

Chapter 355

(Senate Bill 858)

AN ACT concerning

Maryland Winery Modernization Act

FOR the purpose of authorizing the Comptroller to issue a farmer's market permit to certain alcoholic beverages licensees; specifying that a permit may be used only at a certain time and place and for certain purposes; requiring the licensee to notify the local licensing board of the issuance of a farmer's market permit; requiring the Comptroller to submit a certain report to the General Assembly on or before a certain date on the viability and efficacy of instituting in Maryland the policy of permitting direct shipment of wine to consumers in the State; limiting the number of permits that the Comptroller may issue; altering the scope of the Class 4 limited winery license; authorizing a licensee to exercise certain privileges under certain conditions, including fermenting and bottling wine, distilling and bottling pomace brandy, providing samples of wine and pomace brandy, and selling or serving certain foods; specifying certain license restrictions in Garrett County; requiring a licensee to file a certain notice with the Comptroller under certain conditions; altering the amount of pomace brandy a licensee is authorized to distill and bottle; authorizing a licensee to purchase a certain amount of bulk wine for a certain purpose; authorizing a licensee to conduct winemaking and packaging activities at certain locations under certain circumstances; requiring that throughout the winemaking process, the licensee maintain ownership of the wine or pomace brandy and ensure that the wine or pomace brandy returns to the location of the limited winery; repealing certain provisions that are inconsistent with this Act; providing that this Act applies to certain licensees; providing for the construction of a portion of this Act; requiring the Comptroller to make a certain report on or before a certain date on the growth of the Maryland wine industry; and generally relating to alcoholic beverages in the State.

BY adding to

Article 2B – Alcoholic Beverages

Section 2–101(x)

Annotated Code of Maryland

(2005 Replacement Volume and 2009 Supplement)

BY repealing and reenacting, with amendments,

Article 2B – Alcoholic Beverages

Section 2–201, 2–205, 11–507, and 11–511

Annotated Code of Maryland

(2005 Replacement Volume and 2009 Supplement)

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

Article 2B – Alcoholic Beverages

2-101.

(X) (1) IN THIS SUBSECTION, “PERMIT” MEANS A FARMER’S MARKET PERMIT.

(2) THERE IS A FARMER’S MARKET PERMIT.

(3) THE COMPTROLLER MAY ISSUE THE PERMIT TO A HOLDER OF A LICENSE:

(I) OTHER THAN A CLASS 4 LIMITED WINERY LICENSE, THAT ALLOWS THE HOLDER TO SELL ALCOHOLIC BEVERAGES TO THE PUBLIC FOR CONSUMPTION OFF THE LICENSED PREMISES; AND

(II) THAT WAS ISSUED BY THE LOCAL LICENSING BOARD OF THE JURISDICTION IN WHICH THE FARMER’S MARKET WILL BE HELD.

(4) THE HOLDER OF A PERMIT SHALL NOTIFY THE LOCAL LICENSING BOARD OF THE JURISDICTION IN WHICH THE FARMER’S MARKET WILL BE HELD THAT THE PERMIT HAS BEEN ISSUED.

~~(4)~~ (5) (I) A PERMIT MAY BE USED ONLY:

1. AT A FARMER’S MARKET THAT IS LISTED IN THE FARMER’S MARKET DIRECTORY OF THE MARYLAND DEPARTMENT OF AGRICULTURE;

2. AT THE FARMER’S MARKET NAMED IN THE PERMIT; AND

~~2.~~ 3. DURING THE HOURS OF OPERATION OF THE FARMER’S MARKET FOR WHICH IT IS OBTAINED.

(II) THE COMPTROLLER MAY ISSUE NOT MORE THAN ONE PERMIT FOR USE AT EACH FARMER’S MARKET.

~~(5)~~ (6) A PERMIT AUTHORIZES THE HOLDER TO:

(I) OCCUPY STALL SPACE AT A FARMER'S MARKET; AND

(II) SUBJECT TO PARAGRAPH ~~(6)~~ (7) OF THIS SUBSECTION:

1. OFFER AND SELL SEALED CONTAINERS OF WINE TO CONSUMERS FOR CONSUMPTION OFF THE LICENSED PREMISES OF THE FARMER'S MARKET; AND

2. PROVIDE AT NO CHARGE SAMPLES OF WINE NOT TO EXCEED 1 FLUID OUNCE PER BRAND TO CONSUMERS FOR CONSUMPTION ON THE LICENSED PREMISES OF THE FARMER'S MARKET.

