

SENATE BILL 874

A2

(2lr1211)

ENROLLED BILL

— Education, Health, and Environmental Affairs/Economic Matters —

Introduced by **Senator Ferguson**

Read and Examined by Proofreaders:

Proofreader.

Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this

_____ day of _____ at _____ o'clock, _____ M.

President.

CHAPTER _____

1 AN ACT concerning

2 **Baltimore City – Alcoholic Beverages – Refillable Containers**

3 FOR the purpose of authorizing ~~a certain Class B license~~ licenses to include a certain
4 off-sale privilege under a certain circumstance ~~circumstances, notwithstanding~~
5 certain provisions; creating in Baltimore City a refillable container license;
6 authorizing the Board of Liquor License Commissioners to issue the license to a
7 holder of ~~a Class B beer and light wine or a Class B beer, wine and liquor~~
8 ~~license issued for a restaurant~~ any class of alcoholic beverages license issued by
9 the Board except a Class C license and a Class M–G license; specifying that a
10 holder of the license may sell draft beer for consumption off the licensed
11 premises in a certain refillable container ~~to a certain individual~~; requiring a
12 refillable container to meet certain requirements; ~~prohibiting a holder of a~~
13 ~~license from displaying or providing shelving for beer for~~
14 ~~off-premises consumption~~; requiring an applicant for the license to complete a
15 certain form and pay a certain fee; requiring that certain applicants meet

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.

Italics indicate opposite chamber/conference committee amendments.



1 certain advertising, posting of notice, and public hearing requirements ~~be met~~;
 2 specifying the term of the license; requiring that receipts collected under the
 3 license be included in a certain calculation of average daily receipts; specifying
 4 the hours of sale for the license; allowing a holder of the license to ~~exercise the~~
 5 ~~privileges of the license only if the licensed premises is open for business as a~~
 6 ~~restaurant~~ refill only a refillable container that was purchased from and was
 7 branded by the license holder; ~~authorizing~~ requiring the Board to adopt certain
 8 regulations; making a technical change; and generally relating to alcoholic
 9 beverages in Baltimore City.

10 BY repealing and reenacting, without amendments,

11 Article 2B – Alcoholic Beverages

12 Section 1–102(a)(1) and (22) ~~and~~, 8–203(a) and (b), 9–204.1(f)(1), and
 13 12–108(a)(1)

14 Annotated Code of Maryland

15 (2011 Replacement Volume)

16 BY repealing and reenacting, with amendments,

17 Article 2B – Alcoholic Beverages

18 Section 6–201(d)(1)(v) and (vi), 9–204.1(f)(2), and 12–113(c)

19 Annotated Code of Maryland

20 (2011 Replacement Volume)

21 BY adding to

22 Article 2B – Alcoholic Beverages

23 Section 8–203(e) and 9–204.1(f)(8)

24 Annotated Code of Maryland

25 (2011 Replacement Volume)

26 ~~BY repealing and reenacting, with amendments,~~

27 ~~Article 2B – Alcoholic Beverages~~

28 ~~Section 12–113(e)~~

29 ~~Annotated Code of Maryland~~

30 ~~(2011 Replacement Volume)~~

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

33 **Article 2B – Alcoholic Beverages**

34 1–102.

35 (a) (1) In this article the following words have the meanings indicated.

36 (22) (i) 1. “Restaurant” means an establishment:

37 A. Which accommodates the public;

1 B. Which is equipped with a dining room with facilities
2 for preparing and serving regular meals; and

3 C. In which the average daily receipts from the sale of
4 foods exceed the average daily receipts from the sale of alcoholic beverages.

5 2. However the board of license commissioners in any
6 county by regulation may prescribe a different standard as to what constitutes a
7 restaurant.

8 3. For a restaurant in Baltimore City, the average daily
9 receipts from the sale of food must be at least 40% of the total daily receipts of the
10 establishment.

11 (ii) In Baltimore City, the term “food” as used in the definition
12 of “restaurant”, whether the definition is established by State law or by regulations
13 adopted by the Board of License Commissioners, may not include any ingredient or
14 garnish used with or mixed with an alcoholic beverage that is prepared and served for
15 consumption on the licensed premises.

