

UNOFFICIAL COPY OF SENATE BILL 812  
EMERGENCY BILL

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CF 6lr2665

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By: **Senators Middleton, Astle, Brinkley, Dyson, Garagiola, Jacobs,  
Kittleman, Munson, Pipkin, and ~~Teitelbaum~~ Teitelbaum, Hafer, and  
Hogan**

Introduced and read first time: February 3, 2006  
Assigned to: Education, Health, and Environmental Affairs

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Committee Report: Favorable with amendments  
Senate action: Adopted  
Read second time: March 24, 2006

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CHAPTER \_\_\_\_\_

1 AN ACT concerning

2 **Alcoholic Beverages - Limited Wine Wholesaler's License**

3 FOR the purpose of creating a Class 6 limited wine wholesaler's license; authorizing  
4 the holder of a certain manufacturer's license to apply for and obtain a  
5 wholesaler's license; repealing the authority of holders of certain licenses to sell  
6 and deliver wine to certain persons; providing for an annual license fee;  
7 authorizing holders of limited wine wholesaler's licenses to use additional  
8 locations for warehousing, sale, and delivery of wine under certain  
9 circumstances; establishing certain requirements for applicants for a limited  
10 wine wholesaler's license; authorizing a holder of a limited wine wholesaler's  
11 license to sell and deliver its own brand of wine to certain persons under certain  
12 conditions; ~~prohibiting a holder of a limited wine wholesaler's license to transfer~~  
13 ~~alcoholic beverages to certain persons; requiring a Class 6 limited wine~~  
14 wholesale licensee to designate an agent for certain purposes; authorizing an  
15 agent to represent only a single licensee; authorizing an agent or an employee of  
16 an agent to make certain deliveries of wine; requiring each agent and employee  
17 of an agent to register with the Comptroller; requiring each registration form to  
18 include certain information; prohibiting transfers of wine to a third party under  
19 certain conditions; authorizing the Comptroller to revoke or suspend a certain  
20 license under certain circumstances; providing that certain provisions of law do  
21 not prevent a holder of certain licenses from holding a certain additional license;  
22 requiring a wine manufacturer that holds a certain license and sells wine under  
23 certain circumstances to pay the alcoholic beverage tax on that wine; exempting  
24 a holder of a limited wine wholesaler's license from certain requirements and  
25 restrictions; defining a term; altering a certain definition; making technical  
26 changes; making this Act an emergency measure; and generally relating to wine

1 manufacturers, wholesalers, and retailers.

2 BY repealing and reenacting, without amendments,

3 Article 2B - Alcoholic Beverages

4 Section 1-102(a)(1) and 12-104(b)

5 Annotated Code of Maryland

6 (2005 Replacement Volume)

7 BY repealing and reenacting, with amendments,

8 Article 2B - Alcoholic Beverages

9 Section 1-102(a)(27), 2-201, 2-204, 2-205(b)(3), 2-301(a) and (b), 2-401, and

10 12-104(e) and (f)

11 Annotated Code of Maryland

12 (2005 Replacement Volume)

13 BY repealing and reenacting, with amendments,

14 Article - Tax - General

15 Section 5-301(b)

16 Annotated Code of Maryland

17 (2004 Replacement Volume and 2005 Supplement)

18 Preamble

19 WHEREAS, The United States Supreme Court, in Granholm v. Heald, 125 S.Ct.

20 1885 (2005) stated that differential treatment between in-state and out-of-state

21 wineries constitutes explicit discrimination against interstate commerce; and

22 WHEREAS, In the Granholm opinion the Supreme Court stated that many

23 small wineries do not produce enough wine or have sufficient consumer demand for

24 their wine to make it economical for wholesalers to carry their products; and

25 WHEREAS, Since 1951, Maryland wineries have been allowed to deliver their

26 products to restaurants, retailers, and permit holders throughout the State of

27 Maryland; and

28 WHEREAS, In Bushnell v. Ehrlich, a United States District Court case, a

29 Pennsylvania winery alleges that by allowing Maryland wineries to deliver their

30 product to restaurants, retailers, and permit holders, Maryland discriminates against

31 out-of-state wineries and violates the Commerce Clause of the United States

32 Constitution; and

33 WHEREAS, As a result of both the Granholm decision and the Bushnell suit,

34 the Comptroller of Maryland on February 1, 2006, issued an Administrative Release

35 that suspended the ability of Maryland's Class 4 limited wineries to sell and deliver

36 their product directly to Maryland restaurants, retailers, and permit holders under

37 Article 2B, § 2-205 of the Code; and

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

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

5 WHEREAS, Eighteen Maryland wineries sell a combined amount of more than  
6 60,000 gallons of wine annually and distribute their wine themselves to restaurants,  
7 retailers, and permit holders; and

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

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

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

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

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

22 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
23 MARYLAND, That the Laws of Maryland read as follows:

24 **Article 2B - Alcoholic Beverages**

25 1-102.