~~(6)~~ (7) ALL WINE OFFERED FOR SALE OR SAMPLINGS BY THE PERMIT HOLDER SHALL BE THE PRODUCT OF A CLASS 4 LIMITED WINERY.

2-201.

(a) The annual fees for manufacturer's licenses are as follows:

| | | |
|---------|----------------|----------|
| Class 1 | Distillery | \$ 2,000 |
| Class 2 | Rectifying | 600 |
| Class 3 | Winery | 750 |
| Class 4 | Limited Winery | 200 |
| Class 5 | Brewery | 1,500 |
| Class 6 | Pub-Brewery | 500 |
| Class 7 | Micro-Brewery | 500 |

(b) (1) Except for a Class 6 pub-brewery license, the holder of a distillery, rectifying, winery, **LIMITED WINERY**, or brewery license may apply for and obtain, under a different name, one or more additional distillery, rectifying, winery, **LIMITED WINERY**, or brewery licenses for the same or another premises. Those licenses may be issued to different persons or under trade names used by persons occupying a part of or all of the same premises.

(2) (i) The holder of a rectifying, winery, or brewery license may apply for and obtain a wholesaler's license of any class for the same premises or elsewhere as provided under this article.

(ii) The holder of a limited winery license may apply for and obtain a Class 6 limited wine wholesaler's license for the same premises or elsewhere as provided under this article.

2-205.

(a) In this section, “pomace brandy” means brandy that is distilled from the pulpy residue of the wine press, including the skins, pips, and stalks of grapes.

[(b) A Class 4 manufacturer’s license:

(1) Is a limited winery license;

(2) Authorizes the holder to establish and operate in this State a plant for fermenting and bottling wine and distilling and bottling pomace brandy made from Maryland agriculture products at the location described in the license, unless the Secretary of Agriculture determines that there is insufficient supply available of Maryland agriculture products;

(3) Subject to subsection (d) of this section, allows the license holder to:

(i) Sell and deliver this wine and pomace brandy to any wholesale licensee or permit holder in this State, or person outside of this State, authorized to acquire it;

(ii) Sell this wine and pomace brandy made at the plant to persons participating in a guided tour of the facility. The purchase is limited to one quart of each brand per person per year. Any person who has attained the Maryland legal drinking age may purchase the wine. The licensee may operate only in one location in the State;

(iii) Serve at no charge not more than 6 ounces of wine and pomace brandy made at the licensed facility to a person who is participating in a guided tour of the facility, provided the person has attained the Maryland legal drinking age;

(iv) Sell by the glass wine and pomace brandy produced by the licensee to persons participating in a guided tour of the facility or attending a scheduled promotional event or other organized activity at the licensed premises; and

(v) Store on its licensed premises, in a segregated area approved by the Comptroller, the product of other Class 4 limited wineries to be used at bona fide Maryland Winery Association promotional activities, provided records are maintained and reports filed as may be required by the Comptroller; and

(4) Limits the license holder to distilling and bottling not more than 200 gallons of pomace brandy each year.

(c) In Frederick County the provisions regarding sales on Sundays of this section are governed by § 11–511 of this article.

(d) A holder of a Class 4 manufacturer's license in Talbot County:

(1) May produce wine and pomace brandy at each warehouse for which the holder has been issued an individual storage permit; but

(2) May not serve or sell wine and pomace brandy at a warehouse to the public.]

(B) (1) THERE IS A CLASS 4 LIMITED WINERY LICENSE.

(2) A CLASS 4 LIMITED WINERY LICENSE ALLOWS THE LICENSEE TO:

(I) SUBJECT TO PARAGRAPH (3) OF THIS SUBSECTION, FROM AVAILABLE MARYLAND AGRICULTURAL PRODUCTS:

1. FERMENT AND BOTTLE WINE; AND

2. DISTILL AND BOTTLE POMACE BRANDY; AND

(II) SELL AND DELIVER THE WINE AND POMACE BRANDY TO A WHOLESALE LICENSEE OR PERMIT HOLDER IN THIS STATE OR A PERSON OUTSIDE OF THIS STATE THAT IS AUTHORIZED TO ACQUIRE THE WINE AND POMACE BRANDY.

