

# SENATE BILL 162

A1, Q4

9lr0169

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By: **Chair, Education, Health, and Environmental Affairs Committee (By Request – Departmental – Comptroller)**

Introduced and read first time: January 20, 2009

Assigned to: Education, Health, and Environmental Affairs

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## A BILL ENTITLED

1 AN ACT concerning

2 **Alcoholic Beverages – Resident Dealer’s Permit**

3 FOR the purpose of authorizing the Comptroller to issue a resident dealer’s permit to  
4 certain persons; specifying a permit fee; requiring that alcoholic beverages sold  
5 under the permit be sold through a licensed wholesaler; prohibiting certain  
6 persons from being issued a resident dealer’s permit; prohibiting a holder of a  
7 permit from owning or operating a warehouse; making a holder of a resident  
8 dealer’s permit subject to certain restrictions; requiring a resident dealer to file  
9 a certain tax return on or before a certain date and pay a certain tax; defining a  
10 certain term; and generally relating to resident dealer’s permits.

11 BY repealing and reenacting, with amendments,  
12 Article 2B – Alcoholic Beverages  
13 Section 2–101(b)(1)(i) and (k), 2–301(b)(1), 12–102(a) and (b), 12–103(c) and (e),  
14 12–104(a), (c), and (d), and 15–205(b)  
15 Annotated Code of Maryland  
16 (2005 Replacement Volume and 2008 Supplement)

17 BY adding to  
18 Article 2B – Alcoholic Beverages  
19 Section 2–101(w)  
20 Annotated Code of Maryland  
21 (2005 Replacement Volume and 2008 Supplement)

22 BY repealing and reenacting, without amendments,  
23 Article 2B – Alcoholic Beverages  
24 Section 12–104(b)  
25 Annotated Code of Maryland  
26 (2005 Replacement Volume and 2008 Supplement)

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 BY repealing and reenacting, with amendments,  
 2 Article – Tax – General  
 3 Section 5–101 and 5–301(e) and (f)  
 4 Annotated Code of Maryland  
 5 (2004 Replacement Volume and 2008 Supplement)

6 BY adding to  
 7 Article – Tax – General  
 8 Section 5–201(e)  
 9 Annotated Code of Maryland  
 10 (2004 Replacement Volume and 2008 Supplement)

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

13 **Article 2B – Alcoholic Beverages**

14 2–101.

15 (b) (1) (i) The Office of the Comptroller shall collect a fee for the  
 16 issuance or renewal of the following permits:

17 1. \$50 for a solicitor’s permit, an individual storage  
 18 permit, a nonresident winery permit, or a commercial nonbeverage permit;

19 2. \$75 for a public storage permit, a public  
 20 transportation permit, or an import and export permit;

21 3. \$100 for a public storage and transportation permit, a  
 22 nonresident [dealer] **DEALER’S** permit, **A RESIDENT DEALER’S PERMIT**, or a bulk  
 23 transfer permit;

24 4. \$400 for a family beer and wine facility permit; and

25 5. \$10 for a direct wine seller’s permit.

26 (k) A solicitor’s permit may be issued in the discretion of the Office of the  
 27 Comptroller and, if issued, shall grant a resident or nonresident holder the privilege of  
 28 promoting, selling, or offering for sale, beer, wines or distilled spirits to  
 29 manufacturers, wholesalers or retailers in this State. A permit holder may not contact  
 30 consumers, and if the person holding the permit is employed by a nonresident dealer  
 31 **OR RESIDENT DEALER**, the person holding the permit is not permitted to sell,  
 32 promote or offer for sale alcoholic beverages to retail dealers, except for the account of  
 33 a Maryland wholesaler or manufacturer who is a distributor for the products of the  
 34 employer of the nonresident person **OR RESIDENT PERSON** holding such a permit.

1           **(W) (1) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, THE**  
2 **COMPTROLLER MAY ISSUE A RESIDENT DEALER'S PERMIT TO:**

3                   **(I) AN IMPORTER OF BEER, WINE, OR DISTILLED SPIRITS**  
4 **PRODUCED OUTSIDE THE UNITED STATES WHO PURCHASES DIRECTLY FROM**  
5 **THE BRAND OWNER OR FROM A SALES AGENT OF A BREWER, DISTILLER,**  
6 **RECTIFIER, BOTTLER, MANUFACTURER, VINTNER, OR WINERY, WHO IS**  
7 **AUTHORIZED BY THE BRAND OWNER TO SELL IN THE STATE, AND WHO HAS**  
8 **PROVIDED PROOF OF THIS SALES AGENCY RELATIONSHIP TO THE**  
9 **COMPTROLLER; OR**

