

PLEASE NOTE: Legislative Information **cannot** perform research, provide legal advice, or interpret Maine law. For legal assistance, please contact a qualified attorney.

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

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

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

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

**§ 1403-A. Purchase of wine by mail**

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

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

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

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

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

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

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

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

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

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

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

Amend the bill by inserting after section 2 the following:

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

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

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

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

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

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

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

## SUMMARY

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