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April 6, 2018

The Honorable Lawrence J. Hogan, Jr.
Governor of Maryland
State House
100 State Circle
Annapolis, Maryland 21401

RE: *House Bill 145, "Montgomery County - Kensington - Alcoholic Beverages Licenses" and House Bill 146, "Montgomery County - Alcoholic Beverages - Class 7 Micro-Brewery License Issuance"*

Dear Governor Hogan:

We have reviewed and hereby approve as to constitutionality and legal sufficiency House Bill 145 and House Bill 146, each of which amend Alcoholic Beverages Article ("AB"), § 25-405 in different and, to some extent, conflicting ways. It is our view that both bills can be signed, but write to suggest a signing order.

As introduced, House Bill 145 did not affect § 25-405, while House Bill 146 provided as to that provision:

(b) The license may be issued to the holder of:

(1) a Class B beer, wine, and liquor (on-sale) license that is issued for use on the premises of a restaurant located in the county;

(2) SUBJECT TO SUBSECTION (C) OF THIS SECTION, a Class D beer and wine license THAT IS ISSUED FOR THE SALE OF BEER AND WINE, AT RETAIL, AT THE PLACE DESCRIBED IN THE LICENSE, FOR ON- AND OFF-PREMISES CONSUMPTION; [or]

(3) a Class H beer and wine license THAT IS ISSUED FOR THE SALE OF BEER AND WINE AT A HOTEL OR RESTAURANT, AT RETAIL, AT THE PLACE DESCRIBED IN THE LICENSE, FOR ON-PREMISES CONSUMPTION; OR

(4) A CLASS BD-BWL LICENSE THAT IS ISSUED FOR THE SALE OF BEER AND WINE FOR ON- AND OFF-PREMISES CONSUMPTION, AND LIQUOR FOR ON-PREMISES CONSUMPTION, AT THE PLACE DESCRIBED IN THE LICENSE.

(C) THE COMPTROLLER MAY NOT ISSUE MORE THAN AN AGGREGATE AMOUNT OF TWO CLASS 7 MICRO-BREWERY LICENSES TO HOLDERS OF CLASS D BEER AND WINE LICENSES IN THE TOWN OF KENSINGTON.

The Fiscal and Policy Note describes the bill as clarifying “that (1) a Class 7 micro-brewery license may be issued to the holder of a Class BD-BWL license in Montgomery County; and (2) the holder of a Class D beer and wine license or Class H beer and wine license must meet certain requirements to obtain a micro-brewery license in the county.”

As for House Bill 145, on third reader it was amended to include the list of licenses the holders of which can be issued a Class 7 micro-brewery license from House Bill 146, but without the additional “clarifying” language with respect to the requirements that must be met to obtain that license. The amendments to House Bill 145 also include new subsection (c) from House Bill 146 which limited the number of Class 7 microbrewery licenses that can be issued in Kensington to two. The third reader version of House Bill 146 remained the same with respect to the licensees who could be issued Class 7 micro-brewery licenses, but the provision limiting the number of micro-breweries in Kensington was deleted.

The changes to the list of licensees in the two bills are not inconsistent, and can, in our view, be combined in a way that retains the changes regardless of signing order. The changes to the Kensington provision are more complicated, however. The provision was apparently deleted from House Bill 146 because the bill drafter believed that it was more

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appropriately included in House Bill 145, which relates to Kensington. To ensure that the provision is preserved, however, House Bill 145, which has the provision, should be signed after House Bill 146, which expressly deletes it.

Sincerely,

A handwritten signature in black ink, appearing to read "Brian E. Frosh". The signature is fluid and cursive, with a long horizontal stroke at the end.

Brian E. Frosh
Attorney General

BEF/KMR/kd

cc: The Honorable John C. Wobensmith
Chris Shank
Victoria L. Gruber