16 (iii) In Harford County a “restaurant” as used in § 5–201 and §
17 6–201(n)(9) of this article means a business establishment for the accommodation of
18 the public, fully equipped with a proper and adequate dining room, tables, chairs and
19 sufficient facilities for preparing and serving regular meals, as may be approved by the
20 Liquor Control Board. The Board and Department of Health shall approve its sanitary
21 facilities, running hot and cold water, equipment for the proper cleaning of dishes and
22 kitchenware and adequate toilets. At all times there must be sufficient food on the
23 premises for the regular serving of meals, with a proper sign or signs in front of the
24 establishment designating “restaurant” or food and beverages sold, and not
25 advertising any other business. In this establishment the average gross monthly
26 receipts from the sale of foods cooked or prepared and served on the premises where
27 the license is exercised, and other foods, commodities and items defined by the Liquor
28 Control Board, shall exceed 50 percent of the average monthly receipts from the sale of
29 beer and wine, except that a restaurant serving food and beverages whose gross
30 monthly receipts from the sale of food averages \$1,500 or more may not be required to
31 sell food and food commodities in excess of 50 percent of the average monthly receipts
32 from the sale of beer and wine.

33 (iv) The requirements of this section relating to average daily
34 receipts are not applicable to any licenses issued in Cecil County.

35 6–201.

36 (d) (1) (v) **1. ~~It~~ *EXCEPT AS PROVIDED IN SUBSUBPARAGRAPH 2***
37 ***OF THIS SUBPARAGRAPH, IN an area coterminous with the 47th Alcoholic Beverages***
38 ***District as that district existed before the Legislative Districting Plan was ordered by***

1 the Maryland Court of Appeals on June 21, 2002, a Class B beer, wine and liquor
 2 license issued for use in a restaurant:

3 ~~1. A. [After] EXCEPT AS PROVIDED IN ITEM 5 OF THIS~~
 4 ~~SUBPARAGRAPH, AFTER~~ July 1, 1991 may not include an off-sale alcoholic beverages
 5 privilege;

6 ~~2. B.~~ Before July 1, 1991 with an on-sale alcoholic
 7 beverages privilege only may not be changed or altered to include an off-sale alcoholic
 8 beverages privilege;

9 ~~3. C.~~ Before July 1, 1991 with both on- and off-sale
 10 alcoholic beverages privileges may continue to be sold, renewed, or transferred within
 11 the 47th Alcoholic Beverages District with both privileges; ~~and~~

12 ~~4. D.~~ Except as provided in subparagraph (vi) of this
 13 paragraph, before July 1, 1991 may not include an off-sale privilege for sales of
 14 alcoholic beverages from 12 midnight on Saturday to 2 a.m. on Monday; ~~AND.~~

15 ~~5. 2. MAY~~ A LICENSE SPECIFIED UNDER
 16 SUBSUBPARAGRAPH 1 OF THIS SUBPARAGRAPH MAY INCLUDE AN OFF-SALE
 17 PRIVILEGE FOR SALES OF REFILLABLE CONTAINERS UNDER A REFILLABLE
 18 CONTAINER LICENSE ISSUED IN ACCORDANCE WITH § 8-203(E) OF THIS
 19 ARTICLE.

20 *(vi) The sales prohibition in subparagraph [(v)4] (v)1D of this*
 21 *paragraph does not apply to a Class B beer, wine and liquor licensee:*

22 *1. Whose license was issued before July 1, 1991; and*

23 *2. Who prior to July 1, 1991 operated the premises and*
 24 *exercised the sales privileges under the license on Sundays.*

25 8-203.

26 (a) The provisions of this section only apply in Baltimore City.

27 (b) In this section, "Board" means the Board of License Commissioners of
 28 Baltimore City.

29 (E) (1) THERE IS A REFILLABLE CONTAINER LICENSE.

30 (2) THE BOARD MAY ISSUE A REFILLABLE CONTAINER LICENSE
 31 TO A HOLDER OF ~~A CLASS B BEER AND LIGHT WINE OR A CLASS B BEER, WINE~~
 32 ~~AND LIQUOR LICENSE ISSUED FOR A RESTAURANT~~ ANY CLASS OF ALCOHOLIC

1 BEVERAGES LICENSE ISSUED BY THE BOARD EXCEPT A CLASS C LICENSE AND A
 2 CLASS M-G LICENSE.

3 (3) ~~A~~ SUBJECT TO PARAGRAPH (4) OF THIS SUBSECTION, A
 4 REFILLABLE CONTAINER LICENSE ENTITLES THE HOLDER TO SELL DRAFT BEER
 5 FOR CONSUMPTION OFF THE LICENSED PREMISES;

