

Second Regular Session
Sixty-fifth General Assembly
STATE OF COLORADO

DRAFT
1.12.06

DRAFT

LLS NO. 06-0367.02 Bart Miller

HOUSE BILL

HOUSE SPONSORSHIP

Buescher,

SENATE SPONSORSHIP

Tupa (unverified),

SHORT TITLE: "Shipment Of Wine To Personal Consumers"

DEADLINES: Finalize by: 01.10.06 File by: 01.16.06

A BILL FOR AN ACT

101 CONCERNING RESTRICTIONS ON THE AUTHORITY OF WINERIES TO SHIP
102 WINE TO PERSONAL CONSUMERS.

Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments that may be subsequently adopted.)

Amends Colorado's laws relating to the interstate and intrastate shipment of wine to personal consumers to conform to the United States supreme court holding in the case of *Granholm v. Heald*, 544 U.S. ____, 125 S. Ct. 1885, 2005 U.S. Lexis 4174 (2005).

Permits the sale and direct shipment of wine produced in-state or out-of-state to personal consumers in Colorado or outside of Colorado under certain conditions, including requiring wineries to obtain winery

*Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.*

direct shipper's permits from the state licensing authority, requiring shipments only be made to individuals allowed to purchase and consume alcohol beverages under Colorado law and requiring that applicable Colorado excise taxes be collected on such sales.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** 12-47-103, Colorado Revised Statutes, is amended
3 BY THE ADDITION OF A NEW SUBSECTION to read:

4 **12-47-103. Definitions.** As used in this article and article 46 of
5 this title, unless the context otherwise requires:

6 (23.5) "PERSONAL CONSUMER" MEANS AN INDIVIDUAL WHO IS AT
7 LEAST 21 YEARS OF AGE, DOES NOT HOLD AN ALCOHOL BEVERAGE LICENSE
8 ISSUED IN THIS STATE, AND INTENDS TO USE WINE PURCHASED UNDER
9 SECTION 12-47-104 FOR PERSONAL CONSUMPTION ONLY AND NOT FOR
10 RESALE OR OTHER COMMERCIAL PURPOSES. Adult" means a person
11 lawfully permitted to purchase alcohol beverages.

12 **SECTION 2.** 12-47-104, Colorado Revised Statutes, is
13 REPEALED AND REENACTED, WITH AMENDMENTS, to read:

14 **12-47-104. Wine shipments - permits.** (1) (a) THE HOLDER OF
15 A WINERY DIRECT SHIPPER'S PERMIT MAY SELL AND DELIVER WINE THAT IS
16 PRODUCED OR BOTTLED BY THE PERMITTEE TO A PERSONAL CONSUMER
17 LOCATED IN COLORADO.

18 (b) THE HOLDER OF A WINERY DIRECT SHIPPER'S PERMIT MAY
19 NOT SELL OR SHIP WINE TO A MINOR, AS DEFINED IN SECTION 2-4-401 (6),
20 C.R.S.;

21 (2) A WINERY DIRECT SHIPPER'S PERMIT MAY ONLY BE ISSUED TO
22 A PERSON WHO APPLIES FOR SUCH PERMIT TO THE STATE LICENSING
23 AUTHORITY AND WHO:

1 (a) OPERATES A WINERY LOCATED IN THE UNITED STATES AND
2 HOLDS ALL STATE AND FEDERAL LICENSES, PERMITS, OR BOTH, NECESSARY
3 TO OPERATE THE WINERY, INCLUDING THE FEDERAL WINEMAKER'S AND
4 BLENDER'S BASIC PERMIT;

5 (b) EXPRESSLY SUBMITS TO PERSONAL JURISDICTION IN COLORADO
6 STATE AND FEDERAL COURTS FOR CIVIL, CRIMINAL, AND ADMINISTRATIVE
7 PROCEEDINGS AND EXPRESSLY SUBMITS TO VENUE IN THE CITY AND
8 COUNTY OF DENVER, COLORADO, AS PROPER VENUE FOR ANY
9 PROCEEDINGS THAT MAY BE INITIATED BY OR AGAINST THE STATE
10 LICENSING AUTHORITY; AND

11 (c) EXCEPT AS PROVIDED IN SECTIONS 12-47-402 (1) AND
12 12-47-406 (3), DOES NOT DIRECTLY OR INDIRECTLY HAVE ANY FINANCIAL
13 INTEREST IN A COLORADO WHOLESALER OR RETAILER LICENSED PURSUANT
14 TO SECTION 12-47-406 OR 12-47-407.