26 (a) (1) In this article the following words have the meanings indicated.

27 (27) (I) "Wholesaler" means:

28 1. [a] A person who purchases or imports any alcoholic  
29 beverage for sale to wholesale or retail dealers only[, and includes a county liquor  
30 control board and a county wholesale dispensary]; OR

31 2. A WINERY THAT SELLS WINE TO RETAIL DEALERS.

32 (II) "WHOLESALER" INCLUDES A COUNTY LIQUOR CONTROL BOARD  
33 AND A COUNTY WHOLESALE DISPENSARY.

1 2-201.

2 (a) The annual fees for manufacturer's licenses are as follows:

3 Class 1	Distillery	\$ 2,000
4 Class 2	Rectifying	600
5 Class 3	Winery	750
6 Class 4	Limited Winery	200
7 Class 5	Brewery	1,500
8 Class 6	Pub-Brewery	500
9 Class 7	Micro-Brewery	500

10 (b) (1) Except for a Class 6 pub-brewery license, the holder of a distillery,  
 11 rectifying, winery or brewery license may apply for and obtain, under a different  
 12 name, one or more additional distillery, rectifying, winery or brewery licenses for the  
 13 same or another premises. Those licenses may be issued to different persons or under  
 14 trade names used by persons occupying a part of or all of the same premises.

15 (2) (I) The holder of a rectifying, winery, ~~LIMITED WINERY~~, or brewery  
 16 license may apply for and obtain a wholesaler's license of any class for the same  
 17 premises or elsewhere as provided under this article.

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

21 2-204.

22 A Class 3 manufacturer's license:

23 (1) Is a winery license; and

24 (2) Authorizes the holder to:

25 (i) Establish and operate in this State a plant for fermenting and  
 26 bottling wine at the location described in the license;

27 (ii) Import bulk wine from the holder of a nonresident dealer's  
 28 permit;

29 {(iii) Sell and deliver wine to any wholesale licensee or permit holder  
 30 in this State, or person outside of this State authorized to acquire wine;}

31 {(iv)} (III) Sell wine made from products grown in Maryland at a  
 32 retail price at the plant to persons participating in a guided tour of the facility. The  
 33 purchase shall be limited to not more than one quart per person per year provided the  
 34 purchaser has attained the Maryland legal drinking age; and

1                                   {(v)}                   ~~(IV)~~ Serve at no charge not more than 6 ounces of wines made  
 2 at the licensed facility to a person who is participating in a guided tour of the facility,  
 3 provided the person has attained the Maryland legal drinking age.

4 2-205.

5       (b)                   A Class 4 manufacturer's license:

6                   (3)                   Permits the license holder to:

7                                   {(i)}                   Sell and deliver this wine and pomace brandy to any  
 8 WHOLESALE licensee or permit holder in this State, or person outside of this State,  
 9 authorized to acquire it;‡

10                                  {(ii)}                   ~~(II)~~       Sell this wine and pomace brandy made at the plant to  
 11 persons participating in a guided tour of the facility. The purchase is limited to one  
 12 quart of each brand per person per year. Any person who has attained the Maryland  
 13 legal drinking age may purchase the wine. The licensee may operate only in one  
 14 location in the State;

15                                  {(iii)}                   ~~(III)~~       Serve at no charge not more than 6 ounces of wine and  
 16 pomace brandy made at the licensed facility to a person who is participating in a  
 17 guided tour of the facility, provided the person has attained the Maryland legal  
 18 drinking age;

19                                  {(iv)}                   ~~(IV)~~       Sell by the glass wine and pomace brandy produced by the  
 20 licensee to persons participating in a guided tour of the facility or attending a  
 21 scheduled promotional event or other organized activity at the licensed premises; and

22                                  {(v)}                   ~~(V)~~       Store on its licensed premises, in a segregated area  
 23 approved by the Comptroller, the product of other Class 4 limited wineries to be used  
 24 at bona fide Maryland Winery Association promotional activities, provided records  
 25 are maintained and reports filed as may be required by the Comptroller; and

26 2-301.

