

OFFICE OF POLICY AND LEGAL ANALYSIS

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To: Veterans and Legal Affairs Committee

From: Janet Stocco, Legislative Analyst

LD 1093 **An Act To Expand the Options for Shipping Wine Directly to Customers** (*Senator Miramant*)

LD 1358 **An Act To Provide for the Direct Shipment of Spirits to Consumers** (*Senator Stewart*)

SUMMARY

Currently, an in-state or out-of-state winery or small winery may obtain a license to ship its **wine** directly to Maine customers.

- LD 1093 expands the types of entities eligible to receive licenses from the bureau for the direct shipment of **wine** to Maine customers to include off-premises retailers and wholesalers licensed in this State or another state.
- LD 1358 authorizes an in-state or out-of-state distilleries to obtain a license to ship its **spirits** directly to Maine customers. At the public hearing, the sponsor proposed amending the bill to authorize breweries to ship **malt liquor** products directly to Maine customers.

	Current law §1403-A	LD 1093 (Miramant)	LD 1358 (Stewart)	LD 1358 sponsor amend.
Licensed entities eligible for additional direct shipper license	<ul style="list-style-type: none"> • In-state (small) winery • Out-of-state winery 	<ul style="list-style-type: none"> • In-state (small) winery • Out-of-state winery 	<ul style="list-style-type: none"> • In-state distillery • Out-of-state distillery 	<ul style="list-style-type: none"> • In state (small) brewery • Out-of-state brewery <i>with a certificate of approval</i>
	No retailers	<ul style="list-style-type: none"> • In-state off-premises wine retailer • Out-of-state off-premises wine retailer 	No retailers	No retailers
	No wholesalers	<ul style="list-style-type: none"> • In-state wine wholesaler • Out-of-state wine wholesaler 	No wholesalers	No wholesalers
Products (all labels disclosed in application)	Wine produced by shipper <ul style="list-style-type: none"> • Except wine coolers 	Any wine <ul style="list-style-type: none"> • Including wine coolers 	Spirits produced by shipper	Malt liquor produced by <i>or on behalf of</i> shipper
Container size	Container must be > 750 mL	No restrictions.	Container must be > 750 mL	No restrictions.

	Current law §1403-A	LD 1093 (Miramant)	LD 1358 (Stewart)	LD 1358 sponsor amend.
Maximum sales amount	12 cases, each ≤ 9 liters, per recipient address per year	24 cases, each ≤ 9 liters of wine, per address per year	4 cases, each ≤ 9 liters, per recipient address per year	12 cases = 24 x 12-ounce units <i>to any one person</i> per year
Fees	<ul style="list-style-type: none"> • \$200 license fee • \$100 registration fee • \$50 annual renewal fee 	Same as current law	Same as current law	Same as current law
Restricted addresses	Recipient address must not be in area that voted against all local option questions	Same as current law	Same as current law	Same as current law
Protections for minors	<ul style="list-style-type: none"> • Package must be labeled: CONTAINS ALCOHOL: SIGNATURE OF A PERSON 21 YEARS OF AGE OR OLDER IS REQUIRED FOR DELIVERY • Must use common carrier • Carrier must obtain signature of person 21 years of age or older, verified with photo ID, who is present at the address listed on the shipping label 	Same as current law	Same as current law	Same as current law
Sales tax	As condition of direct shipper license, out-of-state shipper must comply with Title 36, Part 3 sales tax registration, collection, reporting & remittance laws.	Same as current law	Same as current law	<i>As a condition of underlying certificate of approval</i> , out-of-state shipper must comply with Title 36, Part 3 sales tax registration, collection, reporting & remittance laws.