(3) (I) ON OR BEFORE JANUARY 31 OF EACH YEAR, THE MARYLAND DEPARTMENT OF AGRICULTURE SHALL DETERMINE IF AN INSUFFICIENT SUPPLY OF MARYLAND AGRICULTURAL PRODUCTS EXISTS.

(II) IF AN INSUFFICIENT SUPPLY IS DETERMINED TO EXIST, A LICENSEE MAY USE AGRICULTURAL PRODUCTS FROM OUTSIDE THE STATE TO MANUFACTURE WINE AND POMACE BRANDY.

(4) EXCEPT AS PROVIDED IN § 2-301 OF THIS TITLE, A LICENSEE NEED NOT OBTAIN ANY OTHER LICENSE TO POSSESS, MANUFACTURE, SELL, OR TRANSPORT WINE OR POMACE BRANDY.

(5) A LICENSEE MAY:

(I) SELL WINE AND POMACE BRANDY PRODUCED BY THE LICENSEE FOR CONSUMPTION;

(II) IN AN AMOUNT NOT EXCEEDING 2 FLUID OUNCES PER BRAND, PROVIDE SAMPLES OF WINE AND POMACE BRANDY THAT THE LICENSEE PRODUCES TO A CONSUMER:

- 1. AT NO CHARGE; OR**
- 2. FOR A FEE; AND**

(III) SUBJECT TO PARAGRAPH (6) OF THIS SUBSECTION, SELL OR SERVE ONLY:

- 1. BREAD AND OTHER BAKED GOODS;**
- 2. CHILI;**
- 3. CHOCOLATE;**
- 4. CRACKERS;**
- 5. CURED MEAT;**
- 6. FRUITS (WHOLE AND CUT);**
- 7. SALADS AND VEGETABLES (WHOLE AND CUT);**
- 8. ~~HARD~~ HARD AND SOFT CHEESE (WHOLE AND CUT);**
- 9. THE FOLLOWING ITEMS MADE WITH MARYLAND WINE:**
 - A. ICE CREAM;**
 - B. JELLY;**
 - C. JAM; AND**
 - D. VINEGAR;**
- 10. PIZZA;**
- 11. PREPACKAGED SANDWICHES AND OTHER PREPACKAGED FOODS READY TO BE EATEN; ~~AND~~**

12. SOUP; AND

13. CONDIMENTS.

(6) (I) ~~A CATERER LICENSED UNDER THIS ARTICLE~~ IS NOT LIMITED TO SELLING OR SERVING ONLY THE FOODS SPECIFIED IN PARAGRAPH (5)(III) OF THIS SUBSECTION.

(II) A LICENSEE OR ENTITY IN WHICH THE LICENSEE HAS A PECUNIARY INTEREST MAY NOT ACT AS A CATERER OF FOOD.

(7) ~~EXCEPT AS PROVIDED IN~~ SUBJECT TO PARAGRAPH (8) OF THIS SUBSECTION, A LICENSEE MAY CONDUCT THE ACTIVITIES SPECIFIED IN PARAGRAPH (5) OF THIS SUBSECTION:

(I) FOR CONSUMPTION OF WINE AND POMACE BRANDY OFF THE LICENSED PREMISES AND FOR SAMPLING, EACH DAY FROM 10 A.M. TO 10 P.M.; AND

(II) FOR CONSUMPTION OF WINE AND POMACE BRANDY ON THE LICENSED PREMISES AND SALES AND SERVICE OF FOOD ON THE LICENSED PREMISES:

1. FROM 10 A.M. TO 6 P.M. EACH DAY; OR

2. IF GUESTS ARE ATTENDING A PLANNED PROMOTIONAL EVENT OR OTHER ORGANIZED ACTIVITY ON THE LICENSED PREMISES, FROM 10 A.M. TO 10 P.M. EACH DAY.

