

1 S.61

2 Introduced by Senators Mullin, Cummings, Flory, French, McAllister,

3 Rodgers, and Starr

4 Referred to Committee on Economic Development, Housing and General  
5 Affairs

6 Date: January 29, 2013

7 Subject: Alcoholic beverages; prohibited acts; malt and vinous beverage  
8 shipping license

9 Statement of purpose of bill as introduced: This bill proposes to allow  
10 breweries to ship malt beverages to in-state and out-of-state consumers.

11 ~~An act relating to the shipment of malt beverages~~

*An act relating to alcoholic beverages*

12 It is hereby enacted by the General Assembly of the State of Vermont:

13 ~~Sec. 1. 7 V.S.A. § 2 is amended to read:~~

14 § 2. DEFINITIONS

15 The following words as used in this title, unless a contrary meaning is  
16 required by the context, shall have the following meaning:

17 \* \* \*

18 (15) "Manufacturer's or rectifier's license": a license granted by the  
19 ~~liquor control board~~ Liquor Control Board that permits the holder to

1 ~~manufacture or rectify spirituous liquors for export and sale to the liquor~~  
2 ~~control board Board, or malt beverages and vinous beverages for export and~~  
3 ~~sale to bottlers or wholesale dealers, and directly to an out-of-state consumer in~~  
4 ~~accordance with the laws of the state in which the consumer resides. This~~  
5 ~~license permits a manufacturer of vinous beverages to receive from another~~  
6 ~~manufacturer licensed in or outside this state State bulk shipments of vinous~~  
7 ~~beverages to rectify with the licensee's own product, provided that the vinous~~  
8 ~~beverages produced by a Vermont manufacturer may contain no more than 25~~  
9 ~~percent imported vinous beverage. The liquor control board Board may grant~~  
10 ~~to a licensed manufacturer or rectifier a first class restaurant or cabaret license~~  
11 ~~or first and third class restaurant or cabaret license permitting the licensee to~~  
12 ~~sell alcoholic beverages to the public only at the manufacturer's premises,~~  
13 ~~which for the purposes of a manufacturer of malt beverages, includes up to two~~  
14 ~~licensed establishments that are located on the contiguous real estate of the~~  
15 ~~holder of the manufacturer's license, provided the manufacturer owns or has~~  
16 ~~direct control over those establishments. A manufacturer of malt beverages~~  
17 ~~who also holds a first class restaurant or cabaret license may serve to a~~  
18 ~~customer malt beverage by the glass, not to exceed eight glasses at one time~~  
19 ~~and not to exceed four ounces in each glass. The liquor control board Board~~  
20 ~~may grant to a licensed manufacturer or a rectifier of malt beverages a second~~  
21 ~~class license permitting the licensee to sell alcoholic beverages to the public~~

1 ~~anywhere on the manufacturer's or rectifier's premises. A licensed~~  
2 manufacturer or rectifier of vinous beverages may serve, with or without  
3 charge, at an event held on premises of the licensee or the vineyard property,  
4 spirits and vinous and malt beverages, provided the licensee gives the  
5 ~~department~~ Department written notice of the event, including details required  
6 by the ~~department~~ Department, at least five days before the event. Any  
7 beverages not manufactured by the licensee and served at the event shall be  
8 purchased on invoice from a licensed manufacturer or wholesale dealer or  
9 ~~liquor control board~~ the Board.

10 \* \* \*

11 Sec. 2. 7 V.S.A. § 66 is amended to read:

12 § 66. MALT AND VINOUS BEVERAGE SHIPPING LICENSE; IN STATE;  
13 OUT OF STATE; PROHIBITIONS; PENALTIES

14 (a) A manufacturer or rectifier of malt or vinous beverages licensed in  
15 Vermont may be granted an in-state consumer shipping license by filing with  
16 the ~~department of liquor control~~ Department of Liquor Control an application  
17 in a form required by the ~~department~~ Department accompanied by a copy of  
18 the applicant's current Vermont manufacturer's license and the fee as required  
19 by subdivision 231(7)(A) of this title. This consumer shipping license may be  
20 renewed annually by filing the renewal fee as required by subdivision

