0.99	Y	1	19.99	""
6	Ferrari-Carano Winery	CH	Alexander Valley	California	\$54	17.33	\$26.00	Reliable-Churchill	http://www.ferrari-carano.com/	Y	\$23.00	-\$3.00	Y	50/125	15.98-35.99	25% discount on case purchases of Classic Collection wines 20% discount on wine club shipments, featured wines, and case purchases of Limited Release wines. 15% discount on single bottle purchases 10% discount on Library and large format bottle wines
7	Ferrari-Carano Winery	CH	Russian River Valley Tre Terre	California	\$67	24.99	\$37.49	Reliable-Churchill	http://www.ferrari-carano.com/	Y	\$30.00	-\$7.49	Y	11/19	22.98-39.99	""
8	Duckhorn Vineyards	SB	Napa Valley	California	\$56	19.99	\$29.99	Reliable-Churchill	http://www.duckhorn.com	Y	\$27.00	-\$2.99	Y	50/157	13.49-29.99	1 bottle of each wine produced PLUS Four \$225-\$25 3-5-bottle shipments/yr 10% off re-orders 20% off mixed cases
9	Duckhorn Vineyards	M	Napa Valley	California	\$104	37.99	\$56.99	Reliable-Churchill	http://www.duckhorn.com	Y	\$52.00	-\$4.99	Y	50/203	39.98-54.99	""
10	Rombauer Vineyards	CH	Carneros	California	\$67	22.66	\$33.99	Reliable-Churchill	http://www.rombauer.com	Y	sold out		Y	50/353	23.99-28.99	The winery is sold out of this particular wine. 15% discount Three \$65 2-bottle shipments/yr Three \$125 4-bottle shipments/yr One \$375 4-bottle shipment/yr
11	La Crema	PN	Sonoma Coast	California	\$50	16.99	\$25.49	Monument Fine Wines	http://www.lacrema.com/	Y	\$24.00	-\$1.49	Y	50/173	16.69-38.99	""
12	Kendall-Jackson Vineyards	CH	California Vintner's Reserve	California	\$34	11.33	\$17.00	Republic National	http://www.kj.com	Y	\$14.00	-\$3.00	Y	50/155	9.45-12.99	Twelve \$40 2-bottle shipments/yr Six \$60-120 2-bottle shipments/yr 15% off wine 20% off cases Note: A three-shipment minimum is required to receive wine club discount
13	Kendall-Jackson Vineyards	CH	California Grand Reserve	California	\$47	14.34	\$21.51	Republic National	http://www.kj.com/	Y	\$20.00	-\$1.51	Y	20/37	13.89-22.99	""
14	Stag's Leap Wine Cellars	CS	Napa Valley Artemis	California	\$108	39.99	\$59.99	Republic National	http://www.cask23.com	Y	\$55.00	-\$4.99	Y	4	\$105	Four \$1,300 12-bottle shipments/yr, 25% off Six \$180 2-bottle shipments/yr, 15% off shipments, 20% off cases Four \$80 2-bottle shipments/yr
15	Stag's Leap Wine Cellars	CS	Stags Leap District Fay	California	\$170	32.99	\$49.49	Republic National	http://www.cask23.com/	Y	\$95.00	\$45.52	Y	29/94	49.95-101.99	""
16	Santa Margherita	PG	Alto Aldidge	Italy	\$51	19.99	\$29.99	Reliable-Churchill	http://www.santamargherita.com	N			Y	25/99	\$22	""
17	Jordan Vineyard & Winery	CH	Russian River Valley	California	\$74	23.66	\$35.49	Republic National	http://www.jordanwinery.com/	Y	\$29.00	-\$6.49	Y	4/6	29.99-37.99	""
