

Department of Legislative Services
Maryland General Assembly
2006 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 812

(Senator Middleton, *et al.*)

Education, Health, and Environmental Affairs

Economic Matters

Alcoholic Beverages - Limited Wine Wholesaler's License and Nonresident
Winery Permit

This emergency bill creates a Class 6 limited wine wholesaler's license and a nonresident winery permit, which would allow small wineries to sell their product directly to retailers. The bill limits the authority conferred by a Class 4 manufacturer's license (limited winery), so that the holder may only sell and deliver its product to any wholesale licensee or permit holder in this State or person outside of the State authorized to acquire it. The fees for the Class 6 limited wine wholesaler's license and nonresident winery permit are \$50, respectively.

Fiscal Summary

State Effect: Potential increase in enforcement and auditing expenditures for the Comptroller's Office. Potential increase in license and permit fee revenues, 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 limited wine wholesaler's license may only be issued to wine manufacturers that: (1) produce no more than 27,500 gallons of wine per year; and (2) hold a Class 4 limited winery manufacturer's license issued by the State. A Class 6 limited wine wholesaler is authorized to sell its own brand of wine produced at the license holder's premises to a retail licensee or permit holder in the State authorized to

acquire it; however, the licensee may not sell its wine to a licensed wholesaler. A holder of a Class 6 limited wine wholesaler's license and a Class 4 limited wine manufacturer's license may hold a Class A light wine license.

A nonresident winery permit may only be issued to a person that is: (1) licensed out-of-state to manufacture wine; and (2) produces no more than 27,500 gallons of wine per year. A nonresident winery permit holder may not hold a nonresident dealer's permit. The permit holder is authorized to sell and delivery its own wine directly to a retail licensee or permit holder in the State authorized to acquire it and must comply with all applicable alcoholic beverages laws, tax laws, and regulations of the Office of the Comptroller. Moreover, the holder of a nonresident winery permit is subject to the current provisions of law: (1) prohibiting the granting of discounts, rebates, allowances, free goods, or other inducements to selected licensees; (2) authorizing the Comptroller to prescribe the maximum discounts allowable on wine; and (3) regarding the filing of prices at which wine is to be sold. The permit holder is responsible for the alcoholic beverages taxes on the wine sold or delivered in the State and must post security for the alcoholic beverages taxes with the Comptroller.

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. There are only two Maryland wineries that produce more than 27,500 gallons of wine per year and would therefore not be eligible for this new Class 6 limited wine wholesaler’s license. A third winery that produced 22,000 gallons of wine in 2005 expects to produce 28,000 gallons of wine in 2006 and will be using a wholesaler to sell and distribute its wine this year.

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. For each nonresident winery permit issued, annual permit fee revenue would increase by \$50. 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 nonresident winery permit, 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 nonresident winery permit. There could be a potential minimal increase in State excise and sales tax revenue from potential increased sales of wine. 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*.

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 holders of a Class 6 wholesaler’s license or a nonresident winery 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: Most of the State’s wineries rely on orders from retailers and restaurants and could not afford to go through a distributor. Thus, 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 license could have a potentially meaningful positive impact on wineries without a wholesaler. 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: HB 1122 (Delegate V. Clagett, *et al.*) – Economic Matters.

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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