

BY: Education, Health, and Environmental Affairs Committee

AMENDMENTS TO SENATE BILL NO. 812

(First Reading File Bill)

AMENDMENT NO. 1

On page 1, at the top of the page, insert “EMERGENCY BILL”; in the sponsor line, strike “and Teitelbaum” and substitute “Teitelbaum, Hafer, and Hogan”; strike beginning with “prohibiting” in line 12 down through “persons;” in line 13 and substitute “requiring a Class 6 limited wine wholesale licensee to designate an agent for certain purposes; authorizing an agent to represent only a single licensee; authorizing an agent or an employee of an agent to make certain deliveries of wine; requiring each agent and employee of an agent to register with the Comptroller; requiring each registration form to include certain information; prohibiting transfers of wine to a third party under certain conditions; authorizing the Comptroller to revoke or suspend a certain license under certain circumstances; providing that certain provisions of law do not prevent a holder of certain licenses from holding a certain additional license; requiring a wine manufacturer that holds a certain license and sells wine under certain circumstances to pay the alcoholic beverage tax on that wine;”; in line 14, after “restrictions;” insert “defining a term;”; in line 15, after “changes;” insert “making this Act an emergency measure;”; in line 25, after “12-104(e)” insert “and (f)”; and after line 27, insert:

“BY repealing and reenacting, with amendments,

Article - Tax - General

Section 5-301(b)

Annotated Code of Maryland

(2004 Replacement Volume and 2005 Supplement)

Preamble

WHEREAS, The United States Supreme Court, in Granholm v. Heald, 125 S.Ct. 1885 (2005) stated that differential treatment between in-state and out-of-state wineries constitutes explicit

(Over)

discrimination against interstate commerce; and

WHEREAS, In the Granholm opinion the Supreme Court stated that many small wineries do not produce enough wine or have sufficient consumer demand for their wine to make it economical for wholesalers to carry their products; and

WHEREAS, Since 1951, Maryland wineries have been allowed to deliver their products to restaurants, retailers, and permit holders throughout the State of Maryland; and

WHEREAS, In Bushnell v. Ehrlich, a United States District Court case, a Pennsylvania winery alleges that by allowing Maryland wineries to deliver their product to restaurants, retailers, and permit holders, Maryland discriminates against out-of-state wineries and violates the Commerce Clause of the United States Constitution; and

WHEREAS, As a result of both the Granholm decision and the Bushnell suit, the Comptroller of Maryland on February 1, 2006, issued an Administrative Release that suspended the ability of Maryland's Class 4 limited wineries to sell and deliver their product directly to Maryland restaurants, retailers, and permit holders under Article 2B, § 2-205 of the Code; and

WHEREAS, Maryland currently has twenty-two licensed wineries that produce and distribute wine; and

WHEREAS, Only four Maryland wineries use services of a wholesaler to distribute their product; and

WHEREAS, Eighteen Maryland wineries sell a combined amount of more than 60,000 gallons of wine annually and distribute their wine themselves to restaurants, retailers, and permit holders; and

WHEREAS, Maryland has taken substantial steps in the past years to promote the growth of Maryland wineries, including the appropriation of \$100,000 in the fiscal year 2006 budget to create a fund for grants to expand Maryland wineries; and

WHEREAS, The General Assembly has declared, as a matter of State policy, that former tobacco farms be converted to vineyards to provide a new value-added agricultural product; and

WHEREAS, The General Assembly has a history of promoting value-added agricultural products as a method of preserving agricultural land in Maryland; and

WHEREAS, The Governor’s Advisory Commission on Wine Making and Grape Growing stated that every \$3 invested in Maryland wineries results in \$1 earned in tourist trade to those wineries; and

WHEREAS, Small wineries cannot economically use the services of a wholesaler to distribute their wine product to restaurants and retail outlets throughout the State; now, therefore,.”.