15 (3) (a) ALL WINE SOLD OR SHIPPED BY THE HOLDER OF A WINERY
16 DIRECT SHIPPER'S PERMIT MUST BE IN A PACKAGE THAT IS CLEARLY AND
17 CONSPICUOUSLY LABELED SHOWING THAT:

18 (I) THE PACKAGE CONTAINS WINE; AND

19 (II) THE PACKAGE MAY ONLY BE DELIVERED TO A PERSON
20 DESCRIBED IN THIS SUBSECTION (3).

21 (b) WINE SOLD OR SHIPPED BY A HOLDER OF A WINERY DIRECT
22 SHIPPER'S PERMIT MAY NOT BE DELIVERED TO ANY PERSON OTHER THAN:

23 (I) THE PERSON WHO PURCHASED THE WINE;

24 (II) A RECIPIENT DESIGNATED IN ADVANCE BY SUCH PURCHASER;

25 OR

26 (III) A PERSON AT THE DELIVERY ADDRESS WHO IS TWENTY-ONE
27 YEARS OF AGE OR OLDER.

1 (c) WINE MAY BE DELIVERED ONLY TO A PERSON WHO IS
2 TWENTY-ONE YEARS OF AGE OR OLDER AFTER THE PERSON ACCEPTING THE
3 PACKAGE:

4 (I) PRESENTS VALID PROOF OF IDENTITY AND AGE; AND

5 (II) PERSONALLY SIGNS A RECEIPT ACKNOWLEDGING DELIVERY OF
6 THE PACKAGE.

7 (4) THE HOLDER OF A WINERY DIRECT SHIPPER'S PERMIT SHALL
8 MAINTAIN RECORDS OF ALL SALES AND DELIVERIES MADE UNDER THE
9 PERMIT IN ACCORDANCE WITH SECTION 12-47-701.

10 (5) A PERSONAL CONSUMER PURCHASING WINE FROM THE HOLDER
11 OF A WINERY DIRECT SHIPPER'S PERMIT MAY NOT RESELL THE WINE.

12 (6) THE STATE LICENSING AUTHORITY MAY ADOPT RULES AND
13 FORMS NECESSARY TO IMPLEMENT THIS SECTION.

14 **SECTION 12-47-402**, Colorado Revised Statutes, is amended
15 BY THE ADDITION OF A NEW SUBSECTION to read:

16 **12-47-402. Manufacturer's license.** (3.5) A WINERY THAT HAS
17 RECEIVED A LICENSE PURSUANT TO THIS SECTION MAY SHIP WINE
18 DIRECTLY TO PERSONAL CONSUMERS IF SUCH WINERY ALSO HAS RECEIVED
19 A WINERY DIRECT SHIPPER'S PERMIT UNDER SECTION 12-47-104.

20 **SECTION 3.** 12-47-403 (2) (b), Colorado Revised Statutes, is
21 amended to read:

22 **12-47-403. Limited winery license.** (2) A limited winery
23 licensee is authorized:

24 (b) (I) To sell vinous liquors of its own manufacture within this
25 state at wholesale, retail, or to PERSONAL consumers, including, IF THE
26 LIMITED WINERY ALSO HAS RECEIVED A WINERY DIRECT SHIPPER'S PERMIT
27 UNDER SECTION 12-47-104, sales to be delivered by common carrier to

1 ~~purchasers~~ PERSONAL CONSUMERS who have visited the licensed premises
2 in person. ~~Any shipping container sent under this paragraph (b) shall be~~
3 ~~clearly labeled to indicate that such container shall not be delivered to a~~
4 ~~minor, as defined in section 2-4-401 (6), C.R.S., or to an intoxicated~~
5 ~~person. The wine shipment permit provisions of section 12-47-104 (2)~~
6 ~~are not applicable to any interstate wine shipment made by a limited~~
7 ~~winery licensee pursuant to this paragraph (b).~~

8 **SECTION 4.** 12-47-503 (1) (a), (3), (5), (6), (8), and (9) (a),
9 Colorado Revised Statutes, are amended, and the said 12-47-503 is
10 further amended BY THE ADDITION OF A NEW SUBSECTION, to
11 read:

12 **12-47-503. Excise tax - records.** (1) (a) An excise tax at the rate
13 of 8.0 cents per gallon, or the same per unit volume tax applied to metric
14 measure, on all malt liquors, fermented malt beverages, and hard cider,
15 7.33 cents per liter on all vinous liquors except hard cider, and 60.26
16 cents per liter on all spirituous liquors is imposed, and such taxes shall be
17 collected on all such respective beverages, not otherwise exempt from the
18 tax, sold, offered for sale, or used in this state; except that, upon the same
19 beverages, only one such tax shall be paid in this state. The manufacturer
20 thereof, THE HOLDER OF A WINERY DIRECT SHIPPER'S PERMIT, or the first
21 licensee receiving alcohol beverages in this state if shipped from without
22 the state, shall be primarily liable for the payment of any tax or tax
23 surcharge imposed pursuant to this section; but, if such beverage is
24 transported by a manufacturer or wholesaler to a point outside of the state
25 and there disposed of, then such manufacturer or wholesaler, upon the
26 filing with the state licensing authority of a duplicate bill of lading,
27 invoice, or affidavit showing such transaction, shall not be subject to the

1 tax provided in this section on such beverages, and, if such tax has
2 already been paid, it shall be refunded to said manufacturer or wholesaler.
3 For purposes of this section, "manufacturer" includes brew pub licensees
4 and vintner's restaurant licensees.

