

Department of Legislative Services
Maryland General Assembly
2006 Session

FISCAL AND POLICY NOTE

House Bill 1122
Economic Matters

(Delegate V. Clagett, *et al.*)

Alcoholic Beverages - Limited Wine Wholesaler's License

This bill creates a Class 6 limited wine wholesaler's license and sets the annual license fee at \$50. The bill repeals the authority conferred by a Class 3 manufacturer's (winery) license to sell and deliver wine to any wholesale licensee or permit holder in Maryland, or person outside of the State authorized to acquire it. The bill also repeals the authority conferred by a Class 4 manufacturer's (limited winery) license to sell and deliver wine and pomace brandy to any licensee or permit holder in the State or outside of the State authorized to acquire it.

The bill takes effect July 1, 2006.

Fiscal Summary

State Effect: Potential increase in enforcement and auditing expenditures for the Comptroller's Office. Potential increase in license fee revenues from the issuance of Class 6 wholesaler's licenses and a potential minimal increase in State excise and sales tax revenue.

Local Effect: Potential decrease in dispensary revenues in counties operating an alcoholic beverages dispensary system. Expenditures would not be affected.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: A Class 6 wholesale license may only be issued to wine manufacturers that (1) are small domestic producers as defined in Title 26, § 5041(c)(1) of the U.S.

Code; or (2) hold a license to manufacture wine issued by the State or any other state. Title 26, § 5041(c)(1) of the U.S. Code defines a small domestic producer as someone who produces no more than 250,000 gallons of wine during a calendar year.

A Class 6 wholesale licensee is authorized to sell and deliver its own brand of wine produced at the license holder's premises to a licensee or permit holder in the State authorized to acquire it. The wholesaler is not authorized to transfer alcoholic beverages to a third party for delivery to another licensee, permit holder, or consumer. However, a Class 6 wholesale licensee is authorized to deliver wine to any person in the State if authorized to do so under the provisions governing Class A retail licenses.

The bill further provides that a Class 6 wholesale licensee is exempt from the residency requirements imposed upon applicants for other wholesaler's licenses. The bill also exempts a holder of a Class 3 or Class 4 manufacturer's license also holding a Class 6 wholesaler's license from specified prohibitions regarding such things as having an interest in retail establishments; lending money or anything of value, or making any gift or offer of gratuity to any retail dealer; and furnishing signs.

The bill expands the definition of "wholesaler" to include a winery that sells wine to retailers, a county liquor control board, and a county wholesale dispensary.

Current Law: A Class 3 manufacturer's license authorizes the holder to sell and deliver wine to any wholesale licensee or permit holder in the State, or a 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 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 advises that four of the State's licensed wineries sell their product through a wholesaler. The 22 wineries in Maryland produce 180 wines. Sales of Maryland wine in calendar 2005 totaled roughly \$8.2 million.

State Fiscal Effect: State general fund revenues could increase by \$250 for each new Class 6 wholesaler's license issued, including the \$50 license fee and a \$200 one-time application fee. For each license renewed, revenues would increase by \$80, including the \$50 license fee and a \$30 renewal application fee. Enforcement and auditing of the bill's provisions for in-State holders of a Class 6 wholesaler's license would be absorbable within existing resources. To the extent that out-of-state wineries obtain a Class 6 wholesaler's license, there may be additional enforcement and auditing expenditures. The extent to which enforcement and auditing expenditures increase cannot be reliably quantified at this time, as it would depend on the number of out-of-state wineries obtaining a Class 6 wholesaler's license. Potential minimal increase in State excise and sales tax revenue from potential increased sales of wine.

Local Fiscal Effect: If counties operating a dispensary system required in the past that wineries sell their products to the dispensary system rather than directly to retailers, allowing wineries to sell directly to retailers could impact revenues from county dispensaries. Four counties (Montgomery, Somerset, Wicomico, and Worcester) operate dispensary systems through which they act as the wholesalers for retail alcoholic beverages licensees in their respective jurisdictions. Montgomery County advises that wineries in the past have sold wine to the Montgomery County Department of Liquor Control, which then would sell and distribute wine to retailers. To the extent that licensed wineries holding a Class 6 wholesaler's permit would be able to bypass the

county's dispensary system and sell directly to retailers, county revenues from its dispensary system could decrease. The revenue decrease cannot be quantified at this time, as it would depend on the amount of wine sold directly to retailers which otherwise would have gone through the county's dispensary system.

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 its product as a result of the Comptroller's administrative decision. Allowing wineries to obtain a wholesalers permit could have a potentially meaningful positive impact on wineries without a wholesaler, by allowing them to continue to sell their product directly to retailers. **Exhibit 1** shows wine sales and dispositions by Maryland wineries, as reported in the Comptroller's fiscal 2005 *Alcohol and Tobacco Tax Annual Report*.

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
Total	161,782

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

Additional Information

Prior Introductions: None.

Cross File: SB 812 (Senator Middleton, *et al.*) – Education, Health, and Environmental Affairs.

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

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