

# REGULATION OF THE ALCOHOLIC BEVERAGES INDUSTRY IN MARYLAND



DEPARTMENT OF LEGISLATIVE SERVICES NOVEMBER 2017

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# **Regulation of the Alcoholic Beverages Industry in Maryland**

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**Department of Legislative Services  
Office of Policy Analysis  
Annapolis, Maryland**

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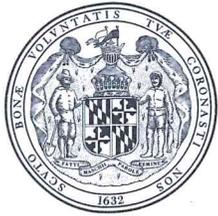
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DEPARTMENT OF LEGISLATIVE SERVICES  
OFFICE OF THE EXECUTIVE DIRECTOR  
MARYLAND GENERAL ASSEMBLY

Warren G. Deschenaux  
Executive Director

November 30, 2017

The Honorable Thomas V. Mike Miller, Jr., President of the Senate  
The Honorable Michael E. Busch, Speaker of the House of Delegates  
Members of the Maryland General Assembly

Ladies and Gentlemen:

The regulation of the alcoholic beverages industry is complex and evolving. The states, which bear the primary responsibility in regulating alcoholic beverages, have seen in the last several decades economic forces prompting manufacturers, wholesalers, and retailers to expand their scope of operations.

In Maryland, the first two tiers of the three tier system used to regulate alcoholic beverages – manufacturing and wholesaling – are regulated by the Comptroller. The third tier – retailing – is regulated by local boards of license commissioners. Breweries and wineries in Maryland may now, under limited circumstances, distribute their product to retailers without going through a wholesaler and sell their product at retail to consumers on their premises. Wineries with a direct wine shipper's permit may ship their wine directly to consumers in the State. Retail license holders without off-sale privileges may sell beer and wine for off-sale consumption in refillable or non-refillable containers. Moreover, certain jurisdictions allow alcoholic beverages to be served at nontraditional venues, such as barbershops, beauty salons, art galleries, and movie theaters.

A recent change under legislation enacted during the 2017 session allows craft brewers to establish a tap room to sell and sample their products. Due to concerns by craft brewers and others over several aspects of the legislation, the Comptroller established a Reform on Tap Task Force. In anticipation of discussions during the 2018 session on this issue as well as on other alcoholic beverages regulation issues, the Department of Legislative Services prepared this report to provide policymakers with a comprehensive overview of the regulation of the alcoholic beverages industry.

The Honorable Thomas V. Mike Miller, Jr., President of the Senate  
The Honorable Michael E. Busch, Speaker of the House of Delegates  
Members of the General Assembly

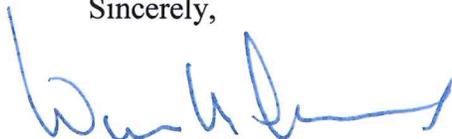
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In the chapters that follow, this report provides an overview of the roles and responsibilities of both the Comptroller and local boards in the regulation of alcoholic beverages, with separate chapters on beer, wine, and liquor. Following these chapters is a comparison of alcoholic beverages regulatory schemes in Maryland and surrounding states, focusing on manufacturers. Finally, this paper offers an analysis of several issues currently confronting alcoholic beverages regulation in Maryland.

The report was written by Sierra S. Boney, Richard L. Duncan, Andrew M. Lantner, and Nathan W. McCurdy. Tami D. Burt, Sara C. Fidler, and Robert K. Smith reviewed the report.

The Department of Legislative Services trusts that this report will be useful to members of the General Assembly and others engaged in deliberations regarding appropriate policy for the regulation of alcoholic beverages in Maryland.

Sincerely,



Warren G. Deschenaux  
Executive Director

WGD/TDB/nac

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# Chapter 1. The History of Alcoholic Beverages in the States

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America's taste for alcoholic beverages is nothing new. In fact, it was well developed during the time of the Puritans. In April 1630, the flotilla led by John Winthrop, founder of the Massachusetts Bay Colony, brought to the colony more than 10,000 gallons of wine and more than three times the amount of beer (42 tons) as water (14 tons).<sup>1</sup> In the nineteenth century, beer, along with brandy and wine, was in high demand, perhaps spurred in part by the fact that beer was often more sanitary than most available water other than rain.<sup>2</sup> Hard cider was especially prized. One mid-westerner named John Chapman planted thousands of apple trees whose fruit was inedible and good only to make cider. Chapman, known to history as "Johnny Appleseed," might be better thought of as the American Dionysus, the Greek god of fertility and wine.<sup>3</sup>

Attempts to protect the public from the dangers of overconsumption date to the Puritans as well. In 1633, just three years after Winthrop's arrival, the Massachusetts Bay Colony enacted a law to limit sales of alcohol in taverns to two drinks per person, which was later amended to exempt strangers.<sup>4</sup> Limits on hours of sale and classes of people (*e.g.*, Native Americans were limited to a quarter of a pint per day), prohibitions against sales on Sunday, and licensing were all concepts in use by the end of the seventeenth century.<sup>5</sup> Moreover, from the colonial period through the Prohibition Era, liquor control focused on either an outright ban on liquor sales or laws regulating the conduct of those trafficking in or using alcohol. On the eve of American entry into World War I, more than two dozen states had enacted Prohibition laws.<sup>6</sup>

## The Prohibition Movement

The major force propelling the Prohibition movement in the early twentieth century was the Anti-Saloon League. Founded in Oberlin, Ohio, in 1893, the league tirelessly railed against the financial ruin and destruction of families caused by drunkenness. The Anti-Saloon League saw its influence spread rapidly by focusing its attention on getting Prohibition candidates elected to local office.