6 ~~(4) IN SUBJECT TO PARAGRAPH (4) OF THIS SUBSECTION,~~
 7 IN A REFILLABLE CONTAINER WITH A CAPACITY OF NOT LESS THAN 32 OUNCES
 8 AND NOT MORE THAN 128 OUNCES; AND

9 ~~(H) ONLY TO AN INDIVIDUAL WHO HAS PURCHASED FOOD~~
 10 ~~OR AN ALCOHOLIC BEVERAGE FROM THE LICENSED PREMISES.~~

11 (4) TO BE USED AS A REFILLABLE CONTAINER UNDER
 12 PARAGRAPH ~~(3)(1)~~ (3) OF THIS SUBSECTION, A CONTAINER SHALL:

13 (I) BE SEALABLE;

14 (II) BE BRANDED WITH AN IDENTIFYING MARK OF THE
 15 LICENSE HOLDER;

16 (III) BEAR THE FEDERAL HEALTH WARNING STATEMENT
 17 REQUIRED FOR CONTAINERS OF ALCOHOLIC BEVERAGES UNDER 27 C.F.R.
 18 16.21;

19 (IV) DISPLAY INSTRUCTIONS FOR CLEANING THE
 20 CONTAINER; AND

21 (V) BEAR A LABEL STATING THAT:

22 1. CLEANING THE CONTAINER IS THE
 23 RESPONSIBILITY OF THE CONSUMER; AND

24 2. THE CONTENTS OF THE CONTAINER ARE
 25 PERISHABLE AND SHOULD BE REFRIGERATED IMMEDIATELY AND CONSUMED
 26 WITHIN 48 HOURS AFTER PURCHASE.

27 ~~(4) (5) IN AREAS OF THE PREMISES THAT ARE ACCESSIBLE TO~~
 28 ~~THE PUBLIC, A HOLDER OF A REFILLABLE CONTAINER LICENSE MAY NOT~~
 29 ~~DISPLAY OR PROVIDE SHELVING FOR BEER FOR OFF-PREMISES CONSUMPTION.~~

30 ~~(5) (6)~~ BEFORE THE BOARD ISSUES A REFILLABLE CONTAINER
 31 LICENSE TO AN APPLICANT:

(I) THE APPLICANT SHALL:

1. COMPLETE THE FORM THAT THE BOARD PROVIDES; AND

2. PAY AN ANNUAL LICENSE FEE OF ~~\$500; AND:~~

A. \$500 FOR AN APPLICANT WHOSE ALCOHOLIC BEVERAGES LICENSE DOES NOT HAVE AN OFF-SALE PRIVILEGE; OR

B. \$50 FOR AN APPLICANT WHOSE ALCOHOLIC BEVERAGES LICENSE HAS AN OFF-SALE PRIVILEGE; AND

(II) ~~THE~~ AN APPLICANT WHO HOLDS A LICENSE WITHOUT AN OFF-SALE PRIVILEGE SHALL MEET THE SAME ADVERTISING, POSTING OF NOTICE, AND PUBLIC HEARING REQUIREMENTS AS THOSE FOR THE LICENSE THAT THE APPLICANT HOLDS ~~SHALL BE MET.~~

~~(6) (7) (6)~~ THE TERM OF A REFILLABLE CONTAINER LICENSE ISSUED TO A SUCCESSFUL APPLICANT IS THE SAME AS THAT OF THE LICENSE THAT THE APPLICANT HOLDS.

~~(7) (8) (7)~~ RECEIPTS COLLECTED UNDER A REFILLABLE CONTAINER LICENSE ARE TO BE INCLUDED IN THE CALCULATION OF AVERAGE DAILY RECEIPTS FROM THE SALE OF ALCOHOLIC BEVERAGES UNDER § 1-102(A)(22)(I)3 OF THIS ARTICLE.

~~(8) (9) (8)~~ THE HOURS OF SALE FOR A REFILLABLE CONTAINER LICENSE; ~~ARE THE SAME~~

(I) BEGIN AT THE SAME TIME AS THOSE FOR THE LICENSE ALREADY HELD BY THE PERSON TO WHOM THE REFILLABLE CONTAINER LICENSE IS ISSUED; AND

(II) END AT MIDNIGHT.