1 ~~231(7)(A) of this title accompanied by a copy of the licensee's current~~

2 Vermont manufacturer's license.

3 (b) A manufacturer or rectifier of malt or vinous beverages licensed in  
4 another state that operates a winery or brewery in the United States and holds  
5 valid state and federal permits and licenses may be granted an out-of-state  
6 consumer shipping license by filing with the ~~department of liquor control~~  
7 Department an application in a form required by the ~~department~~ Department  
8 accompanied by copies of the applicant's current out-of-state manufacturer's  
9 license and the fee as required by subdivision 231(7)(B) of this title. This  
10 consumer shipping license may be renewed annually by filing the renewal fee  
11 as required by subdivision 231(7)(B) of this title accompanied by the licensee's  
12 current out-of-state manufacturer's license. For the purposes of this subsection  
13 and subsection (c) of this section, "out-of-state" means any state other than  
14 Vermont, any territory or possession of the United States, and does not include  
15 a foreign country.

16 \* \* \*

17 (d) Pursuant to a consumer shipping license granted under subsection (a) or  
18 (b) of this section, the licensee may ship malt or vinous beverages produced by  
19 the licensee:

20 (1) Only to private residents for personal use and not for resale.

1 ~~(2) No more than 12 cases containing no more than 29 gallons of vinous~~  
2 ~~beverages, or no more than 24 cases of malt beverages, to any one Vermont~~  
3 ~~resident in any calendar year.~~

4 (3) Only by common carrier certified by the ~~department~~ Department.  
5 The common carrier shall comply with all the following:

6 (A) ~~Deliver~~ deliver malt or vinous beverages pursuant to an invoice  
7 that includes the name of the licensee and the name and address of the  
8 purchaser;

9 (B) ~~On~~ on delivery, require a valid form of photographic  
10 identification from a recipient who appears to be under ~~the age of~~ 30;

11 (C) ~~Require~~ require the recipient to sign an electronic or paper form  
12 or other acknowledgement of receipt.

13 (e) A holder of any shipping license granted pursuant to this section shall:

14 \* \* \*

15 (4) Report at least twice a year to the ~~department of liquor control~~  
16 Department of Liquor Control if the holder of a direct consumer shipping  
17 license and once a year if the holder of a retail shipping license in a manner  
18 and form required by the ~~department~~ Department all the following information:

19 (A) ~~The~~ the total amount of malt or vinous beverages shipped into or  
20 within the ~~state~~ State for the preceding six months if a holder of a direct

1 ~~consumer shipping license or every 12 months if a holder of a retail shipping~~  
2 ~~license;~~

3 (B) ~~The~~ the names and addresses of the purchasers to whom the malt  
4 or vinous beverages were shipped;

5 (C) ~~The~~ the date purchased, if appropriate, the name of the common  
6 carrier used to make each delivery, and the quantity and value of each  
7 shipment.

8 (5) Pay directly to the ~~commissioner of taxes~~ Commissioner of Taxes  
9 the amount of tax on the malt or vinous beverages shipped under this section  
10 pursuant to subsection 421(a) of this title, and comply with the provisions of  
11 32 V.S.A. chapter 233, 24 V.S.A. § 138, and any other legally authorized local  
12 sales taxes. Delivery in this ~~state~~ State shall be deemed to constitute a sale in  
13 this ~~state~~ State at the place of delivery and shall be subject to all appropriate  
14 taxes levied by the ~~state~~ State of Vermont.

15 \* \* \*

16 (f) A common carrier shall not deliver malt or vinous beverages until it has  
17 complied with the training provisions in subsections 239(a) and (b) of this title  
18 and been certified by the ~~department of liquor control~~ Department of Liquor  
19 Control. No employee of a certified common carrier may deliver vinous  
20 beverages until that employee completes the training provisions in subsection  
21 239(c) of this title. A common carrier shall deliver only vinous beverages that

1 ~~have been shipped by the holder of a license issued under this section or a~~  
2 ~~vinous beverage storage license issued under section 68 of this title.~~

3 ~~(g) The department of liquor control and the department of taxes~~  
4 ~~Departments of Liquor Control and of Taxes may adopt rules and forms~~  
5 ~~necessary to implement this section.~~