The conditions in the early twentieth century formed a favorable climate for passage of a Prohibition amendment. The Sixteenth Amendment, which allowed the collection of an income tax, was ratified in 1913. Proponents argued that this made a Prohibition amendment feasible, as it ended the federal government's dependence on alcohol taxes. The national emergency created by World War I led supporters of Prohibition to argue that food, such as corn and barley, was not to be wasted, particularly in light of starving Europe. Moreover, the Anti-Saloon League successfully linked Prohibition to patriotism by directing anti-German attacks toward brewers, many of whom were German-Americans. As one writer observed:

An incessant volley of dry propaganda preached that all patriots must be prohibitionists to save food for the starving Allies; that German-Americans were

guilty of spying and treason and drinking beer; that the German armies had committed their atrocities under the influence of alcohol; that the worst Kaiser of all was the liquor Kaiser; and that peace without victory and a land fit for heroes were only possible in an earth free from the jack boots of Hun brewers.<sup>7</sup>

An Anti-Saloon League pamphlet called on legislatures and citizens “to abolish the un-American pro-German, crime-producing, food-wasting, youth-corrupting, home-wrecking, treasonable liquor traffic.”<sup>8</sup>

## **The Prohibition Amendment**

Introduced in Congress in 1917 and ratified by three-quarters of the states on January 16, 1919, the Eighteenth Amendment was implemented in 1920.

From the outset, implementation of the Prohibition amendment through the National Prohibition Act, known informally as the Volstead Act, ran into many difficulties. Remarkably, while the “manufacture, sale, or transportation” of intoxicating liquor was prohibited by the amendment, the possession, consumption, or home production of intoxicating liquor was not. Unsurprisingly, enforcement of the Volstead Act was ineffective. Public corruption increased. Organized crime flourished. The public, which had become increasingly tolerant of drinking, became exposed to unregulated, dangerous liquor. Moreover, the government was deprived of a source of tax revenue while the cost of coping with the damaging effects of Prohibition soared.<sup>9</sup> On many levels, Prohibition was a failure.

## **A Guide to Regulating Alcoholic Beverages Entitled *Toward Liquor Control***

After being in force for 13 years, Prohibition was repealed by the Twenty-first Amendment on December 5, 1933. However, the amendment largely left individual states responsible for the regulation of alcoholic beverages. Neither the amendment nor the federal government gave any guidance as to how this was to be accomplished.

John D. Rockefeller, Jr., recognized the need to fill this gap. Rockefeller had been a strong proponent of total abstinence. While admitting that Prohibition had proven to be a failure, he committed himself to advocating for a policy of temperance as “the next best thing.”<sup>10</sup> He commissioned an attorney, Raymond B. Fosdick, and an engineer, Albert L. Scott, to study how liquor was controlled in other countries. The resulting book, entitled *Toward Liquor Control*, was published in 1933 and quickly became popular among state alcoholic beverages regulators. Today it is widely accepted as the most influential book about alcoholic beverages legislation ever published. As one commentator said, “The model alcohol control laws that grew out of the recommendations of *Toward Liquor Control* reported and disseminated by the National Municipal League, still form the basis for current law and policy.”<sup>11</sup>

Listed below are some of the recommendations made in *Toward Liquor Control* that still resonate today:

**1. Liquor poses the most critical social problem and should be regulated differently from beer and light wine.**

*Toward Liquor Control* ranked alcoholic beverages according to their alcohol content, arguing that the danger each beverage posed increased with its alcohol content. According to *Toward Liquor Control*, beer had an alcohol content of between 3.9% and 6% and was the least intoxicating form of alcohol. “Table wine” or light wine had an alcohol content between 7% and 14%. Liquor, including distilled spirits and fortified wine, had an alcohol content of between 26% and 50%. Consequently, *Toward Liquor Control* urged that liquor be treated as the most dangerous alcoholic beverage.<sup>12</sup>

Although today the average alcoholic content has increased in beer, wine, and liquor, the three types of beverages have continued to be treated differently by regulators. Beer, wine, and liquor have different tax structures, and different licenses are issued for manufacturers, wholesalers, and retailers of the three types of alcoholic beverages.

**2. The root cause of the problem posed by alcoholic beverages is the profit motive. If left unchecked, the profit motive will lead to excessive selling and consumption. Therefore, controlling the profit motive should be the key to alcoholic beverages regulation.**

Prohibition was a disaster, but allowing the country to revert to pre-Prohibition conditions, *Toward Liquor Control* argued, would be equally disastrous. The pre-Prohibition era was marked by the proliferation of saloons that fostered excessive drinking. A saloon was often a “tied house,” as it was often owned or under contract to a large supplier such as a brewery. Free equipment and interest-free loans often induced tied houses to sell the supplier’s products exclusively.

Tied houses were common because they were efficient. Suppliers offered low acquisition costs to the tied house and a guaranteed return to the supplier.<sup>13</sup> But the costs to the public were severe. The supplier was typically located far away, making it difficult for local authorities to regulate. Moreover, the supplier constantly pressured the tied house to increase business. Marketing stratagems used by saloonkeepers to stimulate consumption included aggressive advertising, offering free food, and allowing consumers to drink without purchasing food.

If alcoholic beverages regulation were to curb excessive consumption, *Toward Liquor Control* concluded, the profit motive in the distribution and sale of alcoholic beverages would have to be eliminated or at least put under strict control. Laws would need to be crafted to protect retailers from unfair competition so that retailers would not be tempted to violate the letter or the spirit of the law.<sup>14</sup> Establishing a stable and orderly system for the distribution and sale of alcoholic beverages was essential.