27       (a)                   (1)                   The annual fees for the following classes of wholesaler's licenses are:

28	Class 1	Beer, wine and liquor	\$2,000
29	Class 2	Wine and liquor	1,750
30	Class 3	Beer and wine	1,500
31	Class 4	Beer	1,250
32	Class 5	Wine	1,250
33	CLASS 6	LIMITED WINE	50

34 (2) Upon approval of the application:

35                                  (i)                   A Class 1 wholesale licensee may use additional locations for  
 36 the warehousing, sale and delivery of beer, wine and liquor upon the payment of an  
 37 additional fee of \$2,000 for each additional location.

1 (ii) A Class 2 wholesale licensee may use additional locations for  
2 the warehousing, sale and delivery of wine and liquor upon the payment of an  
3 additional fee of \$1,750 for each additional location.

4 (iii) A Class 3 wholesale licensee may use additional locations for  
5 the warehousing, sale and delivery of beer and wine upon the payment of an  
6 additional fee of \$1,500 for each additional location.

7 (iv) A Class 4 wholesale licensee may use additional locations for  
8 the warehousing, sale and delivery of beer upon the payment of an additional fee of  
9 \$1,250 for each additional location.

10 (v) A Class 5 wholesale licensee may use additional locations for  
11 the warehousing, sale and delivery of wine upon the payment of an additional fee of  
12 \$1,250 for each additional location.

13 (VI) A CLASS 6 LIMITED WINE WHOLESALER LICENSEE MAY USE  
14 ADDITIONAL LOCATIONS FOR THE WAREHOUSING, SALE AND DELIVERY OF WINE  
15 UPON THE PAYMENT OF AN ADDITIONAL FEE OF \$50 FOR EACH ADDITIONAL  
16 LOCATION.

17 (B) (1) IN THIS SUBSECTION, "AGENT" MEANS AN INDIVIDUAL WHO IS  
18 OBLIGATED BY CONTRACT OR EMPLOYMENT TO A CLASS 6 LIMITED WINE  
19 WHOLESALER LICENSEE TO BE RESPONSIBLE FOR THE LICENSEE'S WINE WHILE IT IS  
20 IN THE STATE AND TO ENSURE THAT ALL LAWS, RULES, AND REGULATIONS  
21 GOVERNING ALCOHOLIC BEVERAGES IN THE STATE ARE OBSERVED.

22 (b) (+) (2) [A] EXCEPT AS OTHERWISE PROVIDED IN THIS SUBSECTION,  
A  
23 wholesaler's license issued in accordance with the fee paid entitles the holder to  
24 acquire the alcoholic beverages indicated on the license from licensees and holders of  
25 nonresident dealer's permits authorized by this State to make the sales and  
26 deliveries. The license authorizes the sale and delivery of those alcoholic beverages  
27 from the licensed premises to licensees and permit holders in Maryland and to  
28 persons outside of this State.

29 (2) A CLASS 6 LIMITED WINE WHOLESALER LICENSE SHALL BE  
30 ISSUED ONLY TO WINE MANUFACTURERS:

31 (I) ~~THAT ARE SMALL DOMESTIC PRODUCERS, AS DEFINED IN~~  
32 ~~TITLE 26, § 5041(C)(1) OF THE INTERNAL REVENUE CODE~~ PRODUCE LESS THAN 40,000  
33 GALLONS OF WINE A YEAR; AND

34 (II) THAT HOLD A LICENSE ISSUED UNDER THIS ARTICLE OR BY  
35 ANOTHER STATE TO MANUFACTURE WINE.

36 (3) A CLASS 6 LIMITED WINE WHOLESALER LICENSEE, ON  
37 APPROVAL OF THE APPLICATION AND PAYMENT OF THE FEE, MAY SELL ~~AND~~  
38 ~~DELIVER~~ ITS OWN BRAND OF WINE PRODUCED AT THE HOLDER'S PREMISES TO A  
39 LICENSEE OR PERMIT HOLDER IN THE STATE AUTHORIZED TO ACQUIRE THE WINE.

1 (4) A CLASS 6 WHOLESALE LICENSEE MAY NOT TRANSFER ALCOHOLIC  
2 BEVERAGES TO A THIRD PARTY FOR DELIVERY TO ANOTHER LICENSEE, PERMIT  
3 HOLDER, OR CONSUMER.

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

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

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

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

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

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

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

24 [(2)] (5) (11) In Allegany County the holder of a Class 1 or Class 2  
25 wholesaler's license may not sell liquor in any size container smaller than 23 ounces  
26 or 680 milliliters to any holder of a special permit issued under § 7-101(h) of this  
27 article.

