

Department of Legislative Services
Maryland General Assembly
2010 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 858

(Senator Conway, *et al.*)

Education, Health, and Environmental Affairs

Economic Matters

Maryland Winery Modernization Act

This bill establishes a farmer's market permit that may be issued by the Comptroller. The bill also expands the scope of operations and activities of a Class 4 limited winery licensee.

The bill takes effect June 1, 2010.

Fiscal Summary

State Effect: Potential increase in general fund revenues to the extent that the bill's provisions increase sales of wine and brandy. The Maryland Department of Agriculture (MDA) and the Comptroller's Office can handle the bill's requirements with existing resources.

Local Effect: Minimal decrease in revenues for local governments that will no longer issue Class A light wine licenses; however, local licensing boards will no longer need to regulate these licenses.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: The Comptroller is authorized to issue a farmer's market permit to a holder of a license: (1) other than a Class 4 limited winery license, that allows the holder to sell alcoholic beverages to the public for consumption off the licensed premises; and (2) that was issued by the local licensing board of the jurisdiction in which the farmer's

market will be held. The holder of a permit must notify the local licensing board that the permit has been issued.

A permit may only be used at the farmer's market identified in the permit during the hours of the farmer's market. In addition, the permit may be used only at a farmer's market that is listed in the farmer's market directory of MDA. The Comptroller may issue only one permit for use at each farmer's market. A permit authorizes the holder to: (1) occupy stall space at a farmer's market; (2) offer and sell sealed containers of wine to consumers for consumption off the licensed premises of the farmer's market; and (3) provide at no charge samples of wine not to exceed one ounce per brand to consumers for consumption on the licensed premises of the farmer's market. All wine offered for sale or samplings by the permit holder must be the product of a Class 4 limited winery.

The bill also expands the scope of operations and activities of a Class 4 limited winery licensee. A limited winery is allowed to apply for and obtain, under a different name, one or more additional licenses for the same or other premises. The bill repeals provisions of law related to a Class 4 limited winery (manufacturer's) license and instead establishes that a Class 4 limited winery license allows the licensee to use available Maryland agricultural products to: (1) ferment and bottle wine; (2) distill and bottle pomace brandy; and (3) sell and deliver the wine and pomace brandy to a wholesale licensee or permit holder in the State or a person outside the State that is authorized to acquire the wine and pomace brandy. On or before January 31 of each year, MDA must determine if an insufficient supply of Maryland agricultural products exists. If MDA determines that there is an insufficient supply, a licensee may use agricultural products from outside the State to manufacture wine and pomace brandy.

Except under statutory provisions related to wholesaler's licenses, a licensee does not need to obtain any other license to possess, manufacture, sell, or transport wine or pomace brandy. A licensee may: (1) sell wine and pomace brandy produced by the licensee for consumption; and (2) provide two-ounce samples per brand of its wine and pomace brandy to a customer for free or for a fee. A licensee is authorized to sell or serve only specified food items. However, a licensed caterer is not limited to selling only the food specified in the bill. A licensee or entity in which the licensee has a financial interest may not act as a caterer of food. The bill specifies that laws and regulations relating to the safe handling and distribution of food apply to wineries that handle and distribute food.

Unless otherwise specified, a licensee may only sell wine, brandy, or specified food or provide samples for off-premises consumption and sampling from 10 a.m. to 10 p.m. The same activities for on-premises consumption may be conducted from 10 a.m. to 6 p.m. each day. However, if guests are attending a planned promotional event or other

organized activity on the licensed premises, the permissible hours are from 10 a.m. to 10 p.m. The bill specifies that in Garrett County, Sunday sales only apply if approved through referendum by the voters of the county.

A Class 4 limited winery license permits the holder to operate seven days a week. At least 14 days before holding a planned promotional event after 6 p.m., a licensee must file a proper notice of the promotional event with the Comptroller. A licensee may not sell or allow to be consumed at the location of the limited winery any alcoholic beverage other than the wine or brandy produced by the licensee. The place listed on the Class 4 winery license must be in compliance with any applicable zoning restrictions.

A licensee may:

- store on its licensed premises, in a separate area approved by the Comptroller, the product of other Class 4 limited wineries to be used at bona fide Maryland Wineries Association promotional activities, so long as records are maintained and reports are filed as required by the Comptroller;
- distill and bottle not more than 1,900 gallons of pomace brandy made from available Maryland agricultural products;
- purchase bulk wine fermented by a licensed manufacturer and blend the wine with the holder's wine and brandy, according to specified criteria;
- purchase pomace brandy only for blending with wine;
- import, export, and transport its wine and pomace brandy; and
- produce wine and pomace brandy at a warehouse for which the holder has been issued an individual storage permit, if the holder does not serve or sell wine or pomace brandy at a warehouse to the public and the Comptroller has full access at all times to the warehouse.

