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April 18, 2013

The Honorable Martin O'Malley
Governor of Maryland
State House
100 State Circle
Annapolis, Maryland 21401-1991

Re: House Bill 231 and Senate Bill 223

Dear Governor O'Malley:

We have reviewed House Bill 231 and Senate Bill 223, identical bills entitled "Alcoholic Beverages - Class 7 Limited Beer Wholesaler's License," for constitutionality and legal sufficiency. While we approve the bills, we write to point out two severable portions of the bills that cannot be given effect as they are not reflected in the bills' title. This problem can be addressed in next year's curative bill.

House Bill 231 and Senate Bill 223 create a Class 7 limited beer wholesaler's license that can be issued to the holder of a Class 5 manufacturer's license or a Class 7 micro-brewery license to allow them to sell their own beer at wholesale to retailers and permit holders from its own location or locations. The bills create a parallel nonresident brewery permit for an out-of-state brewery that meets the qualifications for a Class 7 limited beer wholesaler's license and does not hold a nonresident dealer's permit. The bills also alter the prohibitions in Article 2B, § 2-101(i) on the issuance of a nonresident dealer's permit as follows:

- (2) A nonresident dealer's permit may not be issued to a person who:
 - (i) Holds a wholesaler or retailer license of any class issued under this article;
 - (ii) Has an interest in a wholesaler licensed under this article[, other than a disclosed legal, equity, or security interest of a malt beverage wholesaler]; or

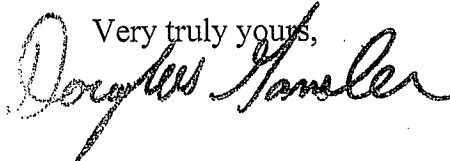
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(iii) Has an interest in a retailer licensed under this article.

The effect of this change is to extend the prohibition on the issuance of a nonresident dealer's permit to all persons with an interest in a wholesaler licensed under the article, including those with "a disclosed legal, equity, or security interest of a malt beverage wholesaler." The title, however, reflects that the bill is "repealing certain prohibitions against issuing a nonresident dealer's permit to a certain person," rather than expanding them. The bill makes a parallel change to the limitations on the issuance of a resident dealer's permit in Article 2B, § 2-101(w)(3) that is not mentioned in the title at all. While oversights of this type can often be resolved by looking to the "generally relating clause," the one in these bills' title reflects only that it is "generally relating to Class 7 beer wholesaler's licenses," which is not sufficiently broad to reach the provisions in question, which relate instead to nonresident and resident dealer's permits.

Because they are not correctly described in the title, to the extent that they are mentioned at all, it is our view that these provisions may not be given effect. It is further our view, however, that the provisions are not so crucial to the major purpose of the bills – to create the Class 7 limited beer wholesaler's license and nonresident brewery permits – that they cannot be severed.¹ Therefore, we do not recommend that the bills be vetoed, but instead recommend that the matter be addressed in the next curative bill.

Very truly yours,



Douglas F. Gansler
Attorney General

DFG/kmr/kk

cc: The Honorable John P. McDonough
Stacy Mayer
Karl Aro

¹ We also note that a person seeking a nonresident brewery permit would have to give up a nonresident dealer's permit that they have to qualify for that permit.