To that end, alcoholic beverages regulators adopted certain prohibitions on retailers that are still in effect. In Maryland, for example, a retailer continues to be prohibited, with few exceptions, from selling an alcoholic beverage to another retailer dealer, or from keeping or allowing to keep any alcoholic beverages on the licensed premises except those that have been purchased by the retailer. A retailer may not offer free food to a customer. Additionally, in many local jurisdictions, restaurants that offer alcoholic beverages must meet minimum food sales requirements.

### **3. Alcoholic beverages are regulated best by a system based on either the control model or licensing model.**

In its most influential recommendation, *Toward Liquor Control* proposed two models to regulate alcoholic beverages: the control model and the licensing model. These models remain the two that are followed in the United States today.

In the control model, a state-owned monopoly may control the wholesaling or the retail selling of alcoholic beverages. Retail operations are conducted through retail state or agency stores, which in Maryland are called dispensaries.

In the licensing model, private parties purchase licenses from the state to sell alcoholic beverages. In Maryland, local retail operations are regulated by each of 25 licensing jurisdictions, which are the City of Annapolis, Baltimore City, and each of the counties in the State. Each licensing jurisdiction has a board of license commissioners that follows the licensing model. Four counties generally follow the licensing model, but follow the control model for certain operations.

In Montgomery County and Worcester County, the control model is implemented by departments of liquor control, which are agencies of the county government. In Montgomery County, the department has a monopoly on the wholesale distribution of beer, wine, and liquor and on the retail distribution of off-sale liquor. In Worcester County, the department generally has a monopoly on the sale and distribution of wine, liquor, or any other alcoholic beverage containing more than 14% of alcohol by volume in the county, although a license holder in the county may elect to purchase wine or liquor from a private licensed wholesaler under certain circumstances.

In Somerset County and Wicomico County, the control model is implemented by liquor control boards, which are autonomous agencies whose members are appointed by the Governor. In Somerset County, the board has a monopoly on the sale and distribution of liquor. In Wicomico County, the board has a monopoly on the sale and distribution in the county of liquor and of wine that contains more than 15.5% alcohol by volume.

The particular systems of licensing in each of the licensing jurisdictions in Maryland are discussed further in Chapter 2 of this paper.

## The Three Tier Distribution System

The distinctive component of the licensing model is the three tier distribution system. Designed to thwart an arrangement called “vertical integration” in which all steps in the supply chain are controlled by the same company, the system separates ownership and operations among (1) manufacturers; (2) wholesalers; and (3) retailers. In its purest form, the system authorizes manufacturers (tier one) to sell only to wholesalers (tier two); wholesalers only to retailers (tier three); and retailers only to consumers. Generally in Maryland, the Comptroller issues statewide licenses to manufacturers and wholesalers, while each licensing jurisdiction issues licenses to retailers to operate within its boundaries.

The key to the three tier system outlined in *Toward Liquor Control* is the second, wholesaler tier, which was a new concept in regulatory practice. Before Prohibition, the alcoholic beverages business had been largely divided into suppliers and retailers. Except in parts of the beer industry, wholesalers did not exist. Many state regulators rejected the control model and instead chose to adopt the three tier system. Interposing a middle tier to prevent direct interaction between supplier and retailer would be the best way, they believed, to eliminate the pressure on retailers to increase sales. Moreover, a wholesaler was “intended to be a local, almost exclusively family-owned business that would spend years and a great deal of capital developing its business marketing brand name alcoholic beverages in its community.”<sup>15</sup> It is interesting to note that many distributors participating at the recent Reform on Tap Task Force hearings conducted by the Comptroller, discussed in Chapter 3 of this paper, have proudly attested to the fact that they are family-owned businesses of long standing.

The relationship between manufacturers and distributors has long been problematic. At the start of the post-Prohibition era, there were far more beer distributors than beer manufacturers; consequently, a distributor typically had only a handful of manufacturers as clients. This imbalance worked to the advantage of the manufacturers, as the loss of even one client could devastate the distributor’s business. To correct this imbalance, Maryland, in 1974, enacted the Beer Franchise Fair Dealing Act.

The Act regulates the agreements, franchises, and relationships between beer manufacturers and their distributors. The law is intended to “foster and promote temperance” by eliminating the undue stimulation of sales of beer by manufacturers that induce or coerce, or attempt to induce or coerce, distributors to act detrimentally to the orderly and lawful distribution of beer. The Act is intended expressly to protect distributors against the termination of distributorships or other acts without good cause for the termination or other acts, and it recognizes that distributors of other alcoholic beverages are not as vulnerable to the economic pressures of the manufacturers as are beer distributors.

Today, however, the positions of manufacturers and distributors have been reversed. With the advent of the craft brewing movement, there are far more brewers in Maryland than there are

distributors. Several brewers at the recent Reform on Tap Task Force hearings have argued that this change makes some of the provisions of the Act inordinately favor distributors, particularly one provision requiring a manufacturer to give notice at least 180 days before terminating or refusing to renew a franchise agreement with a distributor. This notice provision, along with the annual 3,000 barrelage limit on self-distribution that distributors would like to see eliminated (*see* the discussion under “On-premises Consumption” in Chapter 3 of this paper), are the two main issues of contention between beer manufacturers and distributors today.