18	Jordan Vineyard & Winery	CS	Alexander Valley Estate	California	\$115	38.99	\$58.49	Republic National	http://www.jordanwinery.com/	Y	\$52.00	-\$6.49	Y	50/111	34.90-59.99	""
19	Chateau St. Michelle	M	Columbia Valley	Washington	\$33	12.66	\$18.99	Republic National	http://www.ste-michelle.com	Y	\$14.99	-\$4.00	Y	84	\$14	Four 2-bottle shipments/yr 30% off additional current club wines 20% off full cases 10% off half cases 25% off additional wine purchases of 12+ bottles after receipt of 12 vintage shipments
20	Chateau St. Michelle	M	Columbia Valley Indian Wells	Washington	\$39	12.66	\$18.99	Republic National	http://www.ste-michelle.com/wineClub	Y	\$17.99	-\$1.00	Y	79	13.25-21.99	""
21	Maison Joseph Drouhin	CH	Bourgogne Blanc Laforet	France	\$28	7.99	\$11.99	Prestige Beverage	http://www.drouhin.com/en/	N			Y	16	8.99-15.00	""
22	Beaulieu Vineyard	M	Central Coast Signet Collection	California	\$34	7.66	\$11.49	Reliable-Churchill	www.bvwinest.com	Y		-\$11.49	Y	8	8-13.00	Coastal Estates Merlot was not available to buy through proprietary website
23	Silver Oak Wine Cellars	CS	Alexander Valley	California	\$130	52.00	\$78.00	Republic National	http://www.silveroak.com	Y	\$70.00	-\$8.00	Y	50/300	47.99-59.99	""
24	Franciscan Oakville Estate	CS	Oakville Estate	California	\$53	20.00	\$30.00	Republic National	http://www.franciscan.com	Y	\$45.00	\$15.00	Y	4	\$45	Twelve \$35-60 2-bottle shipments/yr Four \$320 6-bottle shipments/yr Six \$350 6-bottle shipments/yr Six \$125 4-bottle shipments/yr 20% off wines
25	King Estate	PG	Oregon	Oregon	\$33	14.67	\$22.01	Republic National	http://www.kingestate.com	Y	\$17.00	-\$5.01	Y	9/28	19.99-26.14	Four \$35-125 2- or 3-bottle shipments/yr 15% off select wines 20% off select 2-case purchases
26	King Estate	PG	Willamette Valley	Oregon	\$55	16.66	\$24.99	Republic National	http://www.kingestate.com/	Y	\$25.00	\$0.01	Y	309	13-25.00	""
27	Veuve Clicquot	SP	Champagne Brut Yellow Label	France	\$98	38.99	\$58.49	Reliable-Churchill	http://experience.veuve-clicquot.com/	N			Y	1243	40-74.00	""
28	Frog's Leap Winery	CS	Napa Valley	California	\$89	31.33	\$47.00	Bacchus	www.frogselect.com	Y	\$35.90	-\$11.10	Y	401	35-70.00	Quantity discounts available.
29	Catena	MB	Mendoza Malbec	Argentina	\$52	35.33	\$53.00	Reliable-Churchill	www.catenawines.com	N			Y	172	40-55.00	""
30	Catena	MB	Mendoza Alamos Malbec	Argentina	\$42	16.66	\$24.99	Reliable-Churchill	www.catenawines.com	N			Y	380	17-25.00	""
31	Domaine Serene	PN	Willamette Valley Yamhill Cuvée	Oregon	\$84	28.00	\$42.00	Bacchus	www.domaineserene.com	Y	\$42.00	\$0.00	Y	183	30-51.00	""
32	Markham Winery	CS	Napa Valley	California	\$58	21.99	\$32.99	Reliable-Churchill	www.markhamvineyards.com	Y	\$24.80	-\$8.19	Y	213	24-32.00	""

