

BY: Economic Matters Committee

AMENDMENTS TO HOUSE BILL NO. 1122  
(First Reading File Bill)

AMENDMENT NO. 1

On page 1, at the top of the page, insert “EMERGENCY BILL”; in the sponsor line, strike “Burns,”; in the same line, strike “and Zirkin” and substitute “Zirkin, Feldman, Krebs, Krysiak, Love, McHale, Moe, Taylor, Vaughn, and Wood”; in line 2, after “License” insert “and Nonresident Winery Permit”; in line 3, after “license” insert “and a nonresident winery permit; providing for a certain permit fee; authorizing the Office of the Comptroller to issue a nonresident winery permit to a person that meets certain requirements; authorizing the holder of a nonresident winery permit to sell and deliver its own wine from a location outside of the State to certain persons; requiring a nonresident winery permit holder to comply with certain requirements and regulations”; strike beginning with “repealing” in line 5 down through “persons;” in line 6; strike beginning with “prohibiting” in line 12 down through “persons;” in line 13 and substitute “specifying the way a Class 6 limited wine wholesale licensee may distribute its product to retailers; exempting a nonresident winery permit holder from a certain requirement; 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;”; strike beginning with the second “a” in line 13 down through “license” in line 14 and substitute “certain licenses”; in line 14, strike “requirements and”; in the same line, after “restrictions;” insert “prohibiting a nonresident winery permit holder from taking certain actions; authorizing the Comptroller to regulate certain discounts that may be allowed by a nonresident winery permit holder; requiring a nonresident winery permit holder to meet certain filing requirements; providing that this Act does not authorize the Comptroller to fix certain prices or require a nonresident winery permit holder to take certain action; requiring a nonresident winery permit holder to pay a certain tax; requiring the Comptroller to require a nonresident winery permit holder to post certain security for a certain tax;”; in line 15, after “changes;” insert “making this Act an emergency measure;”; after line 16, insert:

“BY renumbering

(Over)

Article - Tax - General  
Section 5-301(c), (d), and (e), respectively  
to be Section 5-301(d), (e), and (f), respectively  
Annotated Code of Maryland  
(2004 Replacement Volume and 2005 Supplement)”;

and in line 19, after “12-104(b)” insert “and (e)”.

On page 2, in line 1, after “1-102(a)(27),” insert “2-101(b)(1)(i).”; in the same line, strike the first “and” and substitute a comma; in the same line, after “(b),” insert “and (f).”; in the same line, after “2-401,” insert “12-102(a) and (b), 12-103(b), (c), and (e).”; in line 2, strike “(e)” and substitute “(f)”; after line 4, insert:

“BY adding to  
Article 2B - Alcoholic Beverages  
Section 2-101(v) and 12-104(f)  
Annotated Code of Maryland  
(2005 Replacement Volume)

BY adding to  
Article - Tax - General  
Section 5-301(c)  
Annotated Code of Maryland  
(2004 Replacement Volume and 2005 Supplement)

BY repealing and reenacting, with amendments,  
Article - Tax - General  
Section 13-825(b)(1)  
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 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, Maryland is interested in preventing deceptive, destructive, and unethical business practices by controlling the sale and distribution of alcoholic beverages; and

WHEREAS, By regulating and controlling alcoholic beverages in accordance with the three-tier system for sales and distribution, Maryland has been able to protect the health, welfare, and safety of its citizens; and

WHEREAS, The Supreme Court in the Granholm opinion reaffirmed that the three-tier system is legitimate; and

WHEREAS, 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

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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, It is the intent of the General Assembly to provide both in-State and out-of-State small wineries with market opportunities and equal access to Maryland retailers; and

WHEREAS, It is the intent of the General Assembly to maintain its general reliance on the three-tier system to uniformly regulate the sale and distribution of alcoholic beverages; and

WHEREAS, The General Assembly, based on its deliberations, finds that all wineries in the State and out of the State that produce less than 27,500 gallons annually require special recognition within the three-tier system in order to grow and maintain financial viability; now, therefore,

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That Section(s) 5-301(c), (d), and (e), respectively, of Article - Tax - General of the Annotated Code of Maryland be renumbered to be Section(s) 5-301(d), (e), and (f), respectively.

SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland read as follows:”.

AMENDMENT NO. 2

On page 2, strike in their entirety lines 5 and 6; in line 14, after “A” insert “LIMITED”; after line 16, insert:

“2-101.

(b) (1) (i) The Office of the Comptroller shall collect a fee for the issuance or renewal of the following permits:

1. \$50 for a solicitor's permit, an individual storage permit, A NONRESIDENT WINERY PERMIT, or a commercial nonbeverage permit;
2. \$75 for a public storage permit, a public transportation permit, or an import and export permit;
3. \$100 for a public storage and transportation permit, a nonresident dealer permit, or a bulk transfer permit;
4. \$400 for a family beer and wine facility permit; and
5. \$10 for a direct wine seller's permit.

(V) (1) THE OFFICE OF THE COMPTROLLER MAY ISSUE A NONRESIDENT WINERY PERMIT TO A PERSON THAT:

(I) IS LICENSED OUTSIDE OF THE STATE TO ENGAGE IN THE MANUFACTURE OF WINE;

(II) PRODUCES NOT MORE THAN 27,500 GALLONS OF ITS OWN WINE ANNUALLY; AND

(III) DOES NOT HOLD A NONRESIDENT DEALER'S PERMIT.

(2) A HOLDER OF A NONRESIDENT WINERY PERMIT MAY SELL AND DELIVER ITS OWN WINE FROM A LOCATION OUTSIDE OF THE STATE TO A RETAIL LICENSEE OR PERMIT HOLDER IN THE STATE AUTHORIZED TO ACQUIRE THE WINE.

(3) A NONRESIDENT WINERY PERMIT HOLDER SHALL COMPLY WITH ALL OF THE REQUIREMENTS OF THIS ARTICLE, THE TAX - GENERAL ARTICLE, AND THE REGULATIONS OF THE OFFICE OF THE COMPTROLLER THAT APPLY TO A HOLDER OF A CLASS 6 LIMITED WINE WHOLESALER'S LICENSE.';

(Over)

in line 31, after “(2)” insert “(I)”; in the same line, strike “LIMITED WINERY”; and after line 33, insert:

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

On page 3, in lines 9, 10, 11, 15, 21, 23, 28, and 32, in each instance, strike the brackets; in lines 11, 15, 23, 28, and 32, strike “(III)”, “(IV)”, “(I)”, “(II)”, and “(III)”, respectively; and in line 21, after “any” insert “WHOLESALE”.

AMENDMENT NO. 3

On page 4, in line 1, strike the brackets; in the same line, strike “(IV)”; and in line 29, after “CLASS 6” insert “LIMITED WINE”.

On page 5, in line 1, strike “WHOLESALE” and substitute “LIMITED WINE WHOLESALER’S”; in the same line, after “TO” insert “A”; in line 2, strike “MANUFACTURERS:” and substitute “MANUFACTURER THAT:”; strike in their entirety lines 3 through 6, inclusive, and substitute:

“(I) PRODUCES NOT MORE THAN 27,500 GALLONS OF ITS OWN WINE ANNUALLY; AND

(II) HOLDS A CLASS 4 LIMITED WINERY MANUFACTURER’S LICENSE ISSUED UNDER THIS ARTICLE.”;

strike in their entirety lines 7 through 13, inclusive, and substitute:

“(3) A PERSON WHO HOLDS A CLASS 6 LIMITED WINE WHOLESALER’S LICENSE, ON APPROVAL OF THE APPLICATION AND PAYMENT OF THE FEE:

(I) MAY SELL AND DELIVER ITS OWN BRAND OF WINE PRODUCED AT THE LICENSEE’S PREMISES TO A RETAIL LICENSEE OR PERMIT HOLDER IN THE STATE AUTHORIZED TO ACQUIRE THE WINE; AND

(II) MAY NOT SELL ITS WINE TO A LICENSED WHOLESALER.”;

in lines 14, 18, and 28, strike “(5)”, “(6)”, and “(7)”, respectively, and substitute “(4)”, “(5)”, and “(6)”, respectively; in line 18, strike “wholesale” and substitute “WHOLESALER’S”; in line 28, strike “(6)” and substitute “(5)”; in line 29, strike “wholesaler” and substitute “WHOLESALE”; after line 30, insert:

“(f) (1) THIS SUBSECTION DOES NOT APPLY TO A NONRESIDENT WINERY PERMIT HOLDER.

(2) Before any sale and delivery to a retail licensee, any alcoholic beverages acquired by a wholesaler from any source shall first come to rest on the licensed premises of the wholesaler.”;

and in line 34, strike “OTHER THAN A CLASS 6 LIMITED WINE WHOLESALER’S LICENSE”.

AMENDMENT NO. 4

On page 6, strike in their entirety lines 5 through 7, inclusive, and substitute:

“(C) NOTHING IN THIS SECTION PREVENTS A HOLDER OF A CLASS 4 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.

12-102.

(a) In order to eliminate the undue stimulation of the sale of alcoholic beverages and the practice of manufacturers and wholesalers in granting secret discounts, rebates, allowances, free goods or other inducement to selected licensees which contribute to a disorderly distribution of alcoholic beverages, it shall be unlawful for any person licensed hereunder as a manufacturer [or], wholesaler, OR NONRESIDENT WINERY PERMIT HOLDER to discriminate directly or indirectly in price, discounts or the quality of merchandise sold, between one dispensary and another

(Over)

dispensary, between one wholesaler and another wholesaler or between one retailer and another retailer purchasing alcoholic beverages bearing the same brand and trade name and of like age and quality. It shall be unlawful for any nonresident dealer, NONRESIDENT WINERY PERMIT HOLDER, or nonresident unlicensed manufacturer to use or promote the use of any such practices for the sale or distribution of alcoholic beverages to or through the manufacturers, wholesalers or county dispensaries in this State. This section shall not restrict a manufacturer, [or] wholesaler, [or] nonresident dealer, OR NONRESIDENT WINERY PERMIT HOLDER from limiting the quantity of alcoholic beverages to be sold to any licensee under a voluntary or compulsory plan of ration and the word "purchase" shall not imply that a manufacturer, wholesaler, [or] nonresident dealer, OR NONRESIDENT WINERY PERMIT HOLDER shall be required to sell to all licensees from whom they receive orders. The Comptroller may promulgate such rules and regulations as are necessary to carry out the purpose of this section.

(b) A supplier, nonresident dealer, NONRESIDENT WINERY PERMIT HOLDER, or wholesaler may not make a discount, rebate, or depletion allowance that is offered on a product dependent on the pricing policy or practice of the licensee who is invoiced for the product.

12-103.

(b) The Comptroller is authorized and directed, by regulation, to prescribe the maximum discounts which may be allowed by any manufacturer, [or] wholesaler, OR NONRESIDENT WINERY PERMIT HOLDER in the sale and distribution of various quantities of wines and liquors. Said regulation may also, in the discretion of the Comptroller, prohibit the giving of discounts by any manufacturer, [or] wholesaler, OR NONRESIDENT WINERY PERMIT HOLDER in the sale and distribution of any or all quantities or kinds of wines and liquors.