10                   **(II) AN AMERICAN SALES AGENT OF AN IMPORTER UNDER**  
11 **SUBPARAGRAPH (I) OF THIS PARAGRAPH, PROVIDING PROOF OF THAT AGENCY**  
12 **IS PRESENTED TO THE COMPTROLLER.**

13                   **(2) TO BE ISSUED A RESIDENT DEALER'S PERMIT, AN INDIVIDUAL**  
14 **APPLICANT, AN APPLICANT QUALIFYING AS A RESIDENT APPLICANT FOR A**  
15 **CORPORATION, OR EACH APPLICANT FOR A PARTNERSHIP SHALL HAVE BEEN A**  
16 **RESIDENT OF THE STATE FOR AT LEAST 2 YEARS IMMEDIATELY BEFORE**  
17 **APPLYING FOR THE PERMIT.**

18                   **(3) A RESIDENT DEALER'S PERMIT MAY NOT BE ISSUED TO A**  
19 **PERSON WHO:**

20                   **(I) HOLDS A WHOLESALER OR RETAILER LICENSE OF ANY**  
21 **CLASS ISSUED UNDER THIS ARTICLE;**

22                   **(II) HAS AN INTEREST IN A WHOLESALER LICENSED UNDER**  
23 **THIS ARTICLE, OTHER THAN A DISCLOSED LEGAL, EQUITY, OR SECURITY**  
24 **INTEREST OF A MALT BEVERAGE WHOLESALER; OR**

25                   **(III) HAS AN INTEREST IN A RETAILER LICENSED UNDER**  
26 **THIS ARTICLE.**

27                   **(4) A RESIDENT DEALER'S PERMIT AUTHORIZES THE HOLDER TO**  
28 **SELL ALCOHOLIC BEVERAGES TO A WHOLESALER LICENSED UNDER THIS**  
29 **ARTICLE IN THE STATE OR TO A PERSON OUTSIDE OF THE STATE WHO THE**  
30 **COMPTROLLER AUTHORIZES TO ACQUIRE THE ALCOHOLIC BEVERAGES.**

31                   **(5) A HOLDER OF A RESIDENT DEALER'S PERMIT MAY NOT OWN**  
32 **OR OPERATE A WAREHOUSE IN THE STATE.**

1 (b) (1) Except as otherwise provided in this subsection, a wholesaler's  
2 license issued in accordance with the fee paid entitles the holder to acquire the  
3 alcoholic beverages indicated on the license from licensees and holders of nonresident  
4 dealer's permits **AND RESIDENT DEALER'S PERMITS** authorized by this State to  
5 make the sales and deliveries. The license authorizes the sale and delivery of those  
6 alcoholic beverages from the licensed premises to licensees and permit holders in  
7 Maryland and to persons outside of this State.

8 12-102.

9 (a) In order to eliminate the undue stimulation of the sale of alcoholic  
10 beverages and the practice of manufacturers and wholesalers in granting secret  
11 discounts, rebates, allowances, free goods or other inducement to selected licensees  
12 which contribute to a disorderly distribution of alcoholic beverages, it shall be  
13 unlawful for any person licensed hereunder as a manufacturer, wholesaler, **RESIDENT**  
14 **DEALER**, or nonresident winery permit holder to discriminate directly or indirectly in  
15 price, discounts or the quality of merchandise sold, between one dispensary and  
16 another dispensary, between one wholesaler and another wholesaler or between one  
17 retailer and another retailer purchasing alcoholic beverages bearing the same brand  
18 and trade name and of like age and quality. It shall be unlawful for any nonresident  
19 dealer, **RESIDENT DEALER**, nonresident winery permit holder, or nonresident  
20 unlicensed manufacturer to use or promote the use of any such practices for the sale or  
21 distribution of alcoholic beverages to or through the manufacturers, wholesalers or  
22 county dispensaries in this State. This section shall not restrict a manufacturer,  
23 wholesaler, nonresident dealer, **RESIDENT DEALER**, or nonresident winery permit  
24 holder from limiting the quantity of alcoholic beverages to be sold to any licensee  
25 under a voluntary or compulsory plan of ration and the word "purchase" shall not  
26 imply that a manufacturer, wholesaler, nonresident dealer, **RESIDENT DEALER**, or  
27 nonresident winery permit holder shall be required to sell to all licensees from whom  
28 they receive orders. The Comptroller may promulgate such rules and regulations as  
29 are necessary to carry out the purpose of this section.