**Appendix 12
Comptroller of Maryland
Wine and Spirits Study**

Bottle Rank	Winery	Varietal	Wine Label	Appellation	Published Price	Wholesale Price (MD Bev Jrn)	Average Retail Price (x1.5)	Maryland Wholesaler	Winery Website	Wine Club? Y/N	Wine Club Price	variance	Available via on-line Retail? Y/N	# of outlets (entries) offer the wine?	Approx. Price range (ex-tax) across vintages	Comments
33	Markham Winery	CS	Napa Valley Reserve	California	\$85	35.33	\$53.00	Reliable-Churchill	www.markhamvineyards.com	Y	N/A					The reserve is not available on website. Not clear what correct wine label name it is. Same with on-line retailer.
34	Segura Viudas	SP	Cava Brut Reserva	Spain	\$28	7.66	\$11.49	Reliable-Churchill	www.seguraviudasusa.com	N			Y	222	6-13.00	
35	Segura Viudas	SP	Cava Brut Aria	Spain	\$36	7.33	\$11.00	Reliable-Churchill	www.seguraviudasusa.com	N			Y	21/120	8-14.00	
36	Trefethen Vineyards	CH	Napa Valley	California	\$43	23.33	\$35.00	Bacchus	www.trefethen.com	Y	\$30.00	-\$5.00	Y	182	22-23.00	
37	Trefethen Vineyards	CS	Napa Valley	California	\$67	35.33	\$53.00	Bacchus	www.trefethen.com	Y	\$50.00	-\$3.00	Y	8/17	32-41.00	
38	Simi Winery	CH	Sonoma	California	\$39	13.66	\$20.49	Republic National	www.simiwinery.com	Y		-\$20.49	Y	350	13-19.00	
39	Simi Winery	CS	Sonoma	California	\$52	17.99	\$26.99	Republic National	www.simiwinery.com	Y		-\$26.99	Y	366	17*27.00	
40	Simi Winery	CS	Sonoma Reserve	California	\$129	27.99	\$41.99	Republic National	www.simiwinery.com	Y		-\$41.99	Y	115	46-92.00	
41	Macmurray Ranch	PN	Sonoma Coast	California	\$43	12.00	\$18.00	Reliable-Churchill	www.macmurrayranch.com/	N			Y	129	14-21.00	The Barrel Room is their Internet Retail and Wine Club partner - see below #8.
42	Estancia Estates	CH	Monterey Chardonnay	California	BTG	10.33	\$15.50	Republic National	www.estanciaestates.com/	N	\$15.00		Y	317	9-14.00	Hartwick & Grove is their Internet Retail and Wine Club partner - see below #7.
43	Hess Collection	CS	Napa Valley Allomi	California	\$48	19.66	\$29.49	Reliable-Churchill	www.hesscollection.com	Y	\$28.00	-\$1.49	Y	242	14-28.00	Your free membership allows: 20% discount on all purchases and gift memberships made at the winery or through our online store. Free UPS Ground shipping November through May on all case orders. Plus other discounts at the winery.
44	Hess Collection	CS	Napa Valley	California	\$70	29.33	\$44.00	Reliable-Churchill	www.hesscollection.com	Y	\$48.00	\$4.01	Y	104	17-70.00	Your free membership allows: 20% discount on all purchases and gift memberships made at the winery or through our online store. Free UPS Ground shipping November through May on all case orders. Plus other discounts at the winery.
45	Charteau St. Jean	CH	Sonoma	California	\$36	10.00	\$15.00	Reliable-Churchill	www.chateautstjean.com/	Y	\$14.00	-\$1.00	Y	338	9-14.00	
46	Charteau St. Jean	CH	Sonoma Robert Young	California	\$52	21.03	\$31.55	Reliable-Churchill	www.chateautstjean.com/	Y	\$35.00	\$3.46	Y	180	21-32.00	
47	Kim Crawford	SB	Marlborough	New Zealand	\$41	19.99	\$29.99	Republic National	www.experiencekimcrawford.com/	N			Y	505	13-21.00	19 - No Club but sight directs you to online retailer - www.hartwickandgrove.com/kimcrawford
48	Beringer Vineyards	WZ	California White Zinfandel	California	\$24	5.69	\$8.54	Reliable-Churchill	www.beringer.com	Y	\$7.00	-\$1.54	Y	672	5-9.00	Membership is free. 20% on Beringer wine purchases & our partner, Cellar360
49	St. Francis Vineyards	CS	Sonoma	California	\$44	17.33	\$26.00	Republic National	www.stfranciswine.com	Y	\$22.00	-\$4.00	Y	311	14-24.00	20% discount on all Reserve wines, 25% discount on all Sonoma County tier wines, plus other benefits as a member
50	Maison Louis Latour	CH	Grand Ardeche Chardonnay	France	\$40	8.66	\$12.99	Monsieur Touton	www.louislatour.com	N			Y	25/99	9-13.00	There is a newsletter club but no wine club.
51	Maison Louis Latour	CH	Pouilly-Fuisse	France	\$44	12.67	\$19.01	Monsieur Touton	www.louislatour.com	N			Y	200	14-25.00	There is a newsletter club but no wine club.
52	J. Steele	PN	Carneros	California	\$51	14.99	\$22.49	Republic National	www.steelwinery.com/	Y	\$19.00	-\$3.49	Y	94	17-25.00	
53	Tuscan Estates of Ruffino		Chianti	Italy	\$31	7.99	\$11.99	Republic National	www.rufino.com	N			Y	502	6-13.00	
54	Tuscan Estates of Ruffino		Chianti Classico Riserva Ducale Gold	Italy	\$100	29.99	\$44.99	Republic National	www.rufino.com	N			Y	353	28-44.00	
55	Coppola	M	California Diamond Series	California	\$37	13.02	\$19.53	Reliable-Churchill	www.franciscoppolawinery.com	Y	\$20.00	\$0.47	Y		8-19.00	In addition to First Member status, access to our newest releases, members-only wines, and increased wine allocations, you will also receive 30% discount on wines and \$15 shipping on regular club shipments plus more discounts at the winery.
56	Domaine Drouhin	PN	Willamette Valley	Oregon	\$88	46.66	\$69.99	Prestige Beverage	www.domainedrouhin.com/en/vineyard	Y	\$40.00	-\$29.99	Y	196	36-51.00	Classique members receive 12* bottles per year, at a 15% discount, which includes three bottles of each of our four wines. There isn't a fee to join, members simply spend around \$600 annually for the 12 bottles of wine.
57	Louis Martini Winery	CS	Napa Valley	California	\$46	17.33	\$26.00	Reliable-Churchill	www.louismartini.com/	Y	\$27.00	\$1.01	Y	265	19-44.00	
58	Robert Mondavi Winery	CS	Napa Valley	California	\$56	21.99	\$32.99	Republic National	www.robertmondavi.com	Y	\$28.00	-\$4.99	Y	477	19-90.00	
59	Bruno Giacosa		Barbaresco	Italy	\$67	107.99	\$161.99	FP Winner	www.brunogiacosa.it/	N			Y	24/38	95-359.00	
60	Patz & Hall	PN	Sonoma Coast	California	\$74	29.33	\$44.00	Bacchus	www.patzhall.com	Y	\$42.00	-\$2.00	Y	131	32-47.00	Sold out at the winery.

