

**Department of Legislative Services**  
Maryland General Assembly  
2006 Session

**FISCAL AND POLICY NOTE**

House Bill 1291 (Delegate Love, *et al.*)  
Economic Matters

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**Alcoholic Beverages - Wineries - Wholesalers and Retail Dealers**

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This bill provides that a holder of a Class 4 manufacturer's (limited winery) license may sell and deliver wine and pomace brandy only to a State wholesale licensee, in addition to a State permit holder or a person outside of the State authorized to acquire it. It specifies that a retail dealer may not purchase alcoholic beverages from a holder of a Class 3 (winery) manufacturer's license or a Class 4 (limited winery) manufacturer's license.

The bill takes effect July 1, 2006.

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**Fiscal Summary**

**State Effect:** Potential decrease in State sales and excise tax revenues. Expenditures would not be affected.

**Local Effect:** None.

**Small Business Effect:** Potential meaningful.

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**Analysis**

**Current Law:** Except for a holder of a Class E, Class F, or Class G license, a retail dealer may only purchase alcoholic beverages from a duly licensed manufacturer, wholesaler, or private bulk sale permit holder.

A Class 3 manufacturer's license authorizes the holder to sell and deliver wine to any wholesale licensee or permit holder in Maryland, or person outside of the State authorized to acquire it. A Class 4 manufacturer's license authorizes the holder to sell and deliver wine and pomace brandy to any licensee or permit holder in the State or a person outside of the State authorized to acquire it.

### *Granholm v. Heald*

In the *Granholm v. Heald* decision, the U.S. Supreme Court struck down state laws in Michigan and New York that barred out-of-state wineries from shipping wine to consumers directly. Both New York and Michigan allowed in-state wineries to sell directly to residents; the Supreme Court indicated that the U.S. Constitution's protection for the free flow of commerce prohibits discrimination in favor of in-state products.

### *Comptroller's Administrative Decision (AB-33)*

On February 1, 2006, the Comptroller's Office released an administrative decision (AB-33) regarding the sale of wine by holders of a Class 4 manufacturer's license to retailers. In the administrative decision, the Comptroller's Office advised that holders of Class 4 manufacturer's licenses have enjoyed the ability to sell to both Maryland wholesalers and Maryland retailers under an interpretation of statute. Out-of-state wineries, however, have been required to obtain a nonresident dealer's permit and are only authorized to sell to Maryland wholesalers. The release further states that after seeking the advice of the Attorney General, the term "licensee" must now only be interpreted to mean wholesale licensee in regards to whom a holder of a Class 4 manufacturer's license may sell wine. As such, holders of a Class 4 manufacturer's license are authorized to sell to Maryland wholesalers, but no longer are authorized to sell to Maryland retailers. The administrative decision's restrictions were to begin April 1, 2006. However, in a subsequent administrative release from the Comptroller's Office, AB-34, the restrictions stated in AB-33 were delayed 60 days and take effect June 1, 2006.

The release clarified that sales made by holders of a Class 4 manufacturer's license to consumers at the winery and sales made out-of-state to persons authorized to receive the wine are not affected.

**Background:** The Comptroller's Office advises that there are currently 22 licensed wineries in the State.

The Maryland Wineries Association (MWA) advises that four of the State's licensed wineries sell their products through wholesalers. The 22 wineries in Maryland produce over 180 wines. Sales of Maryland wine in calendar 2005 totaled roughly \$8.2 million.

**State Fiscal Effect:** Until June 1, 2006, wineries licensed by the State are authorized to sell their product directly to retailers. In comparison to current practice, the bill could cause excise and sales taxes collected from the sale of wine produced by these wineries to decrease, to the extent that their sales decrease because they cannot sell directly to licensed retailers. As noted above, four wineries already sell their products through wholesalers. Any decrease in future tax revenue cannot be reliably quantified at this time, as it would depend on the degree to which wine sales declined, if any. In fiscal 2005, Maryland wineries sold approximately 20,802 gallons of wine directly to retailers. Given that wine is taxed at \$0.40 per gallon, the fiscal 2005 tax revenue collected from the sale of Maryland wine directly to retailers was \$8,320. **Exhibit 1** shows wine sales and dispositions by Maryland wineries, as reported in the Comptroller's fiscal 2005 *Alcohol and Tobacco Tax Annual Report*.

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**Exhibit 1**  
**Maryland Winery Sales and Dispositions**  
**(in gallons)**  
**Fiscal 2005**

<u>Sales and Dispositions</u>	<u>Amount</u>
Sales to Retailers	20,802
Sales at Winery	62,497
Samples	4,919
Sales to Wholesalers	72,328
Sales Out-of-state	1,035
Other	201
<b>Total</b>	<b>161,782</b>

Source: Comptroller's Office, *Alcohol and Tobacco Tax Annual Report*, Fiscal 2005

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Given that two administrative decisions of the Comptroller's Office, AB-33 and AB-34, prohibit wineries to sell their product directly to retailers in the State beginning June 1, 2006, this bill would essentially codify those decisions.

**Small Business Effect:** According to an article in the *Baltimore Business Journal*, most of the State's wineries rely on orders from retailers and restaurants, and would not be able to afford to go through a distributor. As such, these wineries could experience a sharp

decline in sales of their products as a result of the Comptroller's administrative decision as well as the bill's provisions codifying that decision.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** SB 877 (Senator Conway) – Education, Health, and Environmental Affairs.

**Information Source(s):** Comptroller's Office, Maryland Wineries Association, Anne Arundel County, Baltimore County, Garrett County, *Baltimore Business Journal*, National Conference of State Legislatures, Department of Legislative Services

**Fiscal Note History:** First Reader - March 3, 2006  
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Analysis by: Joshua A. Watters

Direct Inquiries to:  
(410) 946-5510  
(301) 970-5510