~~(9) (10) (9) THE HOLDER OF A REFILLABLE CONTAINER LICENSE MAY EXERCISE THE PRIVILEGES OF THE LICENSE ONLY IF THE LICENSED PREMISES IS OPEN FOR BUSINESS AS A RESTAURANT~~ A LICENSE HOLDER MAY REFILL ONLY A REFILLABLE CONTAINER THAT WAS PURCHASED FROM AND WAS BRANDED BY THE LICENSE HOLDER.

1 ~~(10) (11) (10)~~ **THE BOARD ~~MAY SHALL~~ ADOPT REGULATIONS TO**
 2 **CARRY OUT THIS SUBSECTION, ~~INCLUDING A LIMIT ON THE NUMBER OF~~**
 3 **~~REFILLABLE CONTAINER LICENSES TO BE ISSUED.~~**

4 9-204.1.

5 (f) (1) *This subsection applies only in the 46th alcoholic beverages district.*

6 (2) *Notwithstanding § 6-201(d)(1)(vii) of this article, AND SUBJECT*
 7 *TO PARAGRAPH (8) OF THIS SUBSECTION, the Board may issue a Class B beer, wine*
 8 *and liquor license:*

9 (i) *For a restaurant in ward 26, precinct 8, if the restaurant has*
 10 *a minimum capital investment of \$700,000, a seating capacity exceeding 150 persons,*
 11 *and average daily receipts from the sale of food that are at least 65% of the total daily*
 12 *receipts of the restaurant;*

13 (ii) *For a restaurant in ward 4, precinct 1 or ward 22, precinct 1,*
 14 *if the restaurant has a minimum capital investment of \$700,000, a seating capacity*
 15 *that exceeds 75 persons, average daily receipts for the sale of food that are at least 65%*
 16 *of the total daily receipts of the restaurant, and no sales for off-premises consumption;*

17 (iii) *For not more than three restaurants in a residential planned*
 18 *unit development for Silo Point as approved by the Mayor and City Council of*
 19 *Baltimore City in Ordinance 04-697 on June 23, 2004, if the restaurant has a*
 20 *minimum capital investment of \$700,000, a seating capacity that exceeds 75 persons,*
 21 *average daily receipts from the sale of food that are at least 65% of the total daily*
 22 *receipts of the restaurant, and no sales for off-premises consumption; and*

23 (iv) *For not more than three restaurants in a business planned*
 24 *unit development in ward 24, precinct 5 of the 46th alcoholic beverages district, which*
 25 *at all times shall be coterminous with the 46th Legislative District in the Legislative*
 26 *Districting Plan of 2002 as ordered by the Maryland Court of Appeals on June 21,*
 27 *2002, if each restaurant has a minimum capital investment of \$700,000, a seating*
 28 *capacity that exceeds 75 persons but is not more than 150 persons, average daily*
 29 *receipts from the sale of food that are at least 65% of the total daily receipts of the*
 30 *restaurant, and no sales for off-premises consumption.*

31 **(8) NOTWITHSTANDING PARAGRAPH (2)(II) THROUGH (IV) OF**
 32 **THIS SUBSECTION, A LICENSE SPECIFIED UNDER THIS SUBSECTION, INCLUDING**
 33 **A LICENSE THAT ALLOWS NO SALES FOR OFF-PREMISES CONSUMPTION, MAY**
 34 **INCLUDE AN OFF-SALE PRIVILEGE FOR SALES OF REFILLABLE CONTAINERS**
 35 **UNDER A REFILLABLE CONTAINER LICENSE ISSUED IN ACCORDANCE WITH §**
 36 **8-203(E) OF THIS ARTICLE.**

37 12-108.

1 (a) (1) A licensee licensed under this article, or any employee of the
2 licensee, may not sell or furnish any alcoholic beverages at any time:

3 (i) To a person under 21 years of age for the underage person's
4 own use or for the use of any other person; or

5 (ii) To any person who, at the time of the sale, or delivery, is
6 visibly under the influence of any alcoholic beverage.

7 12-113.

8 (c) **[No] EXCEPT AS PROVIDED IN § 8-203(E) OF THIS ARTICLE, NO** retail
9 dealer, or agent or employee of such retail dealer shall refill any container of alcoholic
10 beverages with any substance whatsoever after such container has once been emptied
11 of its original contents.

12 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
13 July 1, 2012.

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.