Notes:

- (1) Eight (8) of the 24 Maryland wholesalers represent the 50 wineries listed as the best-selling wines in America's top restaurants.
- (2) The abbreviations for varietals are as follows: CH=Chardonnay; CS= Cabernet Sauvignon; SB=Sauvignon Blanc; M=Merlot; PN=Pinot Noir; Z=Zinfandel; SP=Sparkling; PG=Pinot Grigio; MB=Malbec
- (3) The August 2010 issue of the Beverage Journal was used to source wholesaler pricing.
- (4) The winery popularity ranking was determined by how many mentions per 100 respondents the winery received in the Wine & Spirits annual restaurant poll.

APPENDIX 13

SURVEY QUESTIONS - TAX COLLECTION

1. Survey question:

Which of the following licensees file tax returns and pay the alcoholic beverage tax for direct wine shipments?

State Regulators
(Response Rate: 72%)

<u>% Out-of-state Wineries</u>	<u>% Out-of-state Retailers</u>	<u>% In-State Wineries</u>	<u>% In-State Retailers</u>
100	23.1	100	0

2. Survey question:

Indicate how frequently tax returns are filed for direct wine shipments?

State Regulators
(Response Rate: 61%)

	<u>% Monthly</u>	<u>% Quarterly</u>	<u>% Annually</u>
Out-of-state Wineries	36.4	36.4	27.3
Out-of-state Retailers	33.3	0	66.7
In-state Wineries	54.5	27.3	18.2
In-state Retailers	0	0	0
	<u>% Mean: 41.4</u>	<u>% Mean: 21.2</u>	<u>% Mean: 37.4</u>

3. Survey question:

On average, how many out-of-state direct wine shippers file delinquent tax returns on an annual basis?

State Regulators
(Response Rate: 27%)

<u>%0</u>	<u>%1-10</u>	<u>%11-20</u>	<u>%21-30</u>	<u>%31-50</u>	<u>%>50</u>
40	40	0	0	0	20

APPENDIX 14

SURVEY QUESTIONS - REGULATORY & PUBLIC POLICY

1. Survey question:

Do you believe direct wine shipment should be allowed by out-of-state wineries, but not by out-of-state retailers?

	<u>% Yes</u>	<u>% No</u>
<u>In-State Licensees:</u>		
Maryland Wineries (Response Rate - 90.5%)	52.6	47.4
Maryland Wholesalers (Response Rate - 77%)	53.3	46.7
Maryland Retailers (Response Rate - 62.7%)	34.4	65.6
Maryland Alcoholic Mfg. (Response Rate - 100%)	14.3	85.7
<u>In-State Licensees:</u>	<u>% Mean: 38.7</u>	<u>% Mean: 61.3</u>

Other Respondents:

Maryland Liquor Boards (Response Rate - 60%)	50.0	50.0
Maryland Nonresident Wineries (Response Rate - 60%)	75.0	25.0

2. Survey question:

Do you believe direct wine shipment should be allowed by in-state wineries, but not by in-state retailers?

	<u>% Yes</u>	<u>% No</u>
<u>In-State Licensees:</u>		
Maryland Wineries (Response Rate - 90.5%)	52.6	47.4
Maryland Wholesalers (Response Rate - 77%)	36.7	63.3
Maryland Retailers (Response Rate - 62.7%)	34.4	65.6
Maryland Alcoholic Mfg. (Response Rate - 100%)	14.3	85.7

<u>In-State Licensees:</u>	<u>% Mean: 34.5</u>	<u>% Mean: 65.5</u>
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Other Respondents:

Maryland Liquor Boards (Response Rate - 60%)	50.0	50.0
Maryland Nonresident Wineries (Response Rate - 55%)	36.4	63.6

3. Survey question:

Do you believe direct wine shipment should be permitted only if in-state wholesaler does not distribute that brand of wine?

