

SENATE BILL 162

A1, Q4

9lr0169

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

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: February 9, 2009

CHAPTER _____

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

12 BY repealing and reenacting, with amendments,
13 Article 2B – Alcoholic Beverages
14 Section 2–101(b)(1)(i) and (k), 2–301(b)(1), 12–102(a) and (b), 12–103(c) and (e),
15 12–104(a), (c), and (d), and 15–205(b)
16 Annotated Code of Maryland
17 (2005 Replacement Volume and 2008 Supplement)

18 BY adding to
19 Article 2B – Alcoholic Beverages
20 Section 2–101(w)
21 Annotated Code of Maryland
22 (2005 Replacement Volume and 2008 Supplement)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike-out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 BY repealing and reenacting, without amendments,
2 Article 2B – Alcoholic Beverages
3 Section 12–104(b)
4 Annotated Code of Maryland
5 (2005 Replacement Volume and 2008 Supplement)

6 BY repealing and reenacting, with amendments,
7 Article – Tax – General
8 Section 5–101 and 5–301(e) and (f)
9 Annotated Code of Maryland
10 (2004 Replacement Volume and 2008 Supplement)

11 BY adding to
12 Article – Tax – General
13 Section 5–201(e)
14 Annotated Code of Maryland
15 (2004 Replacement Volume and 2008 Supplement)

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

18 **Article 2B – Alcoholic Beverages**

19 2–101.

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

22 1. \$50 for a solicitor’s permit, an individual storage
23 permit, a nonresident winery permit, or a commercial nonbeverage permit;

24 2. \$75 for a public storage permit, a public
25 transportation permit, or an import and export permit;

26 3. ~~\$100~~ **\$200** for a public storage and transportation
27 permit, a nonresident [dealer] **DEALER’S** permit, **A RESIDENT DEALER’S PERMIT**, or
28 a bulk transfer permit;

29 4. \$400 for a family beer and wine facility permit; and

30 5. \$10 for a direct wine seller’s permit.

31 (k) A solicitor’s permit may be issued in the discretion of the Office of the
32 Comptroller and, if issued, shall grant a resident or nonresident holder the privilege of
33 promoting, selling, or offering for sale, beer, wines or distilled spirits to
34 manufacturers, wholesalers or retailers in this State. A permit holder may not contact
35 consumers, and if the person holding the permit is employed by a nonresident dealer

1 **OR RESIDENT DEALER**, the person holding the permit is not permitted to sell,
2 promote or offer for sale alcoholic beverages to retail dealers, except for the account of
3 a Maryland wholesaler or manufacturer who is a distributor for the products of the
4 employer of the nonresident person **OR RESIDENT PERSON** holding such a permit.

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

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

14 **(II) AN AMERICAN SALES AGENT OF AN IMPORTER UNDER**
15 **SUBPARAGRAPH (I) OF THIS PARAGRAPH, PROVIDING PROOF OF THAT AGENCY**
16 **IS PRESENTED TO THE COMPTRROLLER.**

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

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

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

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

29 **(III) HAS AN INTEREST IN A RETAILER LICENSED UNDER**
30 **THIS ARTICLE.**

31 **(4) A RESIDENT DEALER'S PERMIT AUTHORIZES THE HOLDER TO**
32 **SELL ALCOHOLIC BEVERAGES TO A WHOLESALER LICENSED UNDER THIS**
33 **ARTICLE IN THE STATE OR TO A PERSON OUTSIDE OF THE STATE WHO THE**
34 **COMPTRROLLER AUTHORIZES TO ACQUIRE THE ALCOHOLIC BEVERAGES.**

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

3 2-301.

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

11 12-102.

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

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

37 12-103.

38 (c) The Comptroller is authorized and directed, by regulation, to require the
39 filing, from time to time, by any manufacturer, wholesaler, nonresident dealer,
40 **RESIDENT DEALER**, or nonresident winery permit holder of schedules of prices at

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

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

41 12-104.

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

1 (2) “Business entity” means any holder of a manufacturer’s or
2 wholesaler’s license, or anyone connected with the business of the holder, or any
3 distiller, nonresident dealer, **RESIDENT DEALER**, brewer, rectifier, blender or bottler
4 of alcoholic beverages.

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

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

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

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

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

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

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

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

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

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

34 (2) Signs bearing advertising matter or any other forms of advertising
35 for use in windows or elsewhere on a retail liquor establishment may be given or

1 furnished to a retailer by a brand owner who is engaged in the business of a business
2 entity, if:

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

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

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

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

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

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

24 15-205.

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

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

33 **Article - Tax - General**

34 5-101.

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

1 (b) (1) “Alcoholic beverage” means a spirituous, vinous, malt, or
2 fermented liquor, liquid, or compound that:

3 (i) is fit for beverage purposes; and

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

5 (2) “Alcoholic beverage” includes:

6 (i) beer;

7 (ii) distilled spirits; and

8 (iii) wine.

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

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

12 (2) “Beer” includes:

13 (i) ale;

14 (ii) porter;

15 (iii) stout;

16 (iv) hard cider, as defined in Article 2B, § 1–102(a)(9–1) of the
17 Code; and

18 (v) alcoholic beverages that contain:

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

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

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

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

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

4 (2) “Distilled spirits” includes:

5 (i) alcohol;

6 (ii) brandy;

7 (iii) cordials;

8 (iv) gin;

9 (v) liqueur;

10 (vi) rum;

11 (vii) vodka;

12 (viii) whiskey; and

13 (ix) solutions or mixtures of distilled spirits except fortified
14 wines.

15 (h) “Manufacturer” means a person who operates within the State a place of
16 business for blending, bottling, brewing, distilling, fermenting, or rectifying an
17 alcoholic beverage.

18 (i) “Nonresident dealer” means a person who is required to obtain a
19 nonresident dealer’s permit under Article 2B, § 2–101(i) of the Code.

20 (j) “Person” includes:

21 (1) this State or a political subdivision, unit, or instrumentality of this
22 State;

23 (2) another state or a political subdivision, unit, or instrumentality of
24 that state; and

25 (3) a unit or instrumentality of a political subdivision of this State or
26 of another state.

27 (k) **“RESIDENT DEALER” MEANS A PERSON WHO IS REQUIRED TO**
28 **OBTAIN A RESIDENT DEALER’S PERMIT UNDER ARTICLE 2B, § 2–101(W) OF THIS**
29 **CODE.**

1 [(k)] (L) (1) “Retail dealer” means a person who buys an alcoholic
2 beverage for sale to a consumer.

3 (2) “Retail dealer” includes a county department of liquor control or
4 liquor control board that operates a dispensary.

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

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

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

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

13 (2) “Wine” includes:

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

15 (ii) champagne;

16 (iii) cider;

17 (iv) fortified wine;

18 (v) perry;

19 (vi) sake; and

20 (vii) vermouth.

21 5–201.

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

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

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

1 5-301.

2 (E) BEFORE A RESIDENT DEALER DELIVERS OR SHIPS BEER TO A
3 WHOLESALER IN THE STATE, THE RESIDENT DEALER SHALL PAY THE
4 ALCOHOLIC BEVERAGE TAX ON THAT BEER, IN THE MANNER THAT THE
5 COMPTROLLER REQUIRES.

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

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

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

14 (1) tax stamps or certificates if required for distilled spirits under §
15 5-303 of this subtitle; or

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

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

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.