

Department of Legislative Services
Maryland General Assembly
2019 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

Senate Bill 801

(Senator Hayes, *et al.*)

Education, Health, and Environmental Affairs

Economic Matters

Brewery Modernization Act of 2019

This bill makes numerous changes to the regulation of Class 5 breweries, Class 6 pub-breweries, Class 7 micro-breweries, and Class 8 farm-breweries in the State. The bill also alters the eligibility requirements for and privileges associated with a Class 7 limited beer wholesaler's license. **The bill takes effect July 1, 2019.**

Fiscal Summary

State Effect: General fund revenues increase to the extent that the bill results in additional tax revenues from the manufacturing and sale of alcoholic beverages beginning in FY 2020; however, any such impact cannot be reliably estimated. The Comptroller's Office can handle the bill's requirements using existing resources.

Local Effect: Local governments can handle the bill's requirements using existing resources. Revenues are not materially affected.

Small Business Effect: Meaningful.

Analysis

Bill Summary:

Class 5 Breweries

The bill makes the following changes to the manner in which Class 5 breweries are regulated:

- A brewery may serve samples of beer to anyone of legal age that is visiting the brewery, instead of only during tours and events.
- A brewery may brew and bottle malt beverages at a location listed on its individual storage permit.
- A local licensing board may grant a brewery a conditional on-site consumption permit or a conditional Class D beer license, as specified.
- A brewery is authorized to sell any beer that it brews at authorized locations for on-premises consumption, instead of only beer brewed at the brewery itself.
- A brewery may sell up to 5,000 barrels of its own beer each year for on-premises consumption, instead of up to 2,000 or 3,000 barrels under specified circumstances.
- A brewery that obtains a Class 7 limited beer wholesaler's license is authorized to sell up to 5,000 barrels of its own beer annually, instead of 3,000 barrels.
- The hours during which a brewery may sell and serve beer for on-premises consumption apply to any transferee of the breweries licenses.
- The Comptroller is required to, instead of authorized to, include specified information about brewery operations and on-premises consumption activities in its annual report on the alcoholic beverages business in the State.

Class 6 Pub-breweries

Under the bill, the Comptroller must report to specified committees of the General Assembly on the total beer production of each pub-brewery for the preceding fiscal year by October 1 of each year. Each pub-brewery must provide the Comptroller with the information needed for the Comptroller's annual report on the alcoholic beverages business in the State and this information must appear in the Comptroller's annual report.

Class 7 Micro-breweries

The bill makes the following changes to the manner in which Class 7 micro-breweries are regulated:

- A micro-brewery may obtain an additional Class 7 micro-brewery license under specified circumstances.
- A micro-brewery may brew and bottle malt beverages at a location listed on its individual storage permit.
- A micro-brewery, including a brewery that has licenses for two locations, may collectively brew, bottle, or contract for up to 45,000 barrels of beer each year, instead of up to 22,500 barrels.

- A micro-brewery that seeks to produce more than 45,000 barrels of beer in a year is no longer expressly required to divest itself of any retail license or obtain a Class 5 brewery license.
- A micro-brewery that obtains a Class 7 limited beer wholesaler's license is authorized to sell up to 5,000 barrels of its own beer annually, instead of 3,000 barrels.
- A micro-brewery that has licenses for two locations may sell up to 5,000 barrels of its own beer each year for on-premises consumption at each location, instead of up to 4,000 barrels in aggregate from both locations.
- By October 1 of each year, the Comptroller must report to specified committees of the General Assembly on the total beer production of each micro-brewery for the preceding fiscal year. Each micro-brewery must provide the Comptroller with the information needed for the Comptroller's annual report on the alcoholic beverages business in the State and this information must appear in the Comptroller's annual report.

Class 8 Farm Breweries

The bill makes the following changes to the manner in which Class 8 farm breweries are regulated:

- Beer produced by a farm brewery may be stored in any approved and segregated area, instead of only being storable on the licensed farm.
- A farm brewery may store, brew, and bottle malt beverages at a location listed on its individual storage permit.
- A farm brewery may exercise the privileges of its license each day from 10 a.m. to 10 p.m.
- By October 1 of each year, the Comptroller must report to specified committees of the General Assembly on the total beer production of each farm brewery for the preceding fiscal year. Each farm brewery must provide the Comptroller with the information needed for the Comptroller's annual report on the alcoholic beverages business in the State and this information must appear in the Comptroller's annual report.

Class 7 Limited Beer Wholesaler's License

The bill increases the maximum amount of beer that a Class 5 manufacturer's license, a Class 7 micro-brewery license, or a Class 8 farm brewery license may produce annually and be eligible to obtain a Class 7 limited beer wholesaler's license from 22,500 barrels to 45,000 barrels. The bill also increases the amount of a brewery's own beer that a holder of

a Class 7 limited beer wholesaler's license may annually distribute from 3,000 barrels to 5,000 barrels.

