

Chapter 92

(House Bill 401)

AN ACT concerning

Baltimore City – Alcoholic Beverages – Refillable Containers

FOR the purpose of authorizing certain Class B licenses to include a certain off-sale privilege under certain circumstances, notwithstanding certain provisions; creating in Baltimore City a refillable container license; authorizing the Board of Liquor License Commissioners to issue the license to a holder of a ~~Class B beer and light wine or a Class B beer, wine and liquor license issued for a restaurant~~ any class of alcoholic beverages license issued by the Board except a Class C license and a Class M-G license; specifying that a holder of the license may sell draft beer for consumption off the licensed premises in a certain refillable container ~~to a certain individual; prohibiting a holder of a license from displaying or providing shelving for beer for off premises consumption; requiring a refillable container to meet certain requirements;~~ requiring an applicant for the license to complete a certain form and pay a certain fee; requiring that certain applicants meet certain advertising, posting of notice, and public hearing requirements ~~be met~~; specifying the term of the license; requiring that receipts collected under the license be included in a certain calculation of average daily receipts; specifying the hours of sale for the license; allowing a holder of the license to ~~exercise the privileges of the license only if the licensed premises is open for business as a restaurant~~ refill only a refillable container that was branded by the license holder; authorizing requiring the Board to adopt certain regulations; making a technical change; and generally relating to alcoholic beverages in Baltimore City.

BY repealing and reenacting, without amendments,

Article 2B – Alcoholic Beverages

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

Annotated Code of Maryland
(2011 Replacement Volume)

BY repealing and reenacting, with amendments,

Article 2B – Alcoholic Beverages

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

Annotated Code of Maryland
(2011 Replacement Volume)

BY adding to

Article 2B – Alcoholic Beverages

Section 8–203(e) and 9–204.1(f)(8)
 Annotated Code of Maryland
 (2011 Replacement Volume)

~~BY repealing and reenacting, with amendments,
 Article 2B – Alcoholic Beverages
 Section 12–113(e)
 Annotated Code of Maryland
 (2011 Replacement Volume)~~

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

Article 2B – Alcoholic Beverages

1–102.

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

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

A. Which accommodates the public;

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

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

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

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

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

(iii) In Harford County a “restaurant” as used in § 5–201 and § 6–201(n)(9) of this article means a business establishment for the accommodation of the public, fully equipped with a proper and adequate dining room, tables, chairs and

sufficient facilities for preparing and serving regular meals, as may be approved by the Liquor Control Board. The Board and Department of Health shall approve its sanitary facilities, running hot and cold water, equipment for the proper cleaning of dishes and kitchenware and adequate toilets. At all times there must be sufficient food on the premises for the regular serving of meals, with a proper sign or signs in front of the establishment designating "restaurant" or food and beverages sold, and not advertising any other business. In this establishment the average gross monthly receipts from the sale of foods cooked or prepared and served on the premises where the license is exercised, and other foods, commodities and items defined by the Liquor Control Board, shall exceed 50 percent of the average monthly receipts from the sale of beer and wine, except that a restaurant serving food and beverages whose gross monthly receipts from the sale of food averages \$1,500 or more may not be required to sell food and food commodities in excess of 50 percent of the average monthly receipts from the sale of beer and wine.

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

6-201.

(d) (1) (v) **1. [In] EXCEPT AS PROVIDED IN SUBSUBPARAGRAPH 2 OF THIS SUBPARAGRAPH, IN an area coterminous with the 47th Alcoholic Beverages District as that district existed before the Legislative Districting Plan was ordered by the Maryland Court of Appeals on June 21, 2002, a Class B beer, wine and liquor license issued for use in a restaurant:**

[1.] A. After July 1, 1991 may not include an off-sale alcoholic beverages privilege;

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

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

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

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

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

1. Whose license was issued before July 1, 1991; and
2. Who prior to July 1, 1991 operated the premises and exercised the sales privileges under the license on Sundays.

8-203.

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

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

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

(2) THE BOARD MAY ISSUE A REFILLABLE CONTAINER LICENSE TO A HOLDER OF ~~A CLASS B BEER AND LIGHT WINE OR A CLASS B BEER, WINE AND LIQUOR LICENSE ISSUED FOR A RESTAURANT~~ ANY CLASS OF ALCOHOLIC BEVERAGES LICENSE ISSUED BY THE BOARD EXCEPT A CLASS C LICENSE AND A CLASS M-G LICENSE.

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

~~(I) IN~~ IN A REFILLABLE CONTAINER WITH A CAPACITY OF NOT LESS THAN 32 OUNCES AND NOT MORE THAN 128 OUNCES; ~~AND~~

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

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

(4) TO BE USED AS A REFILLABLE CONTAINER UNDER PARAGRAPH (3)(I) OF THIS SUBSECTION, A CONTAINER SHALL:

(I) BE SEALABLE;

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

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

(IV) DISPLAY INSTRUCTIONS FOR CLEANING THE CONTAINER; AND

(V) BEAR A LABEL STATING THAT:

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

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

(5) BEFORE THE BOARD ISSUES A REFILLABLE CONTAINER 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) 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) 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) 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) ~~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 BRANDED BY THE LICENSE HOLDER.

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

9-204.1.

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

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

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

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

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

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

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

12-108.

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

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

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

12-113.

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

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

Approved by the Governor, April 10, 2012.