	<u>% Yes</u>	<u>% No</u>
<u>In-State Licensees:</u>		
Maryland Wineries (Response Rate - 85.7%)	11.1	88.9
Maryland Wholesalers (Response Rate - 77%)	26.7	73.3
Maryland Retailers (Response Rate - 62.7%)	43.8	56.3
Maryland Alcoholic Mfg. (Response Rate - 100%)	14.3	85.7

<u>In-State Licensees:</u>	<u>% Mean: 24.0</u>	<u>% Mean: 76.0</u>
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Other Respondents:

Maryland Liquor Boards (Response Rate - 60%)	83.3	16.7
Maryland Nonresident Wineries (Response Rate - 60%)	8.3	91.7

4. Survey question:

Do you believe direct wine shipment will lead to direct "beer" shipment?

	<u>% Strongly Disagree</u>	<u>%Disagree</u>	<u>% Neither Agree or Disagree</u>	<u>%Agree</u>	<u>%Strongly Agree</u>
<u>In-State Licensees:</u>					
Maryland Wineries (Response Rate - 90.5%)	26.3	31.6	42.1	0	0
Maryland Wholesalers (Response Rate - 77%)	20.0	13.3	20.0	23.3	23.3
Maryland Retailers (Response Rate - 62.7%)	9.4	9.4	9.4	28.1	43.8
Maryland Alcohol Mfg. (Response Rate - 100%)	14.3	0	0	42.9	42.9
<u>In-State Licensees:</u>	<u>% Mean: 17.5</u>	<u>% Mean: 13.5</u>	<u>% Mean: 17.9</u>	<u>% Mean: 23.6</u>	<u>% Mean: 27.5%</u>

Other Respondents:

Maryland Liquor Boards (Response Rate - 70%)	0	14.3	14.3	28.6	42.9
Maryland Nonresident Wineries (Response Rate - 65%)	30.8	23.1	38.5	7.7	0
State Regulators (Response Rate - 67%)	0	50.0	33.3	16.7	0

5. Survey question:

Do you believe direct wine shipment will lead to direct "distilled spirits" shipment?

	<u>% Strongly Disagree</u>	<u>%Disagree</u>	<u>% Neither Agree or Disagree</u>	<u>%Agree</u>	<u>%Strongly Agree</u>
<u>In-State Licensees:</u>					
Maryland Wineries (Response Rate - 90.5%)	21.1	26.3	47.4	5.3	0
Maryland Wholesalers (Response Rate - 77%)	23.3	20.0	13.3	20.0	23.3
Maryland Retailers (Response Rate - 62.7%)	9.4	12.5	6.3	25.0	46.9
Maryland Alcohol Mfg. (Response Rate - 100%)	14.3	14.3	14.3	28.6	28.6
<u>In-State Licensees:</u>	<u>% Mean: 17.0</u>	<u>% Mean: 18.3</u>	<u>% Mean: 20.3</u>	<u>% Mean: 19.7</u>	<u>% Mean: 24.7</u>

Other Respondents:

Maryland Liquor Boards (Response Rate - 70%)	0	14.3	28.6	14.3	42.9
Maryland Nonresident Wineries (Response Rate - 65%)	23.3	20.0	13.3	20.0	23.3
State Regulators (Response Rate - 61%)	0	54.5	27.3	18.2	0

6. Survey question:

Do you believe direct wine shipment will undermine the three-tier distribution system?

% Strongly Disagree %Disagree % Neither Agree
or Disagree %Agree %Strongly Agree

In-State Licensees:

Maryland Wineries (Response Rate - 90.5%)	52.6	26.3	21.1	0	0
Maryland Wholesalers (Response Rate - 74.4%)	31.0	20.7	13.8	0	34.5
Maryland Retailers (Response Rate - 62.7%)	3.1	9.4	15.6	18.8	53.1
Maryland Alcohol Mfg. (Response Rate - 100%)	28.6	28.6	14.3	14.3	14.3

In-State Licensees: % Mean: 28.8 % Mean: 21.2 % Mean: 16.2 % Mean: 8.3 % Mean: 25.5

Other Respondents:

Maryland Liquor Boards (Response Rate - 70%)	0	0	28.6	42.9	28.6
Maryland Nonresident Wineries (Response Rate - 60%)	25.0	41.7	16.7	16.7	0
State Regulators (Response Rate - 72%)	0	53.8	15.4	30.8	0

7. Survey question:

Direct wine shipment will lead to consumers purchasing most, if not all, of their wine online.

