



Maine Beverage Distributors Association

Senator Hickman
Representative Supica
Members of the Veterans and Legal Affairs Committee

RE: LD 1092 – An Act to Ensure that Dual Distribution Prohibitions are not Violated by Direct Shipment of Wine

I am writing to respond to questions posed at the public hearing on LD 1092 and to provide additional information that may be useful for your consideration of this legislation.

Following last session's policy consideration of the spirits DTC shipping bill, MBDA requested legal review of the Wine Direct Shipment statute to analyze the issue of dual distribution of wines. In response to the committee request, the legal inquiry posed to BABLO and the AAG is attached with citations and references.

MBWD would like Maine to reinforce and maintain a healthy marketplace for locally licensed industry -wholesalers, and retailers. Specifically, the policy consideration we hope to address in LD 1092 is: **Should out of state suppliers Direct Ship wine to consumers when those same wine products are available at local retailers?**

In 2023, BABLO listed over 650 DTC wine permits. Many of these same brands and labels are sold at retail locations in Maine. To attempt to showcase the issue, please see the attached spreadsheet with 2025 licensee permits for the last 60 days (the limit on the BELLS system search engine).

Several questions were raised at the hearing on how local manufacturers fit into the DTC shipping model. Below are the relevant definitions on "sale", self-distribution privileges in state and intra-state sales for a reciprocal state.

MRSA 28-A Chapter 1 §2 Definitions:

28. Sale or sell. "Sale" or "sell" means any transfer or delivery of liquor for a consideration.

MANUFACTURERS SELF DISTRIBUTION

1355-A – Self distribution privileges

(1) A holder of a small winery license may sell or deliver its products to licensed retailers or wholesalers. The licensee may sell, on the premises for off-premises consumption any wine produced at the licensed premises by the bottle, by the case or in bulk to licensed retailers, including, but not limited to, off-premises retail licensees, restaurants and clubs.

§1357. Sales to persons in another state

Notwithstanding any provision of this Title to the contrary, a manufacturer licensed under [section 1355-A](#) may sell and ship its products to a person located in another state, as long as the sale and shipment are authorized by and conducted in accordance with the requirements of the law of the state where the shipment is delivered.

The issues of delivery and shipping are the critical elements for DTC sales. Delivery is intrastate with manufacturers and retailers using their own employees and vehicles to facilitate consumer sales. Shipping is interstate sales with the use of a common carrier.

MBDA understands that Rep. Chapman has a sponsor amendment to address the local winery use of DTC permit system and a distribution partner. We are supportive of this proposed change to LD 1092 and recognize that the BELLS system has the potential technology features to track label registration details for DTC permittees.

Other states are considering similar proposals. [Mississippi producer wine DTC law](#) that just passed this session, below highlighted in yellow is the relevant section starting on page 5:

<https://billstatus.ls.state.ms.us/documents/2025/pdf/SB/2100-2199/SB2145SG.pdf>

(2) A direct wine shipper shall not:

(a) Sell or ship any light wine or beer that is regulated under Section 67-3-1 et seq. or any alcoholic beverage other than wine;

(b) Sell or ship wine that is contracted through Mississippi distributors, brokers, and solicitors within the state. Wines which are very limited in quantity and are commonly referred to by the broker as highly allocated items (noted as "Allocated Item - See Broker" on the TAP Alcoholic Beverage Control Division of the Department of Revenue website are eligible for sale at a package retailer and also through direct shipment by a direct shipper); or

(c) Sell or ship more than twelve (12) nine-liter cases of wine annually to any one (1) address.

I will be happy to answer any questions and plan to attend the work session. Thank you,

Cheryl Timberlake

Attachments: MBDA legal memorandum

Excel Active DTC Licensees

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April 19, 2024

Via U.S. Mail and Email

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Re: Direct Shipment of Wine into an Exclusive Territory Assigned to a Maine
Distributor Violates Maine's Dual Distribution Prohibition

Dear Director Luchini and Attorney Mantis:

Our office represents the Maine Beverage Distributors Association ("MBDA"). On MBDA's behalf, I write to bring to your attention an issue that may constitute a violation of Maine law and request the opportunity to discuss the issue with you further. It concerns the direct sale by a winery to a Maine consumer in a territory that has been assigned to a Maine distributor. The pertinent Maine Statutes are as follows.