AMENDMENT NO. 2

On page 2, in line 25, after “(2)” insert “(I)”; in the same line, strike “LIMITED WINERY,”; and after line 27, insert:

“(II) THE HOLDER OF A LIMITED WINERY LICENSE MAY APPLY FOR AND OBTAIN A CLASS 6 LIMITED WINE WHOLESALE LICENSE FOR THE SAME PREMISES OR ELSEWHERE AS PROVIDED UNDER THIS ARTICLE.”.

On page 3, in lines 3 and 4, in each instance, strike the bracket; in line 3, strike “or permit holder”; in lines 5 and 9, in each instance, strike the bracket; in line 5, strike “(III)”; in line 9, strike “(IV)”; in lines 15 and 16, in each instance, strike the bracket; in line 15, after “any” insert “WHOLESALE”; strike beginning with “or” in line 15 down through “holder” in line 16; in lines 17, 22, 26, and 29, in each instance, strike the bracket; in line 17, strike “(I)”; in line 22, strike “(II)”; in line 26, strike “(III)”; and in line 29, strike “(IV)”.

AMENDMENT NO. 3

On page 4, in lines 20, 30, and 36, in each instance, after “6” insert “LIMITED WINE”; after line 22, insert:

“(B) (1) IN THIS SUBSECTION, “AGENT” MEANS AN INDIVIDUAL WHO IS OBLIGATED BY CONTRACT OR EMPLOYMENT TO A CLASS 6 LIMITED WINE WHOLESALE LICENSEE TO BE RESPONSIBLE FOR THE LICENSEE’S WINE WHILE IT IS IN THE STATE AND TO ENSURE THAT ALL LAWS, RULES, AND REGULATIONS GOVERNING ALCOHOLIC BEVERAGES IN THE STATE ARE OBSERVED.”;

in lines 23, 30, and 36, strike “(b) (1)”, “(2)”, and “(3)”, respectively, and substitute “(2)”, “(3)”, and “(4)”, respectively; strike beginning with “ARE” in line 32 down through “CODE” in line 33 and

substitute “PRODUCE LESS THAN 40,000 GALLONS OF WINE A YEAR”; and in line 37, strike “AND DELIVER”.

AMENDMENT NO. 4

On page 5, strike in their entirety lines 3 through 5, inclusive, and substitute:

“(5) A CLASS 6 LIMITED WINE WHOLESALE LICENSEE SHALL DESIGNATE AN AGENT TO RECEIVE AND HOLD ITS OWN BRAND OF WINE IN THE STATE.

(6) AN AGENT MAY REPRESENT ONLY A SINGLE CLASS 6 LIMITED WINE WHOLESALE LICENSEE.

(7) AN AGENT OR AN EMPLOYEE OF AN AGENT MAY DELIVER THE LICENSEE’S BRAND OF WINE WITHIN THE STATE TO ANOTHER LICENSEE OR PERMIT HOLDER AUTHORIZED TO RECEIVE IT UNDER THIS ARTICLE.

(8) (I) EACH AGENT AND EMPLOYEE OF AN AGENT SHALL REGISTER WITH THE COMPTROLLER.

(II) EACH REGISTRATION FORM SHALL INCLUDE THE NAME AND ADDRESS OF THE AGENT AND OF THE EMPLOYEE AND ANY OTHER INFORMATION THE COMPTROLLER REQUIRES.

(9) AFTER THE WINE OF A CLASS 6 LIMITED WINE WHOLESALER IS RECEIVED OR PRODUCED IN THE STATE, THE CLASS 6 WHOLESALER, THE AGENT, AND AN EMPLOYEE OF THE AGENT MAY NOT TRANSFER WINE TO A THIRD PARTY FOR DELIVERY TO A LICENSEE, PERMIT HOLDER, OR CONSUMER.