*Toward Liquor Control* strongly advocated the control model because it demonstrated a way in which profits could be taken out of the alcoholic beverages business entirely and permanently. The merits of the control model were summarized this way: “It would effectively stifle the profit motive for enlarging liquor sales beyond a minimum demand. It would facilitate the control of advertising. It would provide freedom of action in regulating prices and conditions of sale, both as a means of checkmating the illicit dealer and as a method of curtailing the use of spirits. It would eliminate the saloon. It would minimize opportunities for the encroachment of political interference. It would keep clear the road for temperance education.”<sup>16</sup>

Notwithstanding the preference stated in *Toward Liquor Control*, the licensing model quickly became the one chosen by a majority of the states. Today only 17 states and several jurisdictions in Alaska, Minnesota, and South Dakota besides Maryland employ a form of the control model in which the jurisdiction takes ownership of the product at some point in the business cycle. Control jurisdictions constitute only about 25.2% of the nation’s population and roughly 22% of the distilled spirit sales, and a smaller proportion of beer and wine sales. A list of the models employed by each state is shown below in **Exhibit 1.1**.

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**Exhibit 1.1**  
**Control Model and Licensing Model States**  
**As of August 2017**

<u>Licensing Model States</u>	<u>Control Model States</u>
Alaska*	Alabama
Arizona	Idaho
Arkansas	Iowa
California	Maine
Colorado	Michigan
Connecticut	Mississippi
Delaware	Montana
Florida	New Hampshire
Georgia	North Carolina
Hawaii	Ohio
Illinois	Oregon
Indiana	Pennsylvania
Kansas	Utah
Kentucky	Vermont
Louisiana	Virginia
Maryland*	West Virginia
Massachusetts	Wyoming
	Minnesota*
	Missouri
	Nebraska
	Nevada
	New Jersey
	New Mexico
	New York
	North Dakota
	Oklahoma
	Rhode Island
	South Carolina
	South Dakota*
	Tennessee
	Texas
	Washington
	Wisconsin

\*Alaska, Maryland, Minnesota, and South Dakota are states with local jurisdictions that employ some sort of control model.

Source: National Alcohol Beverage Control Association

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## Modern Trends

### At the State Level – Maryland

In the last several decades, economic forces have prompted manufacturers, wholesalers, and retailers to expand their scope of operations, causing a partial melding of the three tier system.

For example, breweries and wineries in Maryland may now, under limited circumstances, distribute their product to retailers without going through a wholesaler and sell their product at

retail to consumers on their premises. Wineries with a direct wine shipper's permit may ship their wine directly to consumers in the State. Retail license holders without off-sale privileges may sell beer and wine for off-sale consumption in refillable or nonrefillable containers. Moreover, certain jurisdictions allow alcoholic beverages to be served at nontraditional venues, such as barbershops, beauty salons, art galleries, and movie theaters.

Temperance concerns have not been at issue in most legislation involving alcoholic beverages regulation; and when bills addressing temperance concerns have been proposed, they generally have not been controversial. For example, legislation that bans "Alcohol Without Liquid" machines, alcohol in powder or crystalline form, and the alcoholic caffeinated drink Four Loko were enacted with little opposition from the alcoholic beverages industry. Even so, there have been exceptions to this pattern. For example, bills to shorten the hours of sale at bars in certain locations for public safety reasons have been opposed by the bar owners because they believe the bills threaten their livelihood.

Proponents for additional safeguards against overconsumption perhaps have met their greatest opposition over a matter – drunk driving – that does not strictly fall into the category of business regulation. In 2001, Maryland enacted legislation that reduced the alcohol concentration level for driving under the influence (DUI) from 0.1 to 0.08 or more as measured by grams of alcohol per 100 millimeters of blood or grams of alcohol per 210 liters of breath. The reduction occurred despite arguments that lowering the alcohol concentration level would criminalize social drinking and harm the business of establishments that serve alcohol. The legislation passed only after several attempts in previous years had failed.

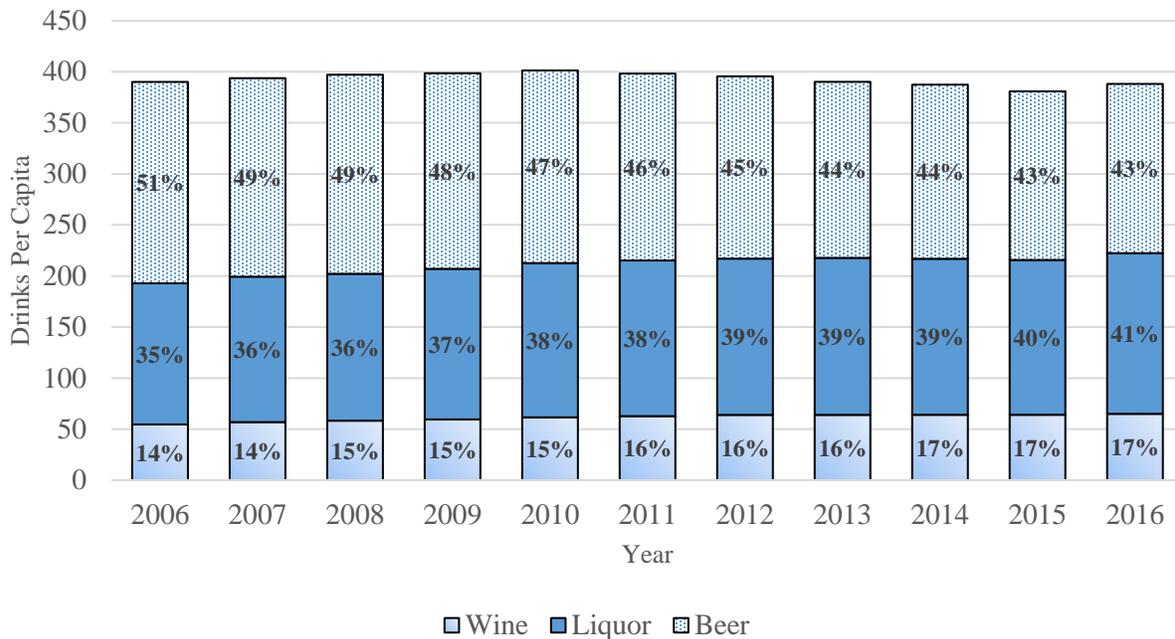
Moreover, despite numerous attempts, Maryland has not enacted a dram shop law. Such legislation, vigorously opposed by the alcoholic beverages industry, would make an alcoholic beverages license holder or the holder's employee liable if the establishment sells or furnishes alcoholic beverages to a visibly intoxicated individual who then injures someone by negligently driving or attempting to drive a motor vehicle.