	Current law §1403-A	LD 1093 (Miramant)	LD 1358 (Stewart)	LD 1358 sponsor amend.
Excise Tax provisions	Direct shippers must annually pay all excise taxes due under §1652 for products shipped to Maine recipients	Same as current law	Direct shippers must annually pay an excise tax of \$11.96 per gallon for products shipped to Maine recipients. All other taxes and premiums do not apply.	Same as current law
Beverage container law	Not applicable	Applicable	Not applicable	Not applicable
Report by all direct shippers	Annually report to BABLO: (1) Total cases shipped to Maine; (2) Name / address of recipients; (3) Date, quantity, purchase price and common carrier used for each shipment.	Same as current law	Same as current law	Reports not required.
Report by in-state shippers	In-state direct shippers must also annually report total cases shipped to out-of-state recipients	Same as current law	Additional report by in-state direct shippers not required	Reports not required.
Audit	BABLO may perform compliance audits; direct shipper must cooperate	Same as current law	Same as current law	Same as current law
Unlicensed shipment	<i>First offense:</i> ≤ \$500 fine <i>Subsequent:</i> ≤ \$1,000 fine	Same as current law	Same as current law	Same as current law
Knowingly deliver to person < 21 years old	<i>Each offense:</i> ≤ \$5,000 fine	Same as current law	Same as current law	Same as current law
Violation of max. amounts or report requirements	BABLO may suspend or revoke the license or accept an offer in compromise in lieu of suspension	Same as current law	Same as current law	Same as current law

ISSUES RAISED IN TESTIMONY

1. **Beverage container law.** For a brief description of the law, see <https://www.maine.gov/dep/sustainability/bottlebill/index.html>. For a more comprehensive description of the law, see OPEGA's report at the following link: <http://legislature.maine.gov/doc/2316> (Note: based on legislation enacted in the 129th Legislature, the handling fee discussed on page 9 of this report is now 4.5¢ for all containers).
 - Under LD 1093, who would be responsible for compliance with Maine's beverage container laws? Will out-of-state entities, including small out-of-state wineries whose direct-shipped products are exempt from the beverage container law under the current direct shipper statute, have the ability to comply?
 - Under LD 1358, what financial impact will additional, unredeemable bottles have on Maine's redemption centers?
2. **Tax compliance (LD 1093).** BABLO expressed concerns regarding the State's ability to collect excise taxes on wine shipments under LD 1093 and suggested enhancing the reporting requirements in both current law and the bills (see proposed amendment below).
3. **Administrative expenses (LD 1093).** BABLO indicated that the following additional staff will be necessary to ensure compliance by the new direct shippers contemplated in LD 1093: 2 additional Liquor Tax Auditors; 2 Office Associate II positions; and 2 Liquor Licensing Inspectors. In addition, BABLO will require additional funding to create a web-based licensing and reporting system for direct shippers.
4. **Impact on State spirits business (LD 1358).** BABLO expressed concern with the potential for an unlevel playing field and negative impact on spirits revenues to the State if direct shippers are authorized to sell spirits products directly to Maine customers at any price chosen by the direct shipper and in any bottle format, while agency liquor stores and in-State distilleries that sell their products to Maine customers at their manufacturing facilities will be subject to the State's listing, pricing and distribution system. BABLO also noted that the current spirits warehousing and distribution contract expires in 3 years; a new contract will be awarded beginning July 1, 2024.
5. **Youth access.** Are the current law's provisions (adopted by the bills) for preventing youth access to direct-shipped liquor sufficient?

AMENDMENTS PROPOSED

1. **BABLO Proposed Amendment to LD 1093.** Enhance the reporting requirements to ensure collection of all excise taxes by:
 - Requiring common carriers to report to BABLO all direct shipments of wine to customers in the State.
 - Requiring direct shippers to identify in annual reports the common carrier used to direct ship in Maine. *But see* [§1403-A\(11\)](#).
The National Association of Wine Retailers concurred with this recommendation.