	<u>% Strongly Disagree</u>	<u>%Disagree</u>	<u>% Neither Agree or Disagree</u>	<u>%Agree</u>	<u>%Strongly Agree</u>
<u>In-State Licensees:</u>					
Maryland Wineries (Response Rate - 90.5%)	78.9	15.8	5.3	0	0
Maryland Wholesalers (Response Rate - 77%)	36.7	26.7	13.3	13.3	10.0
Maryland Retailers (Response Rate - 60.8%)	12.9	22.6	25.8	9.7	29.0
Maryland Alcohol Mfg. (Response Rate - 100%)	42.9	14.3	14.3	14.3	14.3
<u>In-State Licensees:</u>	<u>% Mean: 42.8</u>	<u>% Mean: 19.9</u>	<u>% Mean: 14.7</u>	<u>% Mean: 9.3</u>	<u>% Mean: 13.3</u>

Other Respondents:

Maryland Liquor Boards (Response Rate - 70%)	0	28.6	42.9	28.6	0
Maryland Nonresident Wineries (Response Rate - 65%)	30.8	46.2	15.4	0	7.7
State Regulators (Response Rate - 78%)	0	7.1	92.9	0	0

8. Survey question:

Direct wine shipment will undermine temperance.

	<u>% Strongly Disagree</u>	<u>%Disagree</u>	<u>% Neither Agree or Disagree</u>	<u>%Agree</u>	<u>%Strongly Agree</u>
<u>In-State Licensees:</u>					
Maryland Wineries (Response Rate - 90.5%)	73.7	10.5	15.8	0	0
Maryland Wholesalers (Response Rate - 77%)	33.3	20.0	26.7	6.7	13.3
Maryland Retailers (Response Rate - 60.8%)	22.6	3.2	32.3	12.9	29.0
Maryland Alcohol Mfg. (Response Rate - 100%)	57.1	14.3	0	14.3	14.3
<u>In-State Licensees:</u>	<u>% Mean: 46.7</u>	<u>% Mean: 12.0</u>	<u>% Mean: 18.7</u>	<u>% Mean: 8.5</u>	<u>% Mean: 14.1</u>

Other Respondents:

Maryland Liquor Boards (Response Rate - 60%)	0	16.7	50.0	33.3	0
Maryland Nonresident Wineries (Response Rate - 60%)	41.7	33.3	25.0	0	0
State Regulators (Response Rate - 61%)	0	63.6	27.3	9.1	0
Maryland Consumers "A" (Response Rate - 86.1%)	80.3	11.4	6.5	0.4	1.4
Maryland Consumers "B" (Response Rate - 86.6%)	84.5	9.5	5.2	0.3	0.5

Maryland Consumers: % Mean: 82.4 % Mean: 10.4 % Mean: 5.9 % Mean: 0.3 % Mean: 1.0

APPENDIX 15

SURVEY QUESTIONS - EFFECT ON IN-STATE LICENSEES

1. Survey question:

Direct wine shipment to consumers by the following has had what financial effect on your state's wine businesses?

State Regulators
(Response Rate: 67%)

	<u>% Positive</u>	<u>% No Effect</u>	<u>% Negative</u>	<u>% N/A</u>
Out-of-state Wineries	0	16.7	0	83.3
Out-of-state Retailers	0	15.4	0	84.6
In-state Wineries	0	16.7	0	83.3
In-state Retailers	0	8.3	0	91.7
		<u>% Mean: 14.3</u>		<u>% Mean: 85.7</u>

2. Survey question:

What type of financial effect do you believe direct wine shipping to consumers in Maryland by the following will have on your wine business?