30 (b) A supplier, nonresident dealer, **RESIDENT DEALER**, nonresident winery  
31 permit holder, or wholesaler may not make a discount, rebate, or depletion allowance  
32 that is offered on a product dependent on the pricing policy or practice of the licensee  
33 who is invoiced for the product.

34 12-103.

35 (c) The Comptroller is authorized and directed, by regulation, to require the  
36 filing, from time to time, by any manufacturer, wholesaler, nonresident dealer,  
37 **RESIDENT DEALER**, or nonresident winery permit holder of schedules of prices at  
38 which wines and liquors are sold by such manufacturer, wholesaler, nonresident  
39 dealer, **RESIDENT DEALER**, or nonresident winery permit holder and further to  
40 require the filing of any proposed price change. Said regulation shall provide that the  
41 effective date of any proposed price decrease shall be postponed for such period of time  
42 as the Comptroller may prescribe sufficient to permit notice thereof to other

1 manufacturers or wholesalers selling similar wines and liquors and an opportunity for  
2 the same to make a like price decrease. Said regulation shall also provide that any  
3 manufacturer, wholesaler, nonresident dealer, **RESIDENT DEALER**, or nonresident  
4 winery permit holder proposing to sell any wines and liquors not currently being sold  
5 by the same shall first give notice to the Comptroller of the prices at which such wines  
6 and liquors are proposed to be sold; and said regulation shall further provide that  
7 sales of such wines and liquors shall not be made for such period of time as the  
8 Comptroller may prescribe sufficient to permit notice thereof to other manufacturers  
9 or wholesalers selling similar wines and liquors and an opportunity for such other  
10 manufacturers or wholesalers to alter the price of such similar wines and liquors so as  
11 to make that price comparable to the price fixed by the manufacturer or wholesaler  
12 proposing to sell wines and liquors not currently being sold. The Comptroller is  
13 authorized and empowered, in promulgating the regulations required by this  
14 subsection, to require the filing by any manufacturer, wholesaler, nonresident dealer,  
15 **RESIDENT DEALER**, or nonresident winery permit holder of any other information  
16 with regard to the size, containers, brands, labels, descriptions, packages, quantities to  
17 be sold and any other data in connection with wines and liquors as the Comptroller  
18 may reasonably determine.

19 (e) Nothing contained in this section shall be construed to authorize the  
20 Comptroller to fix the prices at which any wines and liquors may be sold by any  
21 manufacturer, wholesaler, nonresident dealer, **RESIDENT DEALER**, or nonresident  
22 winery permit holder other than to fix permissible discounts which may be allowed by  
23 any manufacturer or wholesaler on such sales and other than to postpone the effective  
24 date of any proposed price decrease in the sale and distribution of wines and liquors  
25 currently sold by any manufacturer, wholesaler, nonresident dealer, **RESIDENT**  
26 **DEALER**, or nonresident winery permit holder or the effective date of the sale of any  
27 wines and liquors not currently being sold by any manufacturer, wholesaler,  
28 nonresident dealer, **RESIDENT DEALER**, or nonresident winery permit holder for a  
29 reasonable period sufficient to permit the filing of proposed price decreases or  
30 proposed sales of wines and liquors not currently being sold, as the case may be, with  
31 the Comptroller and notice thereof to other manufacturers or wholesalers, and an  
32 opportunity for the same to make like price changes. Nothing contained in this section  
33 shall be construed to require any manufacturer, wholesaler, nonresident dealer,  
34 **RESIDENT DEALER**, or nonresident winery permit holder of wines and liquors to  
35 make sales to any licensees under the provisions of this article.

36 12-104.

37 (a) (1) In this section the following words have the meanings indicated.

38 (2) "Business entity" means any holder of a manufacturer's or  
39 wholesaler's license, or anyone connected with the business of the holder, or any  
40 distiller, nonresident dealer, **RESIDENT DEALER**, brewer, rectifier, blender or bottler  
41 of alcoholic beverages.

1           (3) “Sign” means any sign, display, poster, placard, or other form of  
2 advertisement, whether graphic or not.

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

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

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

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

15           (c) (1) The provisions of this subsection apply only to brewed products.

16           (2) Subject to paragraph (3) of this subsection, a brewer, nonresident  
17 dealer, **RESIDENT DEALER**, or beer wholesaler may not furnish any sign over \$150 in  
18 value to the holder of any retail license issued under the provisions of this article  
19 where the sign advertises the beer or malt products of a particular brewer,  
20 nonresident dealer, **RESIDENT DEALER**, or beer wholesaler.