Additionally, one of the recommendations in *Toward Liquor Control* is to refrain from using taxes on alcoholic beverages as a revenue raising measure. Impose too high a tax, it was argued, and persons would be tempted to manufacture illicit liquor. "Tax rates upon the liquor trade should be viewed as a whole and the objective of taxation should be neither revenue, primarily, nor punishment, but social regulation."<sup>17</sup> Maryland followed this advice and did not raise taxes on alcoholic beverages for decades. In 2011, however, after much debate, Maryland raised the sales and use tax imposed on alcoholic beverages from 6% to 9%.

### **Per Capita Alcohol Consumption Remains Stable over Time in Maryland**

Each year, total consumption of alcoholic beverages in Maryland has remained relatively stable, as shown in **Exhibit 1.2**. Since 2006, Marylanders have consumed between 375 and 400 drinks per capita each year, with a "drink" defined as 1.5 ounces of liquor, 5 ounces of wine, or 12 ounces of beer. While wine consumption has remained relatively constant, beer consumption has steadily decreased while liquor consumption has increased correspondingly.

**Exhibit 1.2**  
**Maryland Per Capita Consumption Chart**  
**Total and Percent by Year**  
**2006-2016**



Notes: Drinks per capita are based on consumption data by gallonage from the Comptroller's Office and a standard drink size of (1) 1.5 ounces for liquor; (2) 5 ounces for wine; and (3) 12 ounces for beer.

Source: Comptroller's Office, Department of Legislative Services

### **At the Federal Level – Commerce Clause and Court Action**

While the Twenty-first Amendment grants states the primary responsibility to regulate alcoholic beverages, thereby promoting temperance and safeguarding public health, it has long been in tension with the Commerce Clause of the U.S. Constitution, which grants Congress the power to regulate commerce among the states.

In the first years after the Twenty-first Amendment was enacted, the Supreme Court interpreted the amendment as providing the states broad powers to regulate the trade in alcoholic beverages even when the provisions appeared to violate the Commerce Clause. According to

*Ziffrin, Inc. v. Reeves*, 308 U.S. 132, 138 (1939), the Twenty-first Amendment allowed states to regulate intoxicating liquors “unfettered by the Commerce Clause.”<sup>18</sup> This, however, is no longer the case. The basis for this reversal lies in how the court has interpreted not only the express language of the Commerce Clause but also its implied meaning.

The Commerce Clause may be seen as consisting of two parts. The plain language of the clause (Art. 1, § 8, cl. 3) grants Congress the power “[t]o regulate Commerce... among the several States.” But since the early 1820s, the Supreme Court has ruled that the Commerce Clause, in addition to explicitly granting power to the states, implicitly imposes a negative constraint on state power. This Constitutional constraint, called the dormant Commerce Clause, generally prohibits a state from impairing interstate commerce.

One early sign of the movement of the Supreme Court away from favoring temperance over commercial interests can be seen in *Bacchus Imports, Ltd. v. Dias*, 468 U. S. 263, 275 (1984), in which the Supreme Court stated that the Twenty-first Amendment “did not entirely remove state regulation of alcoholic beverages from the ambit of the Commerce Clause.” Then in *Granholm v. Heald*, 544 U.S. 460 (2005), the Supreme Court faced the issue of whether the power of a state granted by the Twenty-first Amendment prevailed over the ability of Congress to regulate interstate commerce. The Supreme Court examined laws from New York and Michigan, which authorized in-state wineries but not out-of-state wineries to sell directly to consumers. The court held that “discrimination is neither authorized nor permitted by the Twenty-first Amendment” and, therefore, invalidated the Michigan provisions. Despite arguments that overturning the state laws would threaten a state’s ability to regulate and control access to liquor and would lead to expanded access to alcohol, the Supreme Court held the state laws to be unconstitutional because they exempted domestic wineries from the three tier system without providing the same exception for interstate producers. The Twenty-first Amendment protected state policies, the Supreme Court ruled, as long as they did not discriminate between in-state and out-of-state producers or wholesalers. Thus, state power derived from the Twenty-first Amendment may no longer be seen today as automatically prevailing over interstate commerce concerns. State power must operate within the confines of the dormant Commerce Clause.