28 [(3)] (6) (12) A wholesale license of the appropriate class authorizes  
29 the holder to directly import beer, wine, or distilled spirits from sources outside the  
30 continental limits and possessions of the United States. However, any wholesale  
31 licensee that imports for subsequent distribution in or outside the State of Maryland  
32 shall be:

- 33 (i) The brand owner;
- 34 (ii) A wholesale licensee that purchases directly from the brand  
35 owner or the authorized agent of the brand owner; or
- 36 (iii) A wholesale licensee that purchases from the authorized United  
37 States importer.

1 [(4)] (7) (13) Paragraph [(3)] (6) (12) of this subsection only applies if  
 2 the wholesaler licensee's jurisdiction and authority to sell has been submitted to the  
 3 Comptroller by the brand owner.

4 2-401.

5 (a) An individual applicant, an applicant qualifying as a resident applicant for  
 6 a corporation, or each applicant for a partnership applying for a manufacturer's or  
 7 wholesaler's license OTHER THAN A CLASS 6 LIMITED WINE WHOLESALER'S LICENSE  
 8 shall have been a resident of this State for 2 years immediately preceding the filing of  
 9 the application.

10 (b) [The] EXCEPT AS PROVIDED IN SUBSECTION (C) OF THIS SECTION, A  
 11 holder of a manufacturer's or wholesaler's license may not sell or deliver alcoholic  
 12 beverages to any person in this State other than a licensee or permit holder, except as  
 13 provided in § 7-101(c).

14 ~~(C) THE HOLDER OF A CLASS 6 LIMITED WINE WHOLESALER'S LICENSE MAY~~  
 15 ~~SELL OR DELIVER WINE TO ANY PERSON IN THE STATE IF THE HOLDER IS~~  
 16 ~~AUTHORIZED TO DO SO UNDER TITLE 4, SUBTITLE 2 OF THIS ARTICLE.~~

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

21 12-104.

22 (b) (1) A business entity may not have any financial interest in the premises  
 23 upon or in which any alcoholic beverage is sold at retail by any licensee or in any  
 24 business conducted by any licensee.

25 (2) A person or business entity, or anyone connected with that person or  
 26 business entity, may not lend any money or other thing of value, make any gift, or  
 27 offer any gratuity to any retail dealer.

28 (3) Except as provided for, a retail dealer may not accept, receive or  
 29 make use of any money, gift, or sign furnished by any business entity or become  
 30 indebted to any person except for the purchase of alcoholic beverages and allied  
 31 products purchased for resale.

32 (4) A business entity, other than a wholesaler of beer and malt  
 33 beverages, may not furnish any sign, except as provided in this article.

34 (e) (1) The provisions of subsections (b) and (d) of this section do not apply to  
 35 a holder of a Class 3 or Class 4 winery manufacturer's license who is issued a Class  
 36 A2 light wine on- and off-sale license in Baltimore City with respect to the wine  
 37 manufactured or bottled on the winery premises.



1 (2) The provisions of subsections (b) and (c) of this section do not apply to  
2 the holder of a Class 6 pub-brewery license with respect to the malt beverages brewed  
3 on the premises of the pub-brewery.

4 (3) The provisions of subsections (b) and (c) of this section do not apply to  
5 a holder of a Class 7 micro-brewery license with respect to the malt beverages brewed  
6 on the premises of the micro-brewery for the purpose of being licensed as a retailer  
7 for selling on the brewery licensed premises or in a restaurant or brewery pub owned,  
8 conducted, and operated by the holder in or adjacent to the brewery for which it is  
9 licensed.

10 (4) ~~THE PROVISIONS OF SUBSECTION (B) OF THIS SECTION DO NOT~~  
11 ~~APPLY TO A HOLDER OF A CLASS 3 WINERY OR CLASS 4 LIMITED WINERY~~  
12 ~~MANUFACTURER'S LICENSE WHO IS ISSUED A CLASS 6 LIMITED WINE~~  
13 ~~WHOLESALE'S LICENSE.~~

14 {(4)} (5) In addition to the retail license required under § 2-207 or §  
15 2-208 of this article, a Class 6 pub-brewery licensee or a Class 7 micro-brewery  
16 licensee may hold or have a financial interest in one additional retail alcoholic  
17 beverages license that does not apply to premises to which a Class 6 pub-brewery  
18 license or Class 7 micro-brewery license applies.

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

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

26 ~~SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect~~  
27 ~~July 1, 2006.~~

28 **Article - Tax - General**

29 5-301.

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

35 (2) A manufacturer that sells, to wholesalers or retail dealers for  
36 consumption in the State, beer on which the alcoholic beverage tax was not paid  
37 before the beer was delivered into the State shall pay the alcoholic beverage tax on  
38 that beer, in the manner that the Comptroller requires, with the return that covers  
39 the period in which the manufacturer sells that beer.

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

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

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

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

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