(10) THE COMPTROLLER MAY REVOKE OR SUSPEND THE LICENSE OF A CLASS 6 LIMITED WINE WHOLESALER WHOSE AGENT VIOLATES ANY PROVISION OF THIS ARTICLE OR WHOSE ACTION IS LISTED AS A CAUSE UNDER § 10-401(A)(3) OF THIS ARTICLE.”;

in lines 6, 10, and 20, strike “(5)”, “(6)”, and “(7)”, respectively, and substitute “(11)”, “(12)”, and “(13)”, respectively; in line 20, strike “(6)” and substitute “(12)”; and strike in their entirety lines 33

through 35, inclusive, and substitute:

“(C) NOTHING IN THIS SECTION PREVENTS A HOLDER OF A MARYLAND WINE OR LIMITED WINE MANUFACTURER’S LICENSE AND A CLASS 6 LIMITED WINE WHOLESALER’S LICENSE FROM HOLDING A LICENSE ISSUED UNDER THE AUTHORITY OF TITLE 4, SUBTITLE 2 OF THIS ARTICLE.”.

AMENDMENT NO. 5

On page 6, strike in their entirety lines 27 through 30, inclusive; in line 31, strike the brackets; in the same line, strike “(5)”; after line 35, insert:

“(F) NOTWITHSTANDING THE PROVISIONS OF SUBSECTION (B)(1) OF THIS SECTION, A HOLDER OF A CLASS 6 LIMITED WINE WHOLESALER’S LICENSE MAY HAVE A FINANCIAL INTEREST IN UP TO ONE CLASS A LICENSED PREMISES AUTHORIZED UNDER TITLE 4, SUBTITLE 2 OF THIS ARTICLE.

[(f)] (G) Any person who violates the provisions of this section shall be punished by a fine of not more than \$1,000 or by imprisonment for not more than 2 years, or both.”;

and strike in their entirety lines 36 and 37 and substitute:

“Article - Tax - General

5-301.

(b) (1) A manufacturer that, under an alcoholic beverage license as a winery or limited winery, sells or delivers wine to retail dealers or to consumers in the State shall pay the alcoholic beverage tax on that wine, in the manner that the Comptroller requires, with the return that covers the period in which the manufacturer sells or delivers that wine.

(2) A manufacturer that sells, to wholesalers or retail dealers for consumption in the State, beer on which the alcoholic beverage tax was not paid before the beer was delivered into the State shall pay the alcoholic beverage tax on that beer, in the manner that the Comptroller

(Over)

requires, with the return that covers the period in which the manufacturer sells that beer.

(3) A manufacturer that, under a Class 6 pub-brewery license, brews and transfers malt beverages for consumption on restaurant premises in the State shall pay the alcoholic beverage tax on that malt beverage, in the manner that the Comptroller requires, with the return that covers the period in which the manufacturer transfers that malt beverage.

(4) A manufacturer that, under a Class 7 micro-brewery license, brews and transfers malt beverages for consumption off the micro-brewery licensed premises in the State shall pay the alcoholic beverage tax on that malt beverage, in the manner that the Comptroller requires, with the return that covers the period in which the manufacturer transfers that malt beverage.

(5) (I) IN THIS SECTION, "AGENT" HAS THE MEANING STATED IN ARTICLE 2B, § 2-301(B)(1) OF THE CODE.

(II) A WINE MANUFACTURER WHO HOLDS A CLASS 6 LIMITED WINE WHOLESALE LICENSE UNDER ARTICLE 2B, § 2-301 OF THE CODE THAT SELLS OR DELIVERS WINE WITH AN AGENT TO RETAIL DEALERS IN THE STATE SHALL PAY THE ALCOHOLIC BEVERAGE TAX ON THAT WINE, IN THE MANNER THAT THE COMPTROLLER REQUIRES, WITH THE RETURN THAT COVERS THE PERIOD IN WHICH THE WINE MANUFACTURER WHO HOLDS A CLASS 6 LIMITED WINE WHOLESALE LICENSE SELLS OR DELIVERS THAT WINE WITH AN AGENT.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act is an emergency measure, is necessary for the immediate preservation of the public health or safety, has been passed by a ye and nay vote supported by three-fifths of all the members elected to each of the two Houses of the General Assembly, and shall take effect from the date it is enacted."