21           (3) A sign that is manufactured by a beer wholesaler and furnished to  
22 the holder of any retail license issued under this article may not be over \$50 in value  
23 to the holder of the retail license where the sign advertises the beer or malt products  
24 of the beer wholesaler.

25           (4) The sign shall contain brand identifiable advertising matter that is  
26 prominent, permanent, and equal to the life and value of the utilitarian character of  
27 the advertising item.

28           (d) (1) The provisions of this subsection apply only to wine and distilled  
29 spirits products.

30           (2) Signs bearing advertising matter or any other forms of advertising  
31 for use in windows or elsewhere on a retail liquor establishment may be given or  
32 furnished to a retailer by a brand owner who is engaged in the business of a business  
33 entity, if:

34                   (i) The utilitarian value is secondary and only incidental to the  
35 value as an advertisement;

1 (ii) The total value of any item furnished by any brand owner  
2 for each of its individual brands for use in any one retail establishment at any one  
3 time does not exceed the sum of \$150 for each individual brand; and

4 (iii) The cost of installation of these materials does not exceed  
5 that which is usual and customary in that particular locality.

6 (3) (i) In lieu of premanufactured advertising material, materials  
7 and labor may be furnished by a brand owner for the custom manufacture of an  
8 advertising display not exceeding \$150 which is temporary in nature and has no other  
9 utilitarian value.

10 (ii) A manufacturer [or], nonresident dealer, **RESIDENT**  
11 **DEALER**, or brand owner may not undertake any plan or design which directly or  
12 indirectly results in the purchase of advertising materials or supplies or advertising  
13 services by any wholesale or retail licensee; neither may a wholesale or retail licensee  
14 participate directly or indirectly in any transaction in which he pays for or shares in  
15 the cost for any of the value of the advertising materials, supplies, services, or mailing  
16 expenses utilized to promote a brand owner's products.

17 (iii) These provisions do not prevent a wholesale licensee from  
18 furnishing brand owners with display materials and installation services at charges,  
19 computed at not less than the fair market value for these services.

20 15-205.

21 The liquor control board of each county shall have full power and authority  
22 within its county:

23 (b) To purchase from any licensed wholesaler or manufacturer any sparkling  
24 or fortified wine or any other alcoholic beverage which the Board is authorized to sell,  
25 upon which the tax imposed by § 5-102 of the Tax - General Article has been paid,  
26 and to purchase from any nonresident **OR RESIDENT** producer or dealer any such  
27 alcoholic beverages and import the same for resale, as hereinafter provided; but such  
28 importations shall not be resold until the excise tax has been paid.

## 29 **Article - Tax - General**

30 5-101.

31 (a) In this title the following words have the meanings indicated.

32 (b) (1) "Alcoholic beverage" means a spirituous, vinous, malt, or  
33 fermented liquor, liquid, or compound that:

34 (i) is fit for beverage purposes; and

1 (ii) contains one-half of 1% or more of alcohol by volume.

2 (2) “Alcoholic beverage” includes:

3 (i) beer;

4 (ii) distilled spirits; and

5 (iii) wine.

6 (c) “Alcoholic beverage license” means an alcoholic beverage license or  
7 permit issued under Article 2B of the Code.

8 (d) (1) “Beer” means a brewed alcoholic beverage.

9 (2) “Beer” includes:

10 (i) ale;

11 (ii) porter;

12 (iii) stout;

13 (iv) hard cider, as defined in Article 2B, § 1-102(a)(9-1) of the  
14 Code; and

15 (v) alcoholic beverages that contain:

16 1. 6% or less alcohol by volume, derived primarily from  
17 the fermentation of grain, with not more than 49% of the beverage’s overall alcohol  
18 content by volume obtained from flavors and other added nonbeverage ingredients  
19 containing alcohol; or

20 2. more than 6% alcohol by volume, derived primarily  
21 from the fermentation of grain, with not more than 1.5% of the beverage’s overall  
22 alcohol content by volume obtained from flavors and other added nonbeverage  
23 ingredients containing alcohol.

24 (e) “Consumer” means a person who buys, possesses, or transports an  
25 alcoholic beverage for a purpose other than selling the alcoholic beverage.

26 (f) “Direct wine seller” has the meaning stated in Article 2B, § 7.5-101 of the  
27 Code.