Moreover, the express language of the Commerce Clause may prevail when the issue involves commerce wholly within a state. As an example, see *TFWS, Inc. v. Schaefer*, 572 F. 3d 186 (2009), where the U.S. Court of Appeals for the Fourth Circuit held that the post and hold system and volume discount ban long used by the Comptroller of Maryland were unconstitutional. For years, the system and ban were purportedly used to promote temperance by eliminating price wars among liquor wholesalers and by maintaining wholesale prices at stable (and higher) levels. Wholesalers were required to publicly file price schedules and post price changes. These actions gave competitors the chance to match prices the following month. Wholesalers were required to sell to retailers at the prices established in the posted schedule for at least the month following the posting. But the federal Court of Appeals held that the post and hold system and the volume discount ban were part of a single regulatory scheme, constituted hybrid restraints on trade, and were *per se* violations of the Sherman Antitrust Act, which derives its power from the express language of the Commerce Clause. On remand, the District Court held and the circuit court affirmed that the Twenty-first Amendment defense was ineffective in

furthering the state's purported interest in temperance and that the balance weighed in favor of the federal interest in promoting competition. As the court stated:

[U]nsubstantiated state concerns under the Twenty-first Amendment are not sufficient to trump the goals of the Sherman Act; a state must demonstrate that its liquor regulatory policies directly serve [*i.e.*, are effective in furthering] the interests it proffers under the Twenty-first Amendment. In the end, the state's interests must be of sufficient weight to prevail against the federal interest in enforcement of the antitrust laws.<sup>19</sup>

## **Conclusion**

The three tier system, which is the dominant system used in regulating alcoholic beverages today, has fulfilled its original purpose. Chances of reverting to the pre-Prohibition vertical integration system that tied retail establishments to manufacturers, causing excessive consumption and social discord, are virtually nonexistent. Most often, the issues alcoholic beverages regulators confront are wholly economic, as proponents of each tier seeks to enhance its economic position often at the expense of the other tiers. When temperance issues do arise, they are addressed on an individual basis and do not threaten the existence of the system. Although the three tier system is solidly entrenched, the lines separating the three tiers have become blurred and will likely become more so in the future.

In the chapters that follow, this paper examines how alcoholic beverages are regulated in Maryland, with separate chapters on beer, wine, and liquor. Following these chapters is a comparison of alcoholic beverages regulatory schemes in Maryland and surrounding states, focusing on manufacturers. Finally, this paper offers an analysis of several issues now confronting alcoholic beverages regulation in Maryland.



## **Chapter 2. Regulation of Alcoholic Beverages in Maryland**

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In Maryland, the first two tiers of the three tier system used to regulate alcoholic beverages – manufacturing and wholesaling – are regulated by the Comptroller. The third tier – retailing – is regulated by local boards of license commissioners. The following section provides an overview of the role and responsibilities of both the Comptroller and local boards in the regulation process.

### **Regulation of Manufacturing and Wholesale by the Comptroller’s Office**

The Comptroller issues licenses to manufacturers and wholesalers and is responsible for enforcing the laws that are applicable to the purchase or importation of alcoholic beverages. Specifically, two divisions within the Comptroller’s Office are primarily tasked with the regulation process. The Revenue Administration Division (RAD) is responsible for collecting tax revenue from the sale of alcoholic beverages, and the Field Enforcement Division (FED) investigates the manufacture, sale, purchase, use, and transportation of alcohol.

#### **Revenue Administrative Division**

RAD is responsible for receiving and processing the tax returns and payments for the taxes administered by the Comptroller.

Maryland imposes a tax on all alcoholic beverages in the State, including beverages that have been transported into Maryland from another state. Any alcoholic beverage on which a tax has not been paid is considered contraband.

- For distilled spirits, the tax is \$1.50 for each gallon or 39.63 cents for each liter.
- On alcoholic beverages that exceed 100 proof (50% alcohol by volume), there is an additional tax of 1.5 cents per gallon increase per proof, or a .3963 cents increase per liter for each additional proof.
- The tax rate for wine is 40 cents for each gallon or 10.57 cents for each liter.
- The tax rate for beer is 9 cents per gallon or 2.3778 cents for each liter.

The revenue generated from the tax imposed on wine is distributed to the Maryland Wine and Grape Promotion Fund housed in the Maryland Department of Agriculture. Tax stamps are purchased for any container of alcohol one half pint or larger as a form of tax payment. An additional tax is imposed on alcoholic beverages sold from a dealer outside of Maryland if the dealer’s state imposes a discriminatory tax on Maryland dealers.

Alcoholic beverages license holders must submit certain alcohol returns and reports to the Comptroller's Office, most of which are required to be submitted monthly. As shown in **Exhibit 2.1**, report deadlines are set based on the type of license held. All taxes on alcoholic beverages are imposed by the State. Local jurisdictions are prohibited from imposing a tax on alcoholic beverages.

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**Exhibit 2.1**  
**Alcohol Tax Returns and Reporting Due Dates**

<u>Return/Report</u>	<u>Due Date</u>
Wholesale Beer Reports	The tenth of the month following the month for which the report is submitted.
Wholesaler/Manufacturer – Wine & Distilled Spirits Tax Returns	The tenth of the month following the month for which the returns are submitted.
Maryland Brewery Tax Returns, along with a copy of the Federal Brewer's Report of Operations	The tenth of the month following the month for which the returns and report are submitted.
Non-resident Winery Returns	The tenth of the month following the month for which the returns are submitted.
Non-resident Dealer Beer Tax Returns	The fifteenth of the month following the month for which the returns are submitted.
Railroad, Steamboats, and Airplanes Tax Returns	The twenty fifth of the month following the month for which the returns are submitted.
Family Beer and Wine Facility Permit Report	The fifteenth of October (filed yearly).
Charity Wine Auction Permit Holder Report	30 days after the auction is held.

**Source:** Comptroller's Office, Department of Legislative Services

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### **Field Enforcement Division**

FED agents are charged with investigating violations of State revenue laws pertaining not only to alcoholic beverages violations, but also to violations involving tobacco, trader's and transient vendors' licenses, the sales and use tax, the International Fuel Tax Agreement, and motor fuel taxes.

As a part of the regulatory authority of FED, the Comptroller may inspect and search building and space premises where alcoholic beverages are housed, use equipment to measure quantity and quality of alcoholic beverages, and issue summonses for witnesses for hearings and inquiries. The Comptroller works with State's attorneys to provide evidence against individuals in possession of contraband alcoholic beverages, or selling alcoholic beverages without authorization.

