

DOUGLAS F. GANSLER
ATTORNEY GENERAL

KATHERINE WINFREE
Chief Deputy Attorney General

JOHN B. HOWARD, JR.
Deputy Attorney General



DAN FRIEDMAN
Counsel to the General Assembly

SANDRA BENSON BRANTLEY
BONNIE A. KIRKLAND
KATHRYN M. ROWE
Assistant Attorneys General

THE ATTORNEY GENERAL OF MARYLAND
OFFICE OF COUNSEL TO THE GENERAL ASSEMBLY

April 8, 2013

The Honorable Martin O'Malley
Governor of Maryland
State House
100 State Circle
Annapolis, Maryland 21401-1991

RE: House Bill 672

Dear Governor O'Malley:

We have reviewed and hereby approve House Bill 672, "Montgomery County - Consumption of Wine Not Bought from License Holder - Class H Licenses," for constitutionality and legal sufficiency. While we approve the bill, we write to discuss the interaction of these bills and House Bill 749 and Senate Bill 767, identical bills entitled "Garrett County - Alcoholic Beverages - Licenses, Permits, and Other Authorizations," each of which have passed on third reading in the opposite house with identical amendments, and therefore would be expected to be enacted. It is our view that the provisions of the two bills can be pieced together and given effect. It may be advisable, however, to clean the language up in future legislation.

Last year, the General Assembly enacted Chapter 87, Laws of Maryland 2012, which added a new Article 2B, § 12-107(b)(10), allowing an individual in a restaurant, club, or hotel with a Class B or Class C license allowing the sale of wine to consume wine that the individual brings to the restaurant under certain conditions. House Bill 672 adds restaurants, clubs, and hotels with a Class H license in Montgomery County.¹ House Bill 749 and Senate Bill 767 add establishments in Garrett County which hold a B-B&B license for a bed and breakfast.

¹ It is my understanding that most, if not all, restaurants and hotels in Montgomery hold Class H, rather than Class B, licenses.

While there is no substantive conflict between the two bills, they take substantially different approaches to the changes to be made. House Bill 672 adds a new subparagraph (b)(10)(i), which provides:

This paragraph applies only to a restaurant, club, or hotel for which:

1. In any jurisdiction in the State, a Class B or Class C license allowing the sale of wine is issued; or
2. In Montgomery County, a Class H license allowing the sale of wine is issued.

The bill also amends the original lead-in language of the bill as follows:

An individual in a restaurant, club or hotel [for which a Class B or Class C license allowing the sale of wine is issued] may consume wine not purchased from or provided by the license holder ...

House Bill 749 and Senate Bill 767 add a new subparagraph (b)(10)(i), which provides:

This paragraph applies to an individual in:

1. a restaurant, club, or hotel for which a Class B or Class C license allowing the sale of wine is issued; or
2. An establishment in Garrett County for which a Class B-B&B (bed and breakfast) license is issued.

In these bills, the original lead-in language is amended as follows:

An individual [in a restaurant, club, or hotel for which a Class B or Class C license allowing sale of wine is issued] COVERED UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH may consume wine not purchased from or provided by the license holder ...

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In each bill, item 1 reflects the current law, while item 2 reflects the addition. Unfortunately, the different approach taken in the amendments makes it impossible to simply make one of them item 3. It is our view, however, that if House Bill 749 or Senate Bill 767 is signed after House Bill 749, the section can be codified with the new provisions as (i) and (ii) and the existing language with the amendments from House Bill 672 that appears in each bill as (ii) could be moved to (iii) and reference both (i) and (ii). While the result is not elegant, it would give effect to both bills.

Very truly yours,

A handwritten signature in cursive script, reading "Douglas F. Gansler".

Douglas F. Gansler
Attorney General

DFG/KMR/kk

cc: The Honorable John P. McDonough
Stacy Mayer
Karl Aro