

BY: Economic Matters Committee

AMENDMENTS TO SENATE BILL NO. 812
(Third Reading File Bill)

AMENDMENT NO. 1

On page 1, 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 “requiring” in line 13 down through “circumstances;” in line 20 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;”; in line 24, strike “a limited wine wholesaler’s license” and substitute “certain licenses”; in the same line, strike “requirements and”; and in line 25, strike “defining a term;” and substitute “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;”.

On page 2, after line 1, insert:

“BY renumbering

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

(Over)

(2004 Replacement Volume and 2005 Supplement)”;
in line 4, after “12-104(b)” insert “and (e)”; in line 9, 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 10, strike “(e) and”; after line 12, 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)”;

and in line 15, strike “5-301(b)” and substitute “13-825(b)(1)”.

AMENDMENT NO. 2

On page 2, in line 20, strike “in-state” and substitute “in-State”; in line 20, strike “out-of-state” and substitute “out-of-State”; strike beginning with “In” in line 28 down through “the” in line 34 and substitute “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”.

On page 3, strike in their entirety lines 19 through 23, inclusive, and substitute:

“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. 3

On page 3, in line 31, after “A” insert “LIMITED”; and after line 33, 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

(Over)

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."

On page 4 in line 29, and on page 5 in line 8, in each instance, after "licensee" insert "or permit holder".

On page 4, in line 19, strike "WHOLESALE" and substitute "WHOLESALER'S".

On page 6, in line 29, strike "WHOLESALE" and substitute "WHOLESALER'S".

AMENDMENT NO. 4

On page 6, strike in their entirety lines 17 through 21, inclusive; in lines 22 and 29, strike "(2)" and "(3)", respectively, and substitute "(B) (1)" and "(2)", respectively; in line 30, after "TO" insert "A"; in the same line, strike "MANUFACTURERS:" and substitute "MANUFACTURER THAT:"; strike in their entirety lines 31 through 35, 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.”;

and strike in their entirety lines 36 through 39, 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.”.

On page 7, strike in their entirety lines 4 through 23, inclusive; in lines 24 and 28, strike “(11)” and “(12)”, respectively, and substitute “(4)” and “(5)”, respectively; and in line 28, strike “wholesale” and substitute “WHOLESALER’S”.

AMENDMENT NO. 5

On page 8, in line 1, strike “(13)” and substitute “(6)”; in the same line, strike “(12)” and substitute “(5)”; in line 2, strike “wholesaler” and substitute “WHOLESALE”; after line 3, 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.”;

in line 7, strike “OTHER THAN A CLASS 6 LIMITED WINE WHOLESALER’S LICENSE”; strike beginning with “MARYLAND” in line 17 down through “OR” in line 18 and substitute

“CLASS 4”; and after line 20, insert:

“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 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

(Over)

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.”.

AMENDMENT NO. 6

On pages 9 and 10, strike in their entirety the lines beginning with line 30 on page 9 through line 19 on page 10, inclusive, and substitute:

“(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 in line 20, strike "2." and substitute "3.".