6 ~~(h) Direct shipments of malt or vinous beverages are prohibited if the~~  
7 ~~shipment is not specifically authorized and in compliance with this section.~~  
8 ~~Any person who knowingly makes, participates in, imports, or receives a direct~~  
9 ~~shipment of vinous beverages from a person who is not licensed or certified as~~  
10 ~~required by this section may be fined not more than \$1,000.00 or imprisoned~~  
11 ~~not more than one year, or both.~~

12 ~~(i) A licensee under this section or a common carrier that ships malt or~~  
13 ~~vinous beverages to an individual under 21 years of age shall be fined not less~~  
14 ~~than \$1,000.00 or more than \$3,000.00 or imprisoned not more than two years,~~  
15 ~~or both.~~

16 ~~(j) For any violation of this section, the ~~liquor control board~~ Liquor Control~~  
17 ~~Board may suspend or revoke a license issued under this section, among all~~  
18 ~~other remedies available to the board.~~

19 Sec. 3. 7 V.S.A. § 231 is amended to read:

20 § 231. FEES FOR LICENSES; DISPOSITION OF FEES

21 (a) The following fees shall be paid:

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2  
3  
4  
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7  
8  
9

\* \* \*

(7) For a shipping license for malt or vinous beverages:

(A) In-state consumer shipping license, initial and renewal, \$300.00.

(B) Out-of-state consumer shipping license, initial and renewal,  
\$300.00.

(C) Retail shipping license, initial and renewal, \$200.00.

\* \* \*

Sec. 4. EFFECTIVE DATE

~~This act shall take effect on July 1, 2013.~~

*Sec. 1. 7 V.S.A. § 2 is amended to read:*

*§ 2. DEFINITIONS*

*The following words as used in this title, unless a contrary meaning is required by the context, shall have the following meaning:*

\* \* \*

*(19) "Second class license": a license granted by the ~~control commissioners~~ Control Commissioners permitting the licensee to export malt or vinous beverages and to sell malt or vinous beverages to the public for consumption off the premises for which the license is granted.*

\* \* \*

*(28) "Fourth class license" or "farmers' market license": the license granted by the ~~liquor control board~~ Liquor Control Board permitting a manufacturer or rectifier of malt or vinous beverages or spirits to sell by the unopened container and distribute, by the glass with or without charge, beverages manufactured by the licensee. No more than a combined total of ten fourth class and farmers' market licenses may be granted to a licensed manufacturer or rectifier. At only one fourth class license location, a manufacturer or rectifier of vinous beverages, malt beverages, or spirits may sell by the unopened container and distribute by the glass, with or without charge, vinous beverages, malt beverages, or spirits produced by no more than five additional manufacturers or rectifiers, provided these beverages are purchased on invoice from the manufacturer or rectifier. A manufacturer or*



*rectifier of vinous beverages, malt beverages, or spirits may sell its product to no more than five additional manufacturers or rectifiers. A fourth class licensee may distribute by the glass no more than two ounces of malt or vinous beverage with a total of eight ounces to each retail customer and no more than one-quarter ounce of spirits with a total of one ounce to each retail customer for consumption on the manufacturer's premises or at a farmers' market. A farmers' market license is valid for all dates of operation for a specific farmers' market location.*

\* \* \*

*(32) "Art gallery or bookstore permit": a permit granted by the liquor control board permitting an art gallery or bookstore to conduct an event at which malt or vinous beverages or both are served by the glass to the public, provided that the event is approved by the local licensing authority. A permit holder may purchase malt or vinous beverages directly from a licensed retailer. A permit holder shall be subject to the provisions of this title and the rules of the board regarding the service of alcoholic beverages. A request for a permit shall be submitted to the department in a form required by the ~~department~~ Department at least five days prior to the event and shall be accompanied by the permit fee required by subdivision 231(a)(22) of this title. ~~As used in this section, "art gallery" means a fixed establishment whose primary purpose is to exhibit and offer for sale works of art subject to federal copyright protection; and "bookstore" means a fixed establishment whose primary purpose is to offer books for sale.~~ As used in this section, "art gallery" means a fixed establishment whose primary purpose is to exhibit or offer for sale works of art; and "bookstore" means a fixed establishment whose primary purpose is to offer books for sale.*