Maryland Wineries
(Response Rate: 95%)

	<u>% Positive Effect</u> (Increase Sales)	<u>% No Effect</u>	<u>% Negative Effect</u> (Decrease Sales)
Out-of-state Wineries	20.0	80.0	0
Out-of-state Retailers	10.0	90.0	0
In-state Wineries	85.0	15.0	0
In-state Retailers	30.0	70.0	0
<u>Maryland Wineries:</u>	<u>% Mean: 36.3</u>	<u>% Mean: 63.8</u>	

Maryland Wholesalers
(Response Rate: 87%)

	<u>% Positive Effect</u> (Increase Sales)	<u>% No Effect</u>	<u>% Negative Effect</u> (Decrease Sales)
Out-of-state Wineries	11.4	51.4	37.1
Out-of-state Retailers	5.9	58.8	35.3
In-state Wineries	25.7	54.3	20.0
In-state Retailers	24.2	57.6	18.2
<u>Maryland Wholesalers:</u>	<u>% Mean: 16.8</u>	<u>% Mean: 55.5</u>	<u>% Mean: 27.7</u>

Maryland Retailers
(Response Rate: 89%)

	<u>% Positive Effect</u> (Increase Sales)	<u>% No Effect</u>	<u>% Negative Effect</u> (Decrease Sales)
Out-of-state Wineries	4.2	41.7	54.2
Out-of-state Retailers	9.1	34.1	56.8
In-state Wineries	13.0	39.1	47.8
In-state Retailers	15.9	31.8	52.3
<u>Maryland Retailers:</u>	<u>% Mean: 10.5</u>	<u>% Mean: 36.7</u>	<u>% Mean: 52.8</u>

Alcohol Manufacturers
(Response Rate: 86%)

	<u>% Positive Effect</u> (Increase Sales)	<u>% No Effect</u>	<u>% Negative Effect</u> (Decrease Sales)
Out-of-state Wineries	16.7	66.7	16.7
Out-of-state Retailers	16.7	66.7	16.7
In-state Wineries	16.7	66.7	16.7
In-state Retailers	33.3	33.3	33.3
<u>Maryland Alcohol Mfg:</u>	<u>% Mean: 20.8</u>	<u>% Mean: 58.4</u>	<u>% Mean: 20.8</u>

Maryland Liquor Boards
(Response Rate: 70%)

	<u>% Positive Effect</u> (Increase Sales)	<u>% No Effect</u>	<u>% Negative Effect</u> (Decrease Sales)
Out-of-state Wineries	33.3	16.7	50.0
Out-of-state Retailers	0	100.0	0
In-state Wineries	50.0	50.0	0
In-state Retailers	33.3	0	66.7
<u>Maryland Liquor Boards:</u>	<u>% Mean: 29.1</u>	<u>% Mean: 41.7</u>	<u>% Mean: 29.2</u>

Maryland Nonresident Wineries
(Response Rate: 100%)

	<u>% Positive Effect</u> (Increase Sales)	<u>% No Effect</u>	<u>% Negative Effect</u> (Decrease Sales)
Out-of-state Wineries	85.0	15.0	0
Out-of-state Retailers	44.4	38.9	16.7

3. Survey question:

What is the size of your wine business measured either by total gallons sold, production in cases, or sales in dollars for Fiscal Year 2010 (July 1, 2009 – June 30, 2010)?

Number of Cases:	<u>% <1,000</u>	<u>% 1,000-4,999</u>	<u>% 5,000-49,999</u>	<u>% 50,000-499,999</u>	<u>% >500,000</u>
<u>Maryland Wineries</u> (Response Rate: 90.5%)	21.1	57.9	21.1	0	0
<u>Nonresident Wineries</u> (Response Rate: 95%)	20.0	60.0	20.0	0	0

4. Survey question:

What is the average bottle price (750ml) of wine you sell?

	<u>\$Bottle Price</u>
Maryland Wineries (Response Rate: 90.5%)	15.00
Nonresident Wineries (Response Rate: 95%)	35.00

5. Survey question:

Do you ship directly to out-of-state consumers?

	<u>% Yes</u>	<u>% No</u>
Maryland Wineries (Response Rate: 95%)	20.0	80.0
Nonresident Wineries (Response Rate: 100%)	85.0	15.0

6. Survey question:

If no, what is reason you do not ship wine directly to out-of-state consumers?

	<u>Maryland Wineries</u> (Response Rate: 62%)	<u>Nonresident Wineries</u> (Response Rate: 45%)
% No requests by consumer for wine	15.4	22.2
% Not aware of which states a winery may ship to	53.8	11.1
% Does not make economic sense to obtain license	61.5	77.8
% Do not produce enough wine to sell out-of-state	23.1	11.1

7. Survey question:

Do you ship to out-of-state consumers?

	<u>% Yes</u>	<u>% No</u>
Maryland Wineries (Response Rate: 38%)	37.5	62.5

Did you obtain a license or a permit to ship directly to consumers in other states?

	<u>% License</u>	<u>% Permit</u>
Nonresident Wineries (Response Rate: 40%)	42.0	69.0

8. Survey question:

What is the average bottle price (750ml) for the following wine varieties?