28 (g) (1) “Distilled spirits” means a distilled alcoholic beverage.

29 (2) “Distilled spirits” includes:



- 1 (i) alcohol;
- 2 (ii) brandy;
- 3 (iii) cordials;
- 4 (iv) gin;
- 5 (v) liqueur;
- 6 (vi) rum;
- 7 (vii) vodka;
- 8 (viii) whiskey; and
- 9 (ix) solutions or mixtures of distilled spirits except fortified
- 10 wines.

11 (h) “Manufacturer” means a person who operates within the State a place of

12 business for blending, bottling, brewing, distilling, fermenting, or rectifying an

13 alcoholic beverage.

14 (i) “Nonresident dealer” means a person who is required to obtain a

15 nonresident dealer’s permit under Article 2B, § 2–101(i) of the Code.

16 (j) “Person” includes:

17 (1) this State or a political subdivision, unit, or instrumentality of this

18 State;

19 (2) another state or a political subdivision, unit, or instrumentality of

20 that state; and

21 (3) a unit or instrumentality of a political subdivision of this State or

22 of another state.

23 **(K) “RESIDENT DEALER” MEANS A PERSON WHO IS REQUIRED TO**

24 **OBTAIN A RESIDENT DEALER’S PERMIT UNDER ARTICLE 2B, § 2–101(W) OF THIS**

25 **CODE.**

26 [(k)] (L) (1) “Retail dealer” means a person who buys an alcoholic

27 beverage for sale to a consumer.

28 (2) “Retail dealer” includes a county department of liquor control or

29 liquor control board that operates a dispensary.

1           [(1)] (M)       “Tax stamp” means a device in the design and denomination that  
2 the Comptroller authorizes for the purpose of being affixed to a container of distilled  
3 spirits as evidence that the alcoholic beverage tax is paid.

4           [(m)] (N)     (1)   “Wholesaler” means a person who buys or imports an  
5 alcoholic beverage for sale to another person for resale.

6                       (2)   “Wholesaler” includes a county department of liquor control or  
7 liquor control board that operates a wholesale dispensary.

8           [(n)] (O)     (1)   “Wine” means a fermented alcoholic beverage.

9                       (2)   “Wine” includes:

10                       (i)   carbonated, flavored, imitation, sparkling, or still wine;

11                       (ii)   champagne;

12                       (iii)   cider;

13                       (iv)   fortified wine;

14                       (v)   perry;

15                       (vi)   sake; and

16                       (vii)   vermouth.

17   5–201.

18           **(E)   A RESIDENT DEALER SHALL COMPLETE, UNDER OATH, AND FILE**  
19 **WITH THE COMPTROLLER AN ALCOHOLIC BEVERAGE TAX RETURN:**

20                       **(1)   ON OR BEFORE THE 15TH DAY OF THE MONTH THAT FOLLOWS**  
21 **THE MONTH IN WHICH THE RESIDENT DEALER DELIVERS BEER INTO THE**  
22 **STATE; AND**

23                       **(2)   IF THE COMPTROLLER SO SPECIFIES, BY REGULATION, ON**  
24 **OTHER DATES FOR EACH MONTH IN WHICH THE RESIDENT DEALER DOES NOT**  
25 **DELIVER BEER INTO THE STATE.**

26   5–301.

27           **(E)   BEFORE A RESIDENT DEALER DELIVERS OR SHIPS BEER TO A**  
28 **WHOLESALE IN THE STATE, THE RESIDENT DEALER SHALL PAY THE**

1 **ALCOHOLIC BEVERAGE TAX ON THAT BEER, IN THE MANNER THAT THE**  
2 **COMPTROLLER REQUIRES.**

3        [(e)] (F)        (1)     A wholesaler that sells or delivers distilled spirits or wine to  
4 retail dealers in the State shall pay the alcoholic beverage tax on those distilled spirits  
5 and wine, in the manner that the Comptroller requires, with the return that covers  
6 the period in which the wholesaler sells or delivers those distilled spirits and wine.

7        (2)     A wholesaler that imports beer directly from a place outside the  
8 United States shall pay the alcoholic beverage tax on that beer, in the manner that the  
9 Comptroller requires, before the wholesaler receives that beer in the State.

10        [(f)] (G)        A person who pays the alcoholic beverage tax shall obtain:

11                (1)     tax stamps or certificates if required for distilled spirits under §  
12 5-303 of this subtitle; or

13                (2)     any other evidence of tax payment that the Comptroller requires  
14 by regulation.

15        SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
16 July 1, 2009.