Investigations conducted by the agents may result in an arrest or a criminal citation. FED agents also work closely with other state law enforcement agencies and federal law enforcement agencies to monitor and arrest individuals that live in the State or who live outside the State but commit revenue crimes in Maryland.

## **Regulation of Retail Licenses by the Local Boards**

Maryland's 23 counties, the City of Baltimore, and the City of Annapolis all have boards of license commissioners. Four of these 25 licensing jurisdictions also have a liquor control board or department of liquor control that holds a partial or total monopoly on the wholesale distribution of alcoholic beverages within that jurisdiction. These four jurisdictions are discussed in greater detail later in this chapter.

The local boards of license commissioners may issue licenses in their jurisdictions to individuals. They may not issue licenses to partnerships, corporations, or limited liability corporations, but the individual receiving a license may act on behalf of an incorporated or unincorporated entity. Generally, a license on behalf of a partnership is issued to three individuals; a license on behalf of a corporation or incorporated or unincorporated club is issued to three officers of the corporation or club; and a license issued on behalf of a limited liability company is issued to three authorized individuals. A local board may restrict the number of licenses for a neighborhood, divide a municipality into licensing districts, and determine areas in which a license may not be issued.

A board of license commissioners is composed of three or five members. About half of the boards are appointed by the Governor, while the other half are appointed by a local governing body or are the local governing body sitting as the board. As shown in **Exhibit 2.2**, in some jurisdictions, the county council or county commissioners choose the local licensing board or sit as the board.

**Exhibit 2.2**  
**Boards of License Commissioners by Jurisdiction**

<u>County</u>	<u>Number of Members</u>	<u>Appointment Authority</u>
Allegany	3	Governor
City of Annapolis	5	Mayor
Anne Arundel	3	Governor
Baltimore City	3 (plus 1 substitute)	Mayor and President of City Council <sup>1</sup>
Baltimore	3 (plus 2 substitutes)	County Executive
Calvert	3 (plus 1 substitute)	Governor
Caroline	3 (plus 1 substitute)	Governor
Carroll	3 (plus 1 substitute)	County Commissioners
Cecil	3	County Commissioners
Charles	5	County Commissioners
Dorchester	5 <sup>2</sup>	N/A
Frederick	3	Governor
Garrett	3	Governor
Harford	5	County Executive
Howard	5 <sup>3</sup>	County Executive
Kent	3 <sup>4</sup>	N/A
Montgomery	5	County Executive
Prince George's	5	County Executive
Queen Anne's	5	County Commissioners
St. Mary's	5	Governor
Somerset	3	Governor
Talbot	3	Governor
Washington	3	Governor
Wicomico	3	Governor
Worcester	3	Governor

<sup>1</sup> In Baltimore City, the Mayor appoints two members, and the President of the City Council appoints one member and one substitute member.

<sup>2</sup> In Dorchester County, the five member county council sits as the board, and each member may appoint one substitute.

<sup>3</sup> In Howard County, the five member county council sits as the board, and hearing authority is delegated to a five member Alcoholic Beverage Hearing Board. The county executive is responsible for appointing the five member board from lists generated by the council members.

<sup>4</sup> In Kent County, the three county commissioners sit as the board.

Source: Department of Legislative Services

## Four Most Common Retail Licenses

Within each jurisdiction, the most common type of retail licenses are Class A, Class B, Class C, and Class D licenses. Each license authorizes the sale of alcoholic beverages in a different manner. While the general requirements and authorizations of the licenses are the same, these licenses are subject to additional restrictions as determined by each jurisdiction. Local boards can also restrict the issuance of a particular license class within the jurisdiction. For example, in some jurisdictions, a license may not be issued for a business that is located too close to a school or church. **Exhibit 2.3** shows the total number of these licenses issued by each jurisdiction in fiscal 2016.

- Class A licenses authorize the sale and serving of alcoholic beverages for consumption off of the licensed premises. In many jurisdictions, these are liquor stores or stores that primarily sell alcoholic beverages with other related products such as glasses and soda.
- Class B licenses authorize the sale and serving of alcoholic beverages with food, and generally can only be issued for use at a hotel or restaurant. This type of license can authorize both on- and off-premises sales depending on the jurisdiction.
- Class C licenses authorize the sale and serving of alcoholic beverages for on-premises consumption at clubs and nonprofit organizations. For example, American Legion clubhouses can generally acquire a Class C license.
- Finally, Class D licenses may authorize the sale and serving of alcoholic beverages for on-premises or on- and off-premises consumption. In such an establishment, alcohol can be sold without food. The most common type of Class D retailers are bars and taverns. In addition, each class of license may authorize the sale of (1) beer; (2) beer and wine; or (3) beer, wine, and liquor.