\* \* \*

*Sec. 2. 7 V.S.A. § 66 is amended to read:*

*§ 66. MALT AND VINOUS BEVERAGE SHIPPING LICENSE; IN STATE; OUT OF STATE; PROHIBITIONS; PENALTIES*

*(a) A manufacturer or rectifier of vinous beverages or malt beverages licensed in Vermont may be granted an in-state consumer shipping license by filing with the ~~department of liquor control~~ Department of Liquor Control an application in a form required by the ~~department~~ Department accompanied by a copy of the applicant's current Vermont manufacturer's license and the fee as required by subdivision 231(7)(A) of this title. This consumer shipping license may be renewed annually by filing the renewal fee as required by subdivision 231(7)(A) of this title accompanied by a copy of the licensee's current Vermont manufacturer's license.*

(b) A manufacturer or rectifier of vinous beverages or malt beverages licensed in another state that operates a winery or brewery in the United States and holds valid state and federal permits and licenses may be granted an out-of-state consumer shipping license by filing with the ~~department of liquor control~~ Department an application in a form required by the ~~department~~ Department accompanied by copies of the applicant's current out-of-state manufacturer's license and the fee as required by subdivision 231(7)(B) of this title. This consumer shipping license may be renewed annually by filing the renewal fee as required by subdivision 231(7)(B) of this title accompanied by the licensee's current out-of-state manufacturer's license. For the purposes of this subsection and subsection (c) of this section, "out-of-state" means any state other than Vermont, any territory or possession of the United States, and does not include a foreign country.

\* \* \*

(d) Pursuant to a consumer shipping license granted under subsection (a) or (b) of this section, the licensee may ship vinous beverages or malt beverages produced by the licensee:

(1) Only to private residents for personal use and not for resale.

(2) No more than 12 cases containing no more than 29 gallons of vinous beverages or no more than 12 cases of malt beverages containing no more than 36 gallons of malt beverages to any one Vermont resident in any calendar year.

(3) Only by common carrier certified by the ~~department~~ Department. The common carrier shall comply with all the following:

(A) ~~Deliver~~ deliver vinous beverages pursuant to an invoice that includes the name of the licensee and the name and address of the purchaser;

(B) ~~On~~ on delivery, require a valid form of photographic identification from a recipient who appears to be under ~~the~~ age of 30;

(C) ~~Require~~ require the recipient to sign an electronic or paper form or other acknowledgement of receipt.

(e) A holder of any shipping license granted pursuant to this section shall:

(1) ~~Ensure~~ ensure that all containers of alcoholic beverages shipped under this section are clearly labeled: "contains alcohol; signature of individual age 21 or older required for ~~delivery.~~" delivery";

(2) ~~Not~~ not ship to any address in a municipality that the ~~department~~ Department identified as having voted to be "~~dry.~~" dry";

(3) ~~Retain~~ retain a copy of each record of sale for a minimum of five years from the date of shipping-;

(4) ~~Report~~ report at least twice a year to the ~~department of liquor control~~ Department of Liquor Control if the holder of a direct consumer shipping license and once a year if the holder of a retail shipping license in a manner and form required by the ~~department~~ Department all the following information:

(A) ~~The~~ the total amount of vinous beverages or malt beverages shipped into or within the ~~state~~ State for the preceding six months if a holder of a direct consumer shipping license or every 12 months if a holder of a retail shipping license-;

(B) ~~The~~ the names and addresses of the purchasers to whom the ~~vinous~~ beverages were shipped-;

(C) ~~The~~ the date purchased, if appropriate, the name of the common carrier used to make each delivery, and the quantity and value of each shipment.