Maine Revised Statute Section 1403-A permits wineries to direct ship to Maine consumers subject to certain limitations. In pertinent part, that section provides as follows:

§1403-A. Direct shipment of wine

(CONTAINS TEXT WITH VARYING EFFECTIVE DATES)

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

A. "Direct shipper" means a winery that has obtained a wine direct shipper license under subsection 2. [PL 2009, c. 373, §1 (NEW).]

B. "Outside the State" means any state other than Maine and any territory or possession of the United States, but does not include a foreign country. [PL 2009, c. 373, §1 (NEW).]

[PL 2009, c. 373, §1 (NEW).]

2. Direct shipment of wine. A small winery or other winery holding a federal basic wine manufacturing permit located within or outside the State may obtain a wine direct shipper license by filing with the bureau an application in a form determined by the bureau accompanied by an application fee of not more than \$200, a copy of the applicant's current federal basic wine manufacturing permit and a list of wine labels to be shipped in accordance with this section.

[PL 2013, c. 368, Pt. V, §46 (AMD).]

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

[PL 2021, c. 658, §242 (AMD).]

4. Direct shipment requirements. A direct shipper may only ship wine that was produced by the direct shipper in accordance with the direct shipper's federal basic wine manufacturing permit to a recipient for personal use and not for resale. A direct shipper may not ship wine products commonly known as "wine coolers." A direct shipper shall label each package to be shipped in accordance with this section so that it conspicuously reads "CONTAINS ALCOHOL: SIGNATURE OF A PERSON 21 YEARS OF AGE OR OLDER IS REQUIRED FOR DELIVERY."

[PL 2009, c. 373, §1 (NEW).]

5. Common carrier. Shipments made in accordance with this chapter must be made by a common carrier and must be accompanied by a shipping label that clearly indicates the name of the direct shipper and the name and address of the recipient. The common carrier shall obtain the signature of a person 21 years of age or older at the address listed on the shipping label prior to delivery of the shipment. The common carrier shall request photographic identification from the person signing for the shipment and verify that the person is 21 years of age or older.

[PL 2009, c. 373, §1 (NEW).]

6. Bottle size and case limit.

[PL 2023, c. 274, §1 (RP).]

6-A. Shipment limit. A direct shipper may not ship a container of wine of less than 250 milliliters and may ship no more than 9,000 milliliters per shipment no more than 12 times to any one recipient address in a calendar year.

[PL 2023, c. 274, §2 (NEW).]

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

[PL 2009, c. 373, §1 (NEW).]

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

[PL 2021, c. 658, §243 (AMD).]

9. Sales tax registration and payment required. As a condition of receiving a license, a shipper located outside the State shall comply with the provisions of Title 36, Part 3, including all requirements relating to registration as a seller and the collection, reporting and remittance of the sales and use taxes of the State, and shall agree to be subject to the jurisdiction of the State for purposes of the enforcement of those obligations. The requirements of this subsection apply notwithstanding any provision of law of the State to the contrary.

[PL 2021, c. 658, §244 (AMD).]

10. Payment of excise taxes. A direct shipper located outside the State shall annually pay to the bureau all excise taxes due on sales to residents of the State in the preceding year, the amount of such taxes to be calculated as if the sales were in the State.

[PL 2013, c. 368, Pt. XXXX, §5 (AMD); PL 2013, c. 368, Pt. XXXX, §13 (AFF).]

11. Report. A direct shipper shall submit a report to the bureau annually in a manner and form prescribed by the bureau that includes the total number of cases of wine shipped to recipients in the State and, for a direct shipper located in the State, shipments made outside the State, the name and residence address of shipment recipients in the State, the common carrier used to deliver the shipments and the date, quantity and purchase price of each shipment.

[PL 2013, c. 476, Pt. A, §31 (AMD).]

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

[PL 2009, c. 373, §1 (NEW).]

13. Violation. A person, including a common carrier, who knowingly causes a direct shipment in violation of this section is subject to a fine up to \$500 for a first offense and up to \$1,000 for any subsequent violation of this section. A direct shipper or common carrier who knowingly delivers wine to a person under 21 years of age is subject to a fine up to \$5,000. The bureau may suspend or revoke a wine direct shipper license for failure to comply with the shipping limits and reporting requirements required by this section. The bureau may accept payment of an offer in compromise in lieu of suspension; such payments must be determined by rules adopted by the bureau.

