WEST VIRGINIA CODE: §60-8-6A

§60-8-6a. Direct shipper's license.

(a) Before sending any shipment of wine to a resident of West Virginia, the direct shipper must first:

(1) File a license application with the commissioner with the appropriate background check information, using forms required by the commissioner. Criminal background checks will not be required of applicants licensed in their state of domicile who can provide a certificate of good standing from their state of domicile;

(2) Pay to the commissioner either the $150 license fee to ship and sell only wine, the $250 license fee to ship and sell wine and nonfortified dessert wine, port, sherry or Madeira wines, or the $300 multicapacity winery or farm winery license fee;

(3) Obtain a business registration number from the Tax Commissioner;

(4) Register with the office of the Secretary of State, if a corporation;

(5) Provide the commissioner a true copy of its current alcoholic beverage license issued in the state of domicile, proving that the direct shipper is licensed in its state of domicile as a winery, farm winery, supplier or retailer of wine;

(6) Obtain from the commissioner a direct shipper's license;

(7) Submit to the commissioner a list of all brands of wine to be shipped to West Virginia residents; and

(8) Meet all other licensing requirements of this chapter and provide any other information that the commissioner may reasonably require.

(b) All direct shipper licensees shall:

(1) Not ship more than two cases of wine per month to any person. A case is defined as any combination of packages containing not more than nine liters of wine;

(2) Not ship to any address in an area identified by the commissioner as a "dry" or local option area where it is unlawful to sell wine or alcoholic liquors;

(3) Not ship to any licensed suppliers, distributors, retailers, private wine bed and breakfasts, private wine restaurants, private wine spas or wine specialty shops;

(4) Not ship wine from overseas or internationally unless it is first shipped to a licensed supplier or distributor;

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(5) Ensure that all containers of wine shipped directly to a resident in this state are clearly and conspicuously labeled with the words "CONTAINS ALCOHOL: SIGNATURE OF PERSON 21 OR OLDER REQUIRED FOR DELIVERY";

(6) File monthly returns to the commissioner and the Tax Commissioner showing the total of wines, by type, sold and shipped into West Virginia for the preceding month;

(7) Pay to the Tax Commissioner all sales taxes, municipal taxes and the liter tax due on sales and shipments to residents of West Virginia in the preceding month, the amount of such taxes to be calculated as the sales were made in West Virginia at the location where delivery is made;

(8) Permit the Tax Commissioner or commissioner or their designees to perform an audit of the direct shipper's records upon request;

(9) Be deemed to have consented to the jurisdiction of the commissioner or any other state agency, the Kanawha County circuit court located in Charleston, West Virginia, concerning enforcement of this article and any other related laws, rules; and

(10) Provide proof or records to the commissioner, upon request, that all direct shipments of wine were purchased and delivered to an adult resident of West Virginia over the age of twenty-one years of age.

(c) The direct shipper may annually renew its license with the commissioner by application, paying the direct shipper license fee and providing the commissioner with a true copy of a current alcoholic beverage license from the direct shipper's domicile state.

(d) The commissioner may promulgate rules to effectuate the purposes of this law.

(e) The commissioner may enforce the requirements of this section by administrative proceedings to suspend or revoke a direct shipper's license, and the commissioner may accept payment of a penalty or an offer in compromise in lieu of suspension, at the commissioner's discretion.

(f) Shipments of wine direct to consumers in West Virginia from persons who do not possess a current direct shipper's license or other permit or license from the commissioner are prohibited. Any person who knowingly makes, participates in, transports, imports or receives such an unlicensed and unauthorized direct shipment is guilty of a felony and, shall, upon conviction thereof, be fined in an amount not to exceed $10,000 per violation or shall be imprisoned in jail for a period not to exceed seventy-two hours. Without limitation on any punishment or remedy, criminal or civil, any person who knowingly makes, participates in, transports, imports or receives such a direct shipment constitutes an act that is an unfair trade practice.

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