(5) ~~Pay~~ pay directly to the ~~commissioner of taxes~~ Commissioner of Taxes the amount of tax on the vinous beverages or malt beverages shipped under this section pursuant to subsection 421(a) of this title, and comply with the provisions of 32 V.S.A. chapter 233, 24 V.S.A. § 138, and any other legally authorized local sales taxes. Delivery in this ~~state~~ State shall be deemed to constitute a sale in this ~~state~~ State at the place of delivery and shall be subject to all appropriate taxes levied by the ~~state~~ State of Vermont-;

(6) ~~Permit the state treasurer~~ permit the State Treasurer, the ~~department of liquor control~~ Department of Liquor Control, and the ~~department of taxes~~ Department of Taxes, separately or jointly, upon request, to perform an audit of its records-;

(7) ~~If~~ if an out-of-state license holder, be deemed to have consented to the jurisdiction of the ~~department of liquor control~~ Department of Liquor Control or any other state agency and the Vermont state courts concerning enforcement of this or other applicable laws and regulations-;

(8) ~~Not~~ not have any direct or indirect financial interest in a Vermont wholesale dealer or retail dealer, including a first, second, or third class license-;

(9) ~~Comply~~ comply with all ~~liquor control board~~ Liquor Control Board laws and regulations; and

(10) comply with the beverage container deposit redemption system pursuant to 10 V.S.A. chapter 53.

(f) A common carrier shall not deliver vinous beverages or malt beverages until it has complied with the training provisions in subsections 239(a) and (b) of this title and been certified by the ~~department of liquor control~~ Department of Liquor Control. No employee of a certified common carrier may deliver vinous beverages or malt beverages until that employee completes the training provisions in subsection 239(c) of this title. A common carrier shall deliver only vinous beverages or malt beverages that have been shipped by the holder of a license issued under this section or a vinous beverage storage license issued under section 68 of this title.

(g) The ~~department of liquor control and the department of taxes~~ Departments of Liquor Control and of Taxes may adopt rules and forms necessary to implement this section.

(h) Direct shipments of vinous beverages or malt beverages are prohibited if the shipment is not specifically authorized and in compliance with this section. Any person who knowingly makes, participates in, imports, or receives a direct shipment of vinous beverages or malt beverages from a person who is not licensed or certified as required by this section may be fined not more than \$1,000.00 or imprisoned not more than one year, or both.

(i) A licensee under this section or a common carrier that ships vinous beverages or malt beverages to an individual under 21 years of age shall be fined not less than \$1,000.00 or more than \$3,000.00 or imprisoned not more than two years, or both.

(j) For any violation of this section, the ~~liquor control board~~ Liquor Control Board may suspend or revoke a license issued under this section, among all other remedies available to the board.

~~Sec. 3. 7 V.S.A. § 232 is amended to read:~~

~~§ 232. TERMS OF PERMITS AND LICENSES~~

~~All permits and licenses shall expire at midnight, April 30, of each year and, upon of each year, except that annual licenses issued beginning July 1, 2013 shall expire at midnight one year from the date of issuance, and six month licenses shall expire at midnight six months from the date of issuance. Upon the payment of a new fee, licenses may be renewed by the ~~control commissioners~~ Control Commissioners with the approval of the ~~liquor control board~~ Liquor Control Board, provided the licensee is entitled thereto.~~

Sec. 3. 7 V.S.A. § 232 is amended to read:

§ 232. ~~TERMS OF PERMITS AND LICENSES~~

~~All permits and licenses shall expire at midnight, April 30, of each year and, upon of each year. A person acquiring a new license in the first quarter of the license period shall pay the full amount of the license; a person acquiring a new license in the second quarter of the licensing period shall pay 75 percent of the license fee; a person acquiring a new license in the third quarter of the licensing period shall pay 50 percent of the license fee; and a person acquiring a new license in the final quarter of the licensing period shall pay 25 percent of the license fee. Six-month licenses issued to third class licensees beginning July 1, 2013 shall expire at midnight six months from the date of issuance. Upon the payment of a new fee, licenses may be renewed by the control commissioners Control Commissioners with the approval of the liquor control board as provided in section 222 of this title Liquor Control Board, provided the licensee is entitled thereto.~~

Sec. 4. 7 V.S.A. § 239 is amended to read:

§ 239. ~~LICENSEE EDUCATION~~

(a) ~~No new first or second class license~~ A new first class, second class, third class, fourth class, or farmer's market license shall not be granted until the applicant has met with a liquor control investigator or training specialist for the purpose of being informed of the Vermont liquor laws, rules, and regulations pertaining to the purchase, storage, and sale of alcohol beverages. A corporation, partnership, or association shall designate a director, partner, or manager who shall comply with the terms of this subsection.

