

Department of Legislative Services  
Maryland General Assembly  
2011 Session

FISCAL AND POLICY NOTE

Senate Bill 166 (Senators Brinkley and Young)  
Education, Health, and Environmental Affairs

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**Frederick County - Wine Consumption - Restaurants and Clubs**

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This bill allows an individual in a restaurant in Frederick County with a Class B alcoholic beverages license or in a club with a Class C alcoholic beverages license to consume wine not purchased from or provided by the restaurant or facility if the wine is consumed with a meal and the individual receives the approval of the license holder. The license holder is allowed to charge a fee for the privilege up to \$25, on which a sales tax must be imposed. The individual must dispose of or remove any wine that remains after finishing the meal. Any unconsumed wine may be removed from the premises by the individual if the bottle is corked or capped. The removed bottle is an “open container” for purposes of violations of open container provisions of the Criminal Law Article.

The bill takes effect July 1, 2011.

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**Fiscal Summary**

**State Effect:** Minimal. The bill does not materially affect State tax revenues relating to the sale of alcoholic beverages.

**Local Effect:** Potential increase in Frederick County expenditures for enforcement activities. Revenues are not affected.

**Small Business Effect:** Potential meaningful.

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## Analysis

**Current Law:** Generally, with limited exceptions, it is unlawful to consume alcoholic beverages that were not purchased from the license holder on that licensee's premises. Additionally, it is unlawful for a licensee to permit any person to do so.

A person may remove a partially consumed bottle of wine that the person purchased for consumption with a meal from a licensed premises, provided that the licensee or its employee inserts a cork in or places a cap on the bottle. A partially consumed bottle of wine removed from the licensed premises is considered to be an open container for purposes of a specified provision of law concerning possession of alcohol in a motor vehicle.

Under the statewide "open container" prohibition, an occupant of a motor vehicle may not possess an open container that contains any amount of an alcoholic beverage in a passenger area of a motor vehicle on a highway. A driver of a motor vehicle may not be subject to prosecution for a violation of this prohibition based solely on possession of an open container that contains any amount of an alcoholic beverage by another occupant of the motor vehicle. An occupant of a motor vehicle may not consume an alcoholic beverage in a passenger area of a motor vehicle on a highway. A violation is not considered a moving violation under the Transportation Article or a traffic violation for the purposes of the Maryland Vehicle Law. A violation is a citable civil offense subject to a maximum fine of \$25, and a fee of \$5 for court costs.

"Open container" means a bottle, can, or other receptacle: (1) that is open; (2) that has a broken seal; or (3) from which the contents are partially removed.

**Background:** The practice commonly referred to as "corkage" allows customers to bring their own bottles of wine to drink with a meal at a restaurant. Although local laws may be more restrictive, a survey by Marylanders for Better Beer and Wine laws indicates 26 states and the District of Columbia allow individuals to bring and consume their own wine at a restaurant with an alcoholic beverages license in at least some of their local jurisdictions. Restaurants that allow corkage are typically allowed to charge a corkage fee for each bottle a patron brings. The corkage fee covers service, the cost of glass (breakage and/or cleaning) and the lost revenue from not selling the customer a bottle of wine. Additionally, corkage allows the customer to bring a bottle of wine that may not be available on the restaurant's wine list. The District of Columbia privilege limits the corkage fee at \$25.

There were 162 Class B and 38 Class C alcoholic beverages licenses in Frederick County for fiscal 2010.

**State Fiscal Effect:** Generally, a bottle of wine purchased from a retail licensee is less expensive than when purchased at a restaurant. As a result, general fund revenues from the sales tax on alcoholic beverages may decrease slightly from individuals that purchase wine at retail instead of restaurants. If restaurants choose to impose a corkage fee, the fee is subject to sales tax and is expected to at least partially offset any reduction in sales tax from the sale of wine. Revenues from alcoholic beverages taxes are not affected, since wine purchased from a licensee or brought onto the premises by a patron is tax-paid. Under the bill, State revenues are not expected to be materially affected.

The Comptroller will collect the sales and use tax imposed on corkage fees charged by restaurants. The bill's administrative requirements for the Comptroller can be handled with existing budgeted resources.

**Local Fiscal Effect:** Frederick County has one full-time inspector and 289 active alcoholic beverages licenses located throughout the county, which has the largest land area of any county in the State. While there are additional liquor control board part-time inspectors authorized for the county, they are not currently funded. Since resources of the Frederick County Board of License Commissioners are constrained, any increase in enforcement duties may not be absorbable within the existing budgeted resources

**Small Business Effect:** Revenues from wine sales may decrease for some restaurants as patrons take advantage of the opportunity to bring in wine not purchased at the restaurant to consume with their meal; however, some establishments may experience increased business if allowing corkage attracts new patrons. Revenues for restaurants may also increase to the degree that the authorized fee is charged, though some establishments may choose to charge less than the maximum \$25 to encourage repeat business or in response to corkage policies of competing restaurants.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** HB 150 (Frederick County Delegation) - Economic Matters.

**Information Source(s):** Frederick County, Comptroller's Office, Department of Legislative Services

**Fiscal Note History:** First Reader - February 25, 2011  
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