A Class 4 limited winery license may be located only at the place stated on the license. If a licensee maintains the records and files the reports required by the Comptroller, the licensee may: (1) in the State, conduct winemaking and packaging activities at another federally bonded winery or limited winery; or (2) outside the State, conduct winemaking and packaging activities other than fermentation, at another federally bonded winery. Throughout the winemaking process, the licensee must maintain ownership of the wine

or pomace brandy and ensure that the wine or pomace brandy returns to the location of the limited winery.

The bill repeals provisions in Carroll and Frederick counties relating to Sunday sales for Class 4 licensees.

The bill requires the Comptroller, on or before December 31, 2010, to submit a report to the General Assembly on the viability and efficacy of instituting the policy of permitting the direct shipment of wine to consumers in the State. The report must include: (1) an evaluation of the best practices used by the states and the District of Columbia that allow direct wine shipment; (2) an evaluation of related fiscal, tax, and other public policy and regulatory issues; and (3) determinations regarding specified factors, including the benefits and costs to consumers and the best practices for preventing access by underage wine drinkers.

By December 1, 2012, the Comptroller must report to the Senate Education, Health, and Environmental Affairs Committee and the House Economic Matters Committee on the impact that the limitation of special event permits has had on the growth of the Maryland wine industry.

Current Law: Class 4 limited winery licenses are issued by the State. A holder of a Class 4 limited winery license may sell limited and specified quantities of wine made at the facility to persons of legal drinking age participating in a guided tour of the facility. A licensee may serve, at no charge, no more than six ounces of wine made at the facility to a person who is participating in a guided tour. A Class A light wine license is issued by the county licensing authority and may be issued to any holder of a Class 4 license. The license authorizes the holder to keep for sale and to sell light wines produced at the winery in any quantity, to any consumer, at retail at the place described in the license.

Background: MDA advises that the State wine industry has grown significantly in the past five years, from 17 licensed wineries to 41. There are 103 farmer's markets in the State. The Comptrollers' Office indicates that the amount of wine sold has been increasing in recent years.

The Federal Liquor Law Repeal and Enforcement Act, also referred to as the Webb-Kenyon Act, prohibits the shipment of alcoholic beverages from one state into another state in violation of any law of the receiving state. Maryland State law provides for a three-tier distribution system and prohibits wineries located inside or outside of the State from delivering wine directly to a resident of the State.

State Revenues: Although there is no fee for the farmer's market permit established under the bill, the permit may increase general fund revenues by increasing the amount of wine sold in the State. The expansion of the permissible activities and operations for Class 4 limited wineries may also increase sales of wine and brandy. The Comptroller's Office advises that in fiscal 2009, Maryland wineries sold the following gallonage: 31,657 to retailers; 101,735 at wineries; 9,451 samples; 133,867 to wholesalers; and 1,279 out of state.

The bill also authorizes a limited winery to obtain an additional license under a different name for the same or another premise. General fund revenues will increase by \$200 for each additional limited winery license that is issued.

State Expenditures: MDA can research and analyze the State grape industry to determine if there is a sufficient supply of Maryland grapes for State wineries using existing resources. MDA advises that it currently performs this duty in conjunction with the Governor's Advisory Commission for Maryland Wine and Grape Growing. Current staff resources at the Comptroller's Office are adequate to issue and administer the new farmer's market permits. In addition, although the bill expands operations for Class 4 limited wineries, the Comptroller's Office can use existing resources to continue monitoring these licensees. The Comptroller's Office can also use existing resources to comply with the bill's reporting requirements.

Local Fiscal Effect: The provisions of this bill will eliminate the need for Class A light wine licenses, which are issued by local licensing boards. In fiscal 2009, there were 28 Class A light wine licenses issued by local boards. Local jurisdictions with Class A light wine licenses will realize a minimal decrease in revenues as a result (annual license fees range from \$50-\$100). However, because local licensing boards will no longer have to perform inspections or otherwise regulate Class A licensees, it is likely that the minimal decrease in revenues will be offset from the decrease in staff time spent administering the Class A licenses.

Small Business Impact: Retail licensees will be allowed to obtain a permit to sell wine at farmer's markets. The expanded provisions of Class 4 limited winery licenses will allow activities (*e.g.* the sale of wine and food) for Class 4 limited wineries without requiring additional licenses or permits. According to a study commissioned by the Maryland Wineries Association, Maryland wineries generate \$40.4 million in economic activity in the State, support 348 jobs earning \$10.9 million in salaries, and generate \$3.3 million in State and local tax revenues.

Additional Information

Prior Introductions: None.

Cross File: HB 921 (Delegate Love, *et al.*) - Economic Matters.

Information Source(s): Maryland Department of Agriculture; Comptroller's Office; Carroll, Garrett, and Montgomery counties; Department of Legislative Services

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