	<u>\$ MD Wineries</u> (RR: 24%)	<u>\$ MD Wholesalers</u> (RR: 27%)	<u>\$ MD Retailers</u> (RR: 51%)	<u>\$ MD Consumers</u> (RR: 78%)	<u>\$ NRW</u> (RR: 12%)
Cabernet Sauvignon	22.00	15.35	16.30	23.00	29.20
Pinot Noir	15.00	14.00	17.00	22.00	32.50
Chardonnay	16.50	12.80	13.70	17.00	20.60
Zinfandel	16.50	15.30	13.50	17.00	11.00
Syrah/Shiraz	15.00	14.70	14.50	18.00	
Merlot	17.20	14.10	14.80	19.00	17.25
Fume/Sauvignon Blanc	14.25	10.80	13.50	15.00	
Sparkling	14.00	13.10	17.75	24.00	
Cabernet Franc	18.00	18.30	17.45	19.00	17.00
Petite Sirah	50.00	12.00	16.10	19.00	
Bottle Price:	\$ Mean: 19.85	\$ Mean: 14.10	\$ Mean: 15.50	\$ Mean: 19.30	\$ Mean: 21.30

9. Survey question:

On an annual basis, how many times does a customer request a brand and varietal of wine you do not sell?

	<u>% 0</u>	<u>% 1-5</u>	<u>% 6-10</u>	<u>% 11-15</u>
Maryland Wholesalers (Response Rate: 79%)	58.1	19.4	3.2	19.4
Maryland Retailers (Response Rate: 75%)	5.3	36.8	23.7	34.2

10. Survey question:

On an annual basis, how many times does a customer request a brand and varietal of wine you do not carry and that is not available from a Maryland wholesaler?

	<u>% 0</u>	<u>% 1-5</u>	<u>% 6-10</u>	<u>% 11-15</u>
Maryland Retailers (Response Rate: 71%)	13.9	52.8	11.1	22.2

11. Survey question:

What brands and varieties of wine have customers requested that you do not produce or carry?

Maryland Wineries: Brochette, Martinelli, Riesling
 Maryland Wholesalers: Russian River Vineyard, Moscatel
 Maryland Retailers: Clarence Hill -Shiraz, Yellowtail, Screaming Eagle

12. Survey question:

How likely is it that the brand and varietal you do not carry is available from a Maryland wholesaler?

	<u>%Very likely</u>	<u>%Likely</u>	<u>% Not Likely</u>
Maryland Retailers (Response Rate: 71%)	33.3	47.2	19.4

13. Survey question:

If a brand and varietal of wine you do not carry is requested by a customer that is available from a Maryland wholesaler, how likely is it that the customer will ask you to order that wine from the wholesaler?

	<u>%Very likely</u>	<u>%Likely</u>	<u>% Not Likely</u>
Maryland Retailers (Response Rate: 71%)	50.0	30.6	19.4

14. Survey question:

How likely is it that if you do not produce or carry a brand and varietal of wine requested by a customer, that the customer will purchase another brand and varietal of wine you do produce or carry which is a close substitute?

	<u>%Very likely</u>	<u>%Likely</u>	<u>% Not Likely</u>
<u>In-State Licensees:</u>			
Maryland Wineries (Response Rate: 76%)	50.0	37.5	12.5
Maryland Retailers (Response Rate: 73%)	45.9	43.2	10.8
<u>In-State Licensees:</u>	<u>%Mean: 48.0</u>	<u>%Mean: 40.3</u>	<u>%Mean: 11.7</u>
<u>Other Respondent:</u>			
Nonresident Wineries (Response Rate: 55%)	81.8	9.1	9.1

15. Survey question:

Do you believe direct wine shipment will significantly reduce market share for Maryland wholesalers?

	<u>% Yes</u>	<u>% No</u>
Maryland Wholesalers (Response Rate: 77%)	33.3	66.7

16. Survey question:

What effect do you believe direct wine shipment will have on the market share of Maryland wholesalers?

	<u>%Positive Effect</u> (Increase Sales)	<u>%No Effect</u>	<u>%Negative Effect</u> (Decrease Sales)
Maryland Retailers (Response Rate: 65%)	9.1	15.2	75.8

17. Survey question:

Do you believe that you will lose customers if direct wine shipment to consumers is legal in Maryland?

	<u>% Yes</u>	<u>% No</u>
Maryland Retailers (Response Rate: 94%)	60.4	39.6

18. Survey question:

If direct wine shipment became legal in Maryland, do you believe you could compete with online sales of the same product?

	<u>% Yes</u>	<u>% No</u>
Maryland Retailers (Response Rate: 92%)	25.5	74.5