[PL 2009, c. 373, §1 (NEW).]

14. Jurisdiction. A direct shipper, as a condition of licensure, is subject to the jurisdiction and enforcement authority of the State for the purposes of enforcement of this section.

[PL 2009, c. 373, §1 (NEW).]

16. Rules. The bureau shall adopt rules to carry out the purposes of this section. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

Id. (emphasis added).

Maine Revised Statute Section 1453 prohibits dual distribution and states as follows:

§1453. Dual distributorship prohibited

1. Dual distributorship prohibited. A certificate of approval holder that designates a sales territory for which a wholesale licensee is primarily responsible may not enter into any agreement with any other wholesale licensee for the purpose of establishing an additional agreement for its brand or label in the same territory.

[PL 2021, c. 658, §256 (AMD).]

2. Certificate of approval holder to file list. Each certificate of approval holder shall file with its application for a certificate of approval or in-state manufacturer license a list giving the name and address of each bottler and wholesale licensee authorized to distribute products of that certificate of approval holder and designating the exclusive territory assigned to each wholesale licensee within the State. Unless authorized by the bureau, wholesale licensees may not sell those products to licensees outside of the exclusive territory allocated and designated.

A. Sales of wine to retail licensees at the wholesale licensee's warehouse must be considered a sale within the wholesale licensee's exclusive territory. [PL 2021, c. 658, §256 (AMD).]

[PL 2021, c. 658, §256 (AMD).]

3. Primary source of supply. A wholesale licensee may not purchase liquor from anyone other than the primary source of supply within the United States.

Id. (emphasis added).

The Direct Shipment Statute did not exempt the Dual Distributorship statute from its purview. Had the Legislature intended to do so, it would have expressly created an exception. It did not do so. Both Statutes remain in full force and effect. A court will not read a statute to conflict with another statute when an alternative, reasonable interpretation yields harmony. *Pinkham v. Morris*, 622 A.2d 90, 95 (Me. 1993). (citing *State v. Rand*, 430 A.2d 808, 817 (Me.1981)). *See Morton v. Mancari*, 417 U.S. 535, 549 (U.S. 1974) (“In the absence of some affirmative showing of an intention to repeal, the only permissible justification for a repeal by implication is when the earlier and later statutes are

Director Luchini
Attorney Mantis
April 19, 2024
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irreconcilable. *Georgia v. Pennsylvania R. Co.*, 324 U.S. 439, 456—457, 65 S.Ct. 716, 725—726, 89 L.Ed. 1051 (1945)”). Here, the two statutes are not “irreconcilable”. A winery which does not have an exclusive distribution agreement with a Maine distributor can ship direct to a Maine consumer. But a winery which already has an exclusive distribution agreement with a Maine distributor does not need the privilege of selling direct to a consumer, nor does a Maine consumer within such territory need to be able to purchase direct from the winery because it is available through local retailers.

If a “direct shipper” sells wine to a consumer located in a territory assigned to a Maine wine distributor, that sale would violate the prohibition on dual distribution embodied in Maine Revised Statute § 1453. In addition, to my knowledge, all distribution agreements with Maine wine distributors embody exclusive territories. Accordingly, the direct sale by a winery to a Maine consumer in a territory exclusively assigned to a Maine distributor would constitute a breach of the distribution agreement.

Absent direction from BABLO, MBDA is concerned that wineries, either in ignorance or by intent, may sell into a Maine distributor’s territory and thereby violate §1453 and their distribution agreements. One way to prevent this is for BABLO to attach a condition to the wineries’ license that they may not sell direct to any consumer located in a distributor’s territory. Pursuant to § 1403-A (7) above, a “direct shipper may not ship to any address in an area identified by the bureau as a prohibited shipping area or a local option area.” In order to avoid a violation of the dual distribution statute and the exclusive territory provision in distribution agreements, MBDA suggests that any every certificate of approval and winery license embody a provision to the effect that the winery is prohibited from shipping to any consumer located in a territory exclusively assigned to a Maine wine distributor.

Please let me know if you would be willing to discuss this issue further. Thank you for your consideration and please do not hesitate to contact me if you have any questions.

Very truly yours,

MADIGAN, DAHL & HARLAN, P.A.

s/ Michael D. Madigan

Michael D. Madigan

MDM:rcm

cc: Larry Sandborn
Cheryl Timberlake