(8) (I) ~~THIS PARAGRAPH APPLIES ONLY IN GARRETT COUNTY ON SUNDAY.~~

(II) ~~FROM 1 P.M. TO 10 P.M. A LICENSEE MAY:~~

1. ~~SERVE WINE AND POMACE BRANDY FOR CONSUMPTION OFF THE LICENSED PREMISES;~~

2. ~~PROVIDE SAMPLES OF WINE AND POMACE BRANDY;~~

3. ~~SUBJECT TO SUBPARAGRAPH (III) OF THIS PARAGRAPH, SERVE WINE AND POMACE BRANDY FOR CONSUMPTION ON THE LICENSED PREMISES; AND~~

~~4. SUBJECT TO SUBPARAGRAPH (III) OF THIS PARAGRAPH, SELL AND SERVE FOOD THAT IS SPECIFIED IN PARAGRAPH (5)(III) OF THIS SUBSECTION FOR CONSUMPTION ON THE LICENSED PREMISES.~~

~~(III) FROM 6 P.M. TO 10 P.M., A LICENSEE MAY SERVE WINE AND POMACE BRANDY AND SELL AND SERVE FOOD FOR CONSUMPTION ON THE LICENSED PREMISES ONLY TO GUESTS WHO ATTEND A PLANNED PROMOTIONAL EVENT OR OTHER ORGANIZED ACTIVITY ON THE LICENSED PREMISES.~~

~~(9)~~ (8) (I) A EXCEPT AS PROVIDED IN SUBPARAGRAPH (II) OF THIS PARAGRAPH, A CLASS 4 LIMITED WINERY LICENSE PERMITS ALLOWS THE HOLDER TO OPERATE 7 DAYS A WEEK.

(II) IN GARRETT COUNTY, A LICENSEE MAY OPEN ON SUNDAYS TO ENGAGE IN THE ACTIVITIES LISTED IN PARAGRAPH (5) OF THIS SUBSECTION ONLY IN AN ELECTION DISTRICT WHERE THE VOTERS, IN A REFERENDUM AUTHORIZED BY LAW, HAVE APPROVED SUNDAY SALES AT A WINERY.

~~(10)~~ (9) AT LEAST 14 DAYS BEFORE HOLDING A PLANNED PROMOTIONAL EVENT AFTER 6 P.M., A LICENSEE SHALL FILE A NOTICE OF THE PROMOTIONAL EVENT WITH THE COMPTROLLER ON THE FORM THAT THE COMPTROLLER PROVIDES.

~~(11)~~ (10) A LICENSEE MAY NOT SELL OR ALLOW TO BE CONSUMED AT THE LOCATION OF THE LIMITED WINERY ANY ALCOHOLIC BEVERAGE OTHER THAN THE WINE OR POMACE BRANDY PRODUCED BY THE LICENSEE UNDER THE AUTHORITY OF THIS SECTION.

(11) NOTHING IN THIS SUBSECTION LIMITS THE APPLICATION OF RELEVANT PROVISIONS OF TITLE 21 OF THE HEALTH – GENERAL ARTICLE, AND REGULATIONS ADOPTED UNDER THAT TITLE, TO A LICENSEE.

(C) THE PLACE LISTED ON THE CLASS 4 WINERY LICENSE SHALL BE IN COMPLIANCE WITH § 9-103 OF THIS ARTICLE.

(D) A LICENSEE MAY:

(1) STORE ON ITS LICENSED PREMISES, IN A SEGREGATED AREA APPROVED BY THE COMPTROLLER, THE PRODUCT OF OTHER CLASS 4 LIMITED WINERIES TO BE USED AT BONA FIDE MARYLAND WINERIES ASSOCIATION PROMOTIONAL ACTIVITIES, PROVIDED RECORDS ARE MAINTAINED AND REPORTS FILED AS MAY BE REQUIRED BY THE COMPTROLLER;

(2) DISTILL AND BOTTLE NOT MORE THAN 1,900 GALLONS OF POMACE BRANDY MADE FROM AVAILABLE MARYLAND AGRICULTURAL PRODUCTS;

(3) PURCHASE BULK WINE FERMENTED BY A MANUFACTURER LICENSED UNDER THIS ARTICLE AND BLEND THE WINE WITH THE HOLDER'S WINE AND POMACE BRANDY, IF THE AGGREGATE PURCHASE DOES NOT EXCEED 25% OF THE HOLDER'S ANNUAL WINE AND POMACE BRANDY PRODUCTION;