2. **MBWDA Proposed amendment to LD 1093.** The Maine Beer and Wine Distributors Association proposed, instead of enacting LD 1903, that a stakeholders Group be convened to review the following regarding the current wine direct shipper law: number of licenses issued; number of wine labels registered for direct shipment in Maine; volume of wine direct shipped annually; whether excise tax collection is adequate under the current system; and whether to add a common carrier reporting requirement.
3. **Sponsor's Proposed Amendment to LD 1358 - malt liquor.** This proposal is outlined in the chart above.
4. **BABLO's Proposed Amendment to LD 1358 - spirits.** BABLO proposed amending LD 1358 in either of the following ways:
 - *Limit direct shipper licenses to small distilleries* with clearly defined maximum production amounts to qualify for the license. Under current law, small distilleries may not produce more than 50,000 gallons of spirits per year; **or**
 - *Convene a stakeholder group* to discuss the potential impact of LD 1358 on the State's spirits business and carry over the bill to await the recommendations of the group.
5. **DISCUS Proposed Amendment to LD 1358 - spirits.** The Distilled Spirits Council of the United States suggested it may propose an amendment to LD 1358 to address the following issues: (1) calculation of the tax rate on direct-shipped spirits; (2) limiting direct-shipped spirits to products not listed for retail sale in Maine; and (3) adjusting the maximum per-customer, per-year direct shipping amount.
6. **American Distilled Spirits Alliance proposed amendment to LD 1358 - spirits portion.** Proposed amending the bill (1) on p. 1, lines 19-20 to clarify that an out-of-state manufacturer must "hold a valid permit under the Federal Alcohol Administration Act and operate as the brand owner or its authorized agent"; (2) authorize distilleries to use fulfillment centers to ship spirits on their behalf; (3) require all direct-shipped spirits to be sold at the retail price established by the State Liquor and Lottery Commission; (4) clarify whether spirits not currently listed for sale in the State may be direct shipped; (5) require BABLO to issue a "cease-and-desist" notice to an entity that directly ships spirits to Maine without a license before imposing penalties for subsequent unlicensed direct shipments.
7. **MGFPA Proposed Amendment to both bills.** The Maine Grocers & Food Producers Association proposed either of the following:
 - *Additional restrictions on direct shipments:* (1) only authorize direct shipment of products not currently sold in the State and/or limit the amount a single customer may purchase to a serve as a "sampling" of a new product; (2) prohibit sale of products at a price lower than the current retail price in Maine; (3) impose a premium direct shipper's fee; **or**
 - *Convene a stakeholder group:* to discuss direct shipment as well as other issues surrounding the current liquor market in Maine.

ADDITIONAL INFORMATION

1. **Recent Legislation.** Through [P.L. 2021, ch. 8](#) (effective March 17, 2021), the Legislature clarified that licensed Maine liquor manufacturers may sell and ship their products to an individual located in another state for that individual’s personal use and not for resale, provided that the shipment is conducted in accordance with the requirements of the law of the recipient state. [P.L. 2021, ch. 8](#) further clarifies that liquor products sold directly to a consumer located in another state are not subject to the State spirits tax in [28-A M.R.S. §1651](#) or to the state excise tax on wine, malt liquor or low-alcohol spirits products in [§1652](#).
2. **Direct to consumer sales in other states.** According to NCSL, as of July 22, 2020, 46 states license wineries, 6 states license distilleries and 8 states license breweries to directly ship their own products to individuals located in those States for personal consumption. In addition, 2 states (CT & NH) also permit retailers to obtain licenses to directly ship certain liquor products to individuals in those states. NCSL does not report that any states authorize wholesalers to obtain direct shipper licenses. *See* <https://www.ncsl.org/research/financial-services-and-commerce/direct-shipment-of-alcohol-state-statutes.aspx>. Other entities, for example the tax compliance company Avalara, report slightly different lists of states that authorize wineries, distilleries or breweries to obtain licenses to directly ship their products to consumers in their state and that some states also authorize retailers to obtain wine direct shipping permits. *See* <https://www.avalara.com/us/en/learn/whitepapers/dtc-shipping-101-a-survival-guide-for-the-beverage-alcohol-industry.html>.

TECHNICAL ISSUES

1. **Spirits listing & retail price (LD 1358).** 28-A M.R.S. §81(2) provides that the State Liquor and Lottery Commission determines “which [spirits] items may be listed for sale in the state.” Is the intent of LD 1358 to authorize direct shippers to directly ship other, non-listed spirits products to Maine customers? In addition, although some of the language in LD 1358 suggests that the intent is not to require direct shippers to sell spirits to Maine customers at the retail price established by the State Liquor and Lottery Commission, it may make sense to clarify this issue in the bill.
2. **Liquor importation and transportation laws.** Title 28-A has several provisions prohibiting the importation or in-state transportation of liquor, except by certain authorized entities. It will be necessary to update these provisions with cross-reference to the new direct-to-consumer statutes in either of these bills. These statutes are comprehensively redrafted in [LD 1643](#) requiring coordination of these bills.

FISCAL IMPACT

Not yet determined.