(b) ~~Every first and second class licensee~~ first class, second class, third class, fourth class, or farmer's market licensee and every holder of a manufacturer's license shall complete the department of liquor control Department of Liquor Control licensee enforcement training seminar at least once every three two years. A corporation, partnership, or association shall designate a director, partner, or manager who shall comply with the terms of this subsection. No first or second class license A first class, second class, third class, fourth class, or farmer's market license or manufacturer's license shall not be renewed unless the records of the department of liquor control Department of Liquor Control show that the licensee has complied with the terms of this subsection.

(c) ~~Each licensee shall ensure that every employee who is involved in the sale or serving of alcohol beverages completes a training program approved by the department of liquor control~~ Department of Liquor Control before the

*employee begins serving or selling alcoholic beverages and at least once every 24 months thereafter. Each licensee shall maintain written documentation, signed by each employee trained, of each training program conducted. A licensee may comply with this requirement by conducting its own training program on its premises, using information and materials furnished or approved by the ~~department of liquor control~~ Department of Liquor Control. A licensee who fails to comply with the requirements of this subsection shall be subject to a suspension of no less than one day of the license issued under this title.*

*Sec. 5. 7 V.S.A. § 602 is amended to read:*

*§ 602. EXHIBITION OF CARD*

*An individual shall exhibit “a valid authorized form of identification,” which means a valid photographic operator’s license, enhanced driver’s license, or valid photographic nondriver identification card issued by Vermont or another state or foreign jurisdiction, a United States military identification card, or a valid passport or passport card bearing the photograph and signature of the individual upon demand of a licensee, an employee of a licensee, or a law enforcement officer. On the failure of an individual to produce and exhibit a valid authorized form of identification upon demand of a licensee, the licensee shall be entitled to refuse to sell the individual any alcoholic beverage. Sale or furnishing of any alcoholic beverages by a licensee to an individual exhibiting a valid authorized form of identification shall be prima facie evidence of the licensee’s compliance with the law prohibiting the sale or furnishing of alcoholic beverages to minors.*

~~*Sec. 6. 7 V.S.A. § 422 is amended to read.*~~

~~*§ 422. TAX ON SPIRITUOUS LIQUOR*~~

~~*A tax is assessed on the gross revenue on the retail sale of spirituous liquor in the ~~state~~ State of Vermont, including fortified wine, sold by the ~~liquor control board~~ Liquor Control Board or sold by a manufacturer or rectifier of spirituous liquor in accordance with the provisions of this title. The tax shall be at the following rates based on the gross revenue of the retail sales by the seller in the previous year:*~~

~~*(1) if the gross revenue of the seller is ~~\$100,000.00~~ \$200,000.00 or lower, the rate of tax is five percent;*~~

~~*(2) if the gross revenue of the seller is between ~~\$100,000.00~~ \$200,000.00 and ~~\$200,000.00~~ \$400,000.00, the rate of tax is ~~\$15,000.00~~ \$10,000.00 plus 15 percent of gross revenues over ~~\$100,000.00~~ \$200,000.00;*~~

~~*(3) if the gross revenue of the seller is over ~~\$200,000.00~~ \$400,000.00, the rate of tax is 25 percent.*~~

*Sec. ~~7~~ 6. REPEAL*

*The following sections of 2011 Acts and Resolves No. 17 (An act relating to powers and immunities of the liquor control investigators) are repealed:*

*(1) Sec. 3 (amending 7 V.S.A. § 561(a), effective July 1, 2013);*

*(2) Sec. 4 (amending 23 V.S.A. § 4(11), effective July 1, 2013); and*

*(3) Sec. 5(b) (effective date of Secs. 3 and 4).*

*Sec. ~~8~~ 7. EFFECTIVE DATE*

*This section and Sec. ~~7~~ 6 shall take effect on passage. All other sections shall take effect on July 1, 2013.*