(c) The Comptroller is authorized and directed, by regulation, to require the filing, from time to time, by any manufacturer, [or] wholesaler, [or] nonresident dealer, OR NONRESIDENT WINERY PERMIT HOLDER of schedules of prices at which wines and liquors are sold by such manufacturer, [or] wholesaler, [or] nonresident dealer, OR NONRESIDENT WINERY PERMIT HOLDER and further to require the filing of any proposed price change. Said regulation shall provide that the effective date of any proposed price decrease shall be postponed for such period of time as the Comptroller may prescribe sufficient to permit notice thereof to other manufacturers or wholesalers selling similar wines and liquors and an opportunity for the same to make a like price decrease. Said regulation shall also provide that any manufacturer, [or] wholesaler, [or] nonresident



dealer, OR NONRESIDENT WINERY PERMIT HOLDER proposing to sell any wines and liquors not currently being sold by the same shall first give notice to the Comptroller of the prices at which such wines and liquors are proposed to be sold; and said regulation shall further provide that sales of such wines and liquors shall not be made for such period of time as the Comptroller may prescribe sufficient to permit notice thereof to other manufacturers or wholesalers selling similar wines and liquors and an opportunity for such other manufacturers or wholesalers to alter the price of such similar wines and liquors so as to make that price comparable to the price fixed by the manufacturer or wholesaler proposing to sell wines and liquors not currently being sold. The Comptroller is authorized and empowered, in promulgating the regulations required by this subsection, to require the filing by any manufacturer, [or] wholesaler, [or] nonresident dealer, OR NONRESIDENT WINERY PERMIT HOLDER of any other information with regard to the size, containers, brands, labels, descriptions, packages, quantities to be sold and any other data in connection with wines and liquors as the Comptroller may reasonably determine.

(e) Nothing contained in this section shall be construed to authorize the Comptroller to fix the prices at which any wines and liquors may be sold by any manufacturer, [or] wholesaler, [or] nonresident dealer, OR NONRESIDENT WINERY PERMIT HOLDER other than to fix permissible discounts which may be allowed by any manufacturer or wholesaler on such sales and other than to postpone the effective date of any proposed price decrease in the sale and distribution of wines and liquors currently sold by any manufacturer, [or] wholesaler, [or] nonresident dealer, OR NONRESIDENT WINERY PERMIT HOLDER or the effective date of the sale of any wines and liquors not currently being sold by any manufacturer, [or] wholesaler, [or] nonresident dealer, OR NONRESIDENT WINERY PERMIT HOLDER for a reasonable period sufficient to permit the filing of proposed price decreases or proposed sales of wines and liquors not currently being sold, as the case may be, with the Comptroller and notice thereof to other manufacturers or wholesalers, and an opportunity for the same to make like price changes. Nothing contained in this section shall be construed to require any manufacturer, [or] wholesaler, [or] nonresident dealer, OR NONRESIDENT WINERY PERMIT HOLDER of wines and liquors to make sales to any licensees under the provisions of this article.”;

strike in their entirety lines 34 through 37, inclusive; in line 38, strike the brackets; and in the same line, strike “(5)”.

(Over)

AMENDMENT NO. 5

On page 7, after line 3, 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.

Article - Tax - General

5-301.

(C) A PERSON WHO HOLDS A NONRESIDENT WINERY PERMIT UNDER ARTICLE 2B, § 2-101(V) OF THE CODE THAT SELLS OR DELIVERS WINE 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 NONRESIDENT WINERY PERMIT SELLS OR DELIVERS THAT WINE.

13-825.

(b) The Comptroller shall require:

(1) a manufacturer, [or] wholesaler, OR NONRESIDENT WINERY PERMIT HOLDER who sells or delivers beer or wine to retailers in the State to post security for the alcoholic beverage tax:

(i) in an amount not less than:

1. \$1,000 for beer; and

2. \$1,000 for wine; and

(ii) if the alcoholic beverage tax on beer and wine paid in any 1 month exceeds \$1,000, in an additional amount at least equal to the excess; and”;

and strike in their entirety lines 4 and 5 and substitute:

“SECTION 3. 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 a 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.”.