5 (3) Except as provided in paragraph (c) of subsection (1) of this
6 section, the excise taxes and excise tax surcharges provided for in this
7 section shall be paid to the department of revenue upon the filing of the
8 return provided for in subsection (4) of this section and shall be delivered
9 to the department of revenue on or before the twentieth day of the month
10 following the month in which such alcohol beverages are first sold in this
11 state. As used in this subsection (3), "first sold" means the sale or
12 disposal which occurs when a licensed wholesaler sells, transfers, or
13 otherwise disposes of a product or when a manufacturer sells to a licensed
14 wholesaler or a consumer, OR WHEN A HOLDER OF A WINERY DIRECT
15 SHIPPER'S PERMIT SHIPS TO A PERSONAL CONSUMER IN THIS STATE.

16 (4.5) EACH HOLDER OF A WINERY DIRECT SHIPPER'S PERMIT UNDER
17 SECTION 12-47-104 SHALL FILE, ON OR BEFORE THE TWENTIETH DAY OF
18 THE MONTH, AN EXACT, VERIFIED RETURN WITH THE STATE LICENSING
19 AUTHORITY SHOWING FOR THE PRECEDING CALENDAR MONTH THE
20 QUANTITIES OF VINOUS LIQUOR SHIPPED TO PERSONAL CONSUMERS IN THIS
21 STATE.

22 (5) The return, on forms prescribed by the state licensing
23 authority, shall also show the amount of excise tax payable, after
24 allowances for all proper deductions, for alcohol beverages sold by the
25 manufacturer, or wholesaler, OR HOLDER OF A WINERY DIRECT SHIPPER'S
26 PERMIT in this state and shall include such additional information as the
27 state licensing authority may require for the proper administration of this

1 article. The payment of the excise tax provided for in this section, in the
2 amount disclosed by the return, shall accompany the return and shall be
3 paid to the department of revenue. Each manufacturer, ~~and~~ wholesaler, OR
4 HOLDER OF A WINERY DIRECT SHIPPER'S PERMIT required to file a return
5 shall keep complete and accurate books and records, accounts, and other
6 documents as may be necessary to substantiate the accuracy of his or her
7 return and the amount of excise tax due and shall retain such records for
8 a period of three years.

9 (6) The state licensing authority, after public hearing of which the
10 licensee shall have due notice as provided in this article, shall suspend or
11 revoke any license OR WINERY DIRECT SHIPPER'S PERMIT issued pursuant
12 to this article for a failure to pay any excise tax required by this article
13 and may suspend or revoke such license OR PERMIT for a violation of or
14 failure to comply with the rules and regulations promulgated by said
15 authority.

16 (8) The department of revenue shall make refund or allow a credit
17 to the manufacturer, ~~or~~ the wholesaler, OR THE HOLDER OF A WINERY
18 DIRECT SHIPPER'S PERMIT, as the case may be, of the amount of the excise
19 tax paid on alcohol beverages sold in this state when, after payment of the
20 excise tax, such alcohol beverages are rendered unsalable by reason of
21 destruction or damage upon submission of evidence satisfactory to the
22 state licensing authority that such excise tax has actually been paid. Such
23 refund or credit shall be made by the department of revenue within sixty
24 days after the submission of evidence satisfactory to said department.

25 (9) (a) In order to economize and to simplify administrative
26 procedures, the state licensing authority may authorize a procedure
27 whereby a manufacturer or wholesaler of alcohol beverages OR HOLDER

1 OF A WINERY DIRECT SHIPPER'S PERMIT entitled by law to a refund of the
2 tax provided in this section may instead receive a credit against the tax
3 due on other sales by claiming said credit on the next month's return and
4 attaching a duplicate bill of lading, invoice, or affidavit showing such
5 transaction.

6 **SECTION 5. Effective date - applicability.** This act shall take
7 effect upon passage and shall apply to acts occurring on or after said date.

8 **SECTION 6. Safety clause.** The general assembly hereby finds,
9 determines, and declares that this act is necessary for the immediate
10 preservation of the public peace, health, and safety. **ASK MEMBER**