

Department of Legislative Services
Maryland General Assembly
2012 Session

FISCAL AND POLICY NOTE
Revised

House Bill 228

(Delegate Feldman, *et al.*)

Economic Matters

Education, Health, and Environmental Affairs

Consuming Wine Not Bought on Premises - Restaurants, Clubs, and Hotels

This bill allows an individual in a restaurant, club, or hotel with a Class B or Class C alcoholic beverages license to consume wine not purchased from or provided by the restaurant or facility if (1) the wine is consumed with a meal; (2) the individual receives the approval of the license holder; (3) the wine is not available for sale on the license holder's wine list; and (4) the license holder obtains a specified permit from the local licensing board. The license holder is allowed to charge a fee for the privilege of consuming the wine, on which the sales tax must be imposed. The license holder must dispose of any wine that remains after the meal is finished. 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 the open container provisions of the Criminal Law Article. A license holder may not allow an individual who is under 21 years old or who is visibly under the influence of an alcoholic beverage the privilege of consuming wine as provided by the bill.

The bill takes effect July 1, 2012.

Fiscal Summary

State Effect: Minimal. The bill is not expected to significantly affect State tax revenues relating to the sale or consumption of alcoholic beverages.

Local Effect: Potential minimal increase in county licensing board expenditures to handle enforcement. Revenues are not affected.

Small Business Effect: Potential meaningful.

Analysis

Current Law: 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.

The State sales and use tax rate on the sale of alcoholic beverages is 9%.

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 that 26 states, including Virginia 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 limits the corkage fee at \$25.

There were 554 Class B beer and wine licenses; 2,767 Class B beer, wine, and liquor licenses; 39 Class C beer and wine licenses; and 535 Class C beer, wine, and liquor licenses issued in the State in fiscal 2011.

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, however, the fee is subject to the sales tax and is expected to at least partially offset any reduction in sales tax revenues from the sale of wine. Revenues from alcoholic beverage excise taxes are not affected, since wine purchased from a licensee or brought into 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 the corkage fees charged by restaurants. The bill's administrative requirements for the Comptroller can be handled with 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 corkage fee is charged, though some establishments may choose to charge a lesser fee to encourage repeat business or in response to corkage policies of competing restaurants.

Additional Information

Prior Introductions: None.

Cross File: SB 755 (Senator Young, *et al.*) - Education, Health, and Environmental Affairs is identified as a cross file; however, the bills are not identical.

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

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