(4) PURCHASE POMACE BRANDY ONLY FOR BLENDING WITH WINE;

(5) IMPORT, EXPORT, AND TRANSPORT ITS WINE AND POMACE BRANDY IN ACCORDANCE WITH THIS SECTION; AND

(6) PRODUCE WINE AND POMACE BRANDY AT A WAREHOUSE FOR WHICH THE HOLDER HAS BEEN ISSUED AN INDIVIDUAL STORAGE PERMIT, IF:

(I) THE HOLDER DOES NOT SERVE OR SELL WINE OR POMACE BRANDY AT A WAREHOUSE TO THE PUBLIC; AND

(II) THE COMPTROLLER HAS FULL ACCESS AT ALL TIMES TO THE WAREHOUSE TO ENFORCE THIS ARTICLE.

(E) A CLASS 4 LIMITED WINERY MAY BE LOCATED ONLY AT THE PLACE STATED ON THE LICENSE.

(F) IF A LICENSEE MAINTAINS THE RECORDS AND FILES THE REPORTS THAT THE COMPTROLLER REQUIRES, THE LICENSEE MAY:

(1) IN THE STATE, CONDUCT WINEMAKING AND PACKAGING ACTIVITIES AT ANOTHER FEDERALLY BONDED WINERY OR LIMITED WINERY; OR

(2) OUTSIDE THE STATE, CONDUCT WINEMAKING AND PACKAGING ACTIVITIES OTHER THAN FERMENTATION, AT ANOTHER FEDERALLY BONDED WINERY.

(G) THROUGHOUT THE WINEMAKING PROCESS, THE LICENSEE SHALL:

**(1) MAINTAIN OWNERSHIP OF THE WINE OR POMACE BRANDY;
AND**

(2) ENSURE THAT THE WINE OR POMACE BRANDY RETURNS TO THE LOCATION OF THE LIMITED WINERY.

11-507.

(a) This section applies only in Carroll County.

(b) (1) The following restrictions, limitations, and regulations apply.

(2) (i) Holders of “on-sale” licenses authorized under this article may sell, offer for sale, or dispense alcoholic beverages between 8 a.m. and 1 a.m. the following day and no other hours. Holders of these licenses may not sell, offer to sell or dispense any alcoholic beverages on Sunday except:

1. When the holder of that license is open for business on Saturday at midnight the licensee may remain open until 1 a.m. the Sunday immediately following;

2. Holders of Class C and H beer, wine and liquor licenses may reopen and may sell alcoholic beverages on Sundays between 11 a.m. and 1 a.m. the following Monday;

3. Holders of Class B beer, wine and liquor licenses may reopen and may sell alcoholic beverages on Sundays between 11 a.m. and 1 a.m. the following Monday; and

4. Holders of Class B beer and light wine, 7-day licenses may conduct “on-sales” of alcoholic beverages on Sundays between 11 a.m. and 1 a.m. the following Monday.

(ii) In all cases in which a closing time is indicated in this subsection a licensee may not permit the drinking of any alcoholic beverage on the premises 15 minutes following the closing time indicated.

(3) (i) Holders of “off-sale” licenses under this article may sell, offer for sale, or dispense the beverages defined in this article between 8 a.m. and 11 p.m. on Monday through Saturday, and between 11 a.m. and 11 p.m. on Sunday.

(ii) Holders of Class B beer and light wine, 7-day licenses may conduct “off-sales” of alcoholic beverages only between 8 a.m. and 11 p.m. on Monday through Saturday, and between 11 a.m. and 11 p.m. on Sunday.

[(4) A Class 4 manufacturer’s licensee may sell wine on Sundays, in a sealed package or container which may not be opened or the contents consumed on the licensee’s premises, subject to the other restrictions contained in § 2-205 of this article.]

[(5)] (4) A Class A wine licensee may sell wine on Sundays.

[(6)] (5) The hours established in this subtitle for the sale of alcoholic beverages in Carroll County are hereby declared to be in accordance with Eastern Standard Time when such time is effective and the hours are declared to be in accordance with daylight time when such time is effective.