Current Law:

Class 5 Breweries

The holder of a Class 5 brewery license may (1) establish and operate a plant for brewing and bottling malt beverages at the location described in the license; (2) import beer from a holder of a nonresident dealer's permit; (3) contract to brew and bottle beer on behalf of other license holders; and (4) sell and deliver beer to a holder of a beer wholesaler's license. There is no limit to the amount of beer that a Class 5 brewery, also called a "production brewery," may produce.

A Class 5 brewery may also serve samples of beer to an individual who participates in a guided tour of the brewery or attends a scheduled promotional event. Generally, the beer brewed at the brewery may also be sold for off-premises consumption at retail in a container other than a keg to an individual participating in a guided tour of the brewery or attending a scheduled promotional event or other organized activity at the brewery. Each individual may purchase up to 288 ounces of beer per visit.

Local licensing boards in the State may issue on-premises consumption permits to applicants that hold a Class 5 brewery license and a Class D beer license. Accordingly, a brewery with a Class D beer license can operate like other bars, the most common type of Class D establishment, meaning that a brewery tap room can often stay open until 2 a.m. A local licensing board that does not issue a Class D beer license must establish an equivalent license and require the applicant to obtain that license before issuing a permit for on-premises consumption.

Class 5 Breweries – Chapter 813 of 2017

Among other things, Chapter 813 of 2017 made three significant changes to the manner in which Class 5 breweries are regulated in the State. First, Chapter 813 increased from 500 barrels to 2,000 barrels the volume of its own beer that a Class 5 brewery may sell each year for on-premises consumption. A brewery may sell or sample an additional 1,000 barrels of its own beer if the additional beer is sold to and purchased back from a licensed wholesaler and the brewery receives permission from the Comptroller's Office. If a brewery produces more than 1 million barrels of beer each year, it must buy any beer it wishes to sell or serve for on-premises consumption back from a licensed wholesaler. Second, Chapter 813 expressly authorized contract brewed beer and allows the contract brewed beer produced at another location to be sold and sampled at the brewery in limited quantities.

Third, Chapter 813 made changes to the hours during which a brewery may sell and serve beer for on-premises consumption. A brewery that acquires the permit and license needed for on-premises consumption after April 1, 2017, is restricted by shortened hours of sale unless the brewery had already filed a brewer's notice form with the U.S. Department of Treasury by that same date. For such a brewery, beer may only be sold for on-premises consumption from 10 a.m. to 10 p.m. each day.

Other Classes of Brewery

A Class 6 pub-brewery license may only be issued to the holder of a Class B beer, wine, and liquor (on-sale) license that is issued for use at a restaurant. The pub-brewery must be located immediately adjacent to the restaurant, and it may brew up to 2,000 barrels of beer each year for consumption at the associated restaurant.

Generally, a Class 7 micro-brewery license may be issued only to the holder of a Class B beer, wine, and liquor (on-sale) license that is issued for use at a restaurant. A license holder may brew, bottle, or contract for up to 22,500 barrels of beer each calendar year. However, any beer produced under a contractual arrangement accrues to the license holder that owns the brand. The license holder is authorized to sell for on-premises consumption up to 4,000 barrels of beer brewed under the license, with specified restrictions.

In general, a Class 8 farm brewery license authorizes the license holder to brew, bottle, or contract for up to 15,000 barrels of beer each year; however, that beer must be manufactured with an ingredient from a Maryland agricultural product, including hops, grain, and fruit, and produced on the licensed farm. The license holder may sell and deliver the beer to a licensed wholesaler or a person in another state authorized to acquire beer.

Class 7 Limited Beer Wholesaler's License

A Class 7 limited beer wholesaler's license may be issued to the holder of a Class 5 brewery license, Class 7 micro-brewery license, or Class 8 farm brewery license but only if the brewery produces not more than 22,500 barrels of beer each year in aggregate from all of its locations. The holder of a Class 7 limited beer wholesaler's license may distribute up to 3,000 barrels of its own beer each year. The annual license fee is \$50.

Individual Storage Permits

An individual storage permit may be obtained by most alcoholic beverages manufacturers. The permit authorizes the establishment of a warehouse to store alcoholic beverages. In Anne Arundel County, a retailer is required to have written approval from the Anne Arundel County Board of License Commissioners before applying to the Comptroller for a permit.

Background: In February 2019, there were (1) 48 Class 5 breweries; (2) 36 Class 7 micro-breweries; and (3) 20 Class 8 farm breweries in the State.

Small Business Effect: The bill significantly expands the privileges associated with Class 5 brewery licenses, Class 7 micro-brewery licenses, and Class 8 farm brewery licenses. Small businesses that have one of these licenses are likely to experience increased production and sales of beer.

Additional Information

Prior Introductions: None.

Cross File: HB 1010 (Delegate Atterbeary, *et al.*) - Economic Matters.

Information Source(s): Comptroller's Office; Baltimore City; Carroll, Harford, Montgomery, and Queen Anne's counties; Department of Legislative Services

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