11-511.

(a) This section applies only in Frederick County.

(b) This section does not apply to holders of Class E licenses.

(c) (1) Notwithstanding any other provision of this subtitle, the privilege conferred by every class of "on-sale" license may be exercised during the hours from 6 a.m. to 2 a.m. daily, except Sundays.

(2) On Sundays the hours are:

(i) On-sale – 11 a.m. to 2 a.m.; and

(ii) Off-sale – 1 p.m. to 2 a.m.

[(d)] A Class 4 manufacturer's licensee may sell wine on Sundays, in a sealed package or container, which may not be opened or the contents consumed on the licensee's premises, subject to the other restrictions contained in § 2-205 of this article.]

[(e)] (D) (1) A Class A wine licensee may sell wine on Sundays.

(2) (i) The Board of License Commissioners may grant a special Sunday opening permit to a Class A beer, wine and liquor (off-sale) licensee.

(ii) The special Sunday opening permit authorizes the holder to sell beer, wine and liquor for off-premises consumption on Sundays from 12 noon to 12 midnight.

(iii) The annual fee for the special Sunday opening permit is \$650 in addition to the annual fee for the Class A beer, wine and liquor (off-sale) license.

(iv) The special Sunday opening permit is not considered a separate class of license and, if it is granted, the privilege shall be incorporated into the existing Class A beer, wine and liquor license.

(3) (i) The Board of License Commissioners may grant a special Sunday opening permit to a Class A beer and wine (off-sale) licensee.

(ii) The special Sunday opening permit authorizes the holder to sell beer and wine for off-premises consumption on Sundays from 12 noon to 12 midnight.

(iii) The annual fee for the special Sunday opening permit is \$140 in addition to the annual fee for the Class A beer and wine (off-sale) license.

(iv) The special Sunday opening permit is not considered a separate class of license and, if it is granted, the privilege shall be incorporated into the existing Class A beer and wine license.

(4) (i) The Board of License Commissioners may grant a special Sunday opening permit to a Class A beer (off-sale) licensee.

(ii) The special Sunday opening permit authorizes the holder to sell beer for off-premises consumption on Sundays from 12 noon to 12 midnight.

(iii) The annual fee for the special Sunday opening permit is \$100 in addition to the annual fee for the Class A beer (off-sale) license.

(iv) The special Sunday opening permit is not considered a separate class of license and, if it is granted, the privilege shall be incorporated into the existing Class A beer license.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall apply to all persons who hold a Class 4 Limited Winery license on or after the effective date of this Act.

SECTION 3. AND BE IT FURTHER ENACTED, That:

(a) On or before ~~November 1~~ December 31, 2010, the Comptroller shall submit a report to the General Assembly, in accordance with § 2-1246 of the State Government Article, on the viability and efficacy of instituting in Maryland the policy of permitting direct shipment of wine to consumers in the State.

(b) The report shall include:

(1) an evaluation of the best practices used by the 37 states and the District of Columbia that allow direct wine shipment;

(2) an evaluation of related fiscal, tax, and other public policy and regulatory issues; and

(3) a determination regarding:

(i) the best practices for preventing access by underage drinkers to wine that is shipped directly to consumers;

(ii) any significant increase or decrease in access to or demand for wine by underage drinkers that has been documented as the result of direct wine shipment laws;

(iii) the best practices for collecting relevant tax revenues;

(iv) the benefits and costs to consumers; and

(v) the effect of direct wine shipment laws on in-state ~~wineries~~ alcoholic beverages licensees and other local businesses.

SECTION ~~3~~ 4. AND BE IT FURTHER ENACTED, That, on or before December 1, 2012, the Comptroller shall report to the Senate Education, Health, and Environmental Affairs Committee and the House Economic Matters Committee, in accordance with § 2-1246 of the State Government Article, on the impact that the limitation of special event permits specified in § 2-101(x) of Article 2B of the Code, as enacted by Section 1 of this Act, has had on the growth of the Maryland wine industry.

SECTION ~~4~~ 5. AND BE IT FURTHER ENACTED, That this Act shall take effect June 1, 2010.

Approved by the Governor, May 4, 2010.