**Exhibit 2.3**  
**Retail License – Local Liquor Boards**

	A	B	C	D	Total Beer	A	B	C	D	Total Beer and Wine	A	A	B	C	D	Total Beer, Wine, and Liquor
Baltimore City					0	28	14	13	48	103		2	344	65	52	718
Allegany				4	4	9		1	50	60			3	30	57	90
Anne Arundel					0	1	49	2	4	56		79	279	39	108	505
City of Annapolis		2			2	4	13			17		14	67	9	1	91
Baltimore				1	1	11	9	12	1	33		179	323	83	150	735
Calvert	8			1	9	5	7			12		28	51	10	10	99
Caroline	5	1		2	8	6	2			8		16	6	4	3	29
Carroll			1		1	1	13	1	3	18		41	74	15		130
Cecil					0	4	8		1	13		23	89	17		129
Charles					0				8	8		26	68	10	63	167
Dorchester	19				19	15	8	1	5	29		16	23	9		48
Frederick	13	8		4	25	29	25	2		56		54	151	37		242
Garrett	1			5	6	5	9		4	18			24	1	26	51
Harford					0	7	24			31		45	83	26	8	162
Howard				1	1		21		3	24		62	157		32	251
Kent		2		1	3	9	10			19		13	24	8	2	47
Montgomery		1			1	158	19		91	441			552	37	5	594
Prince George's	4	4		32	40	7	27	1	48	83		138	315	41		494
Queen Anne's	2	2			4	9	5			14		16	32	10	8	66
St. Mary's	1			3	4	5	8			13		45	59		43	147
Somerset	1				1	17	2		3	22			6	6	6	18
Talbot					0	11	42			53		15	66	10		91
Washington	1		1		2	2	4			6		38	19	26	35	118
Wicomico				1	1	63	4		5	72		3	52	15	2	72
Worcester		1		1	2	49	38		11	98			150	15	34	199
<b>TOTAL</b>	<b>55</b>	<b>21</b>	<b>2</b>	<b>56</b>	<b>134</b>	<b>455</b>	<b>53</b>	<b>33</b>	<b>285</b>	<b>1307</b>	<b>0</b>	<b>1</b>	<b>301</b>	<b>523</b>	<b>645</b>	<b>5293</b>

(1) County Dispensaries: Montgomery, Somerset, Wicomico, Worcester

(2) Caroline, Dorchester, Queen Anne's, and Washington counties permit two licenses to same premises in certain cases.

## **Four Jurisdictions with Wholesale Monopolies**

The four jurisdictions with wholesale monopolies are Montgomery County, Somerset County, Wicomico County, and Worcester County. Each county has a board of license commissioners and either a department of liquor control (DLC) or a liquor control board.

### **Montgomery County**

The Montgomery County Board of License Commissioners issues licenses for the sale of alcoholic beverages and may revoke or suspend licenses, or issue fines up to \$20,000 for violations. If a license is revoked, the board may issue a license for the same premises to a person other than the former license holder in the same manner as the board considers an application for a new license.

The Montgomery County Department of Liquor Control is a separate county agency that maintains a monopoly on the wholesale distribution of beer, wine, and liquor. As a result and with limited exceptions, a licensed retailer may sell only alcoholic beverages that are purchased from the department. DLC holds a monopoly on the retail sale of liquor for off-premises consumption and shares the retail sale of beer and wine with more than 900 licensed retailers in the county. The DLC operates dispensaries in order to sell alcoholic beverages at retail. The prices at each dispensary must be the same throughout the county.

The proceeds from the sale of alcoholic beverages go to the Liquor Control Fund which is used to pay the department's operating expenses. Additional revenue is transferred to the Montgomery County general fund.

### **Somerset County**

The Somerset County Board of License Commissioners issues licenses for the retail sale of alcoholic beverages and may revoke or suspend licenses or issue fines for violations. After revoking a license, the board may not issue another license to the person whose license is revoked, and may decide not to issue another license for the same premises.

The Somerset County Liquor Control Board has a monopoly on the sale and distribution of liquor in the county. The liquor control board purchases alcoholic beverages from manufacturers and wholesalers, and from individuals with a dealer's permit. Once the alcoholic beverages are purchased, the liquor control board sets the prices for alcoholic beverages sold in the county, determines the quantity that may be sold to a consumer at one time, and sells and resells products. The liquor control board may also refuse to sell to anyone whom the liquor control board considers an unsuitable purchaser.

The liquor control board dispensaries may sell any alcoholic beverage except beer and may sell alcoholic beverages only in sealed containers. Dispensaries in the county may be located only in Crisfield, the West Princess Anne election district, and the Dublin election district.

Proceeds from the purchase of alcoholic beverages go first to the payment of any debt accumulated by the liquor control board. After repayment of debt, the board may maintain a reserve fund up to \$150,000 to support the dispensary operations. Seventy-five percent of the remaining funds received from the Crisfield and West Princess Anne dispensaries and all of the remaining proceeds from the Dublin election district dispensary are given to the county. The remaining 25% of proceeds from Crisfield and West Princess Anne is divided between the two localities.

### **Wicomico County**

The Wicomico County Board of License Commissioners issues licenses for the retail sale of alcoholic beverages and may revoke or suspend licenses or issue fines for violations. After revoking a license, the board may not issue another license to the person whose license is revoked, may not issue another license to the person whose license is revoked, and may decide not to issue another license for the same premises.

The Wicomico County Liquor Control Board has a monopoly on the sale and distribution of liquor and of wine that contains more than 15.5% alcohol by volume.

Dispensaries may sell sparkling or fortified wine or other alcoholic beverages containing more than 14% alcohol by volume in sealed containers. They may also sell chilled and nonchilled beer, wine, liquor, ice, and bottled wine. A holder of a liquor store, restaurant, or club license must purchase wholesale liquor from a dispensary at a markup not exceeding 15% above the operating cost to the dispensary, while the markup for a holder of a tavern license may not exceed 15% above the wholesale cost to the dispensary. Dispensaries may hold wine tasting events under certain restrictions, as listed below:

- dispensaries may not serve to a consumer more than one ounce of wine from each brand;
- not more than six bottles of wine may be open at any one time;
- not more than 10 days' worth of events may be held each year;
- bottles of wine opened at the event must be labeled for sampling only;
- the contents of a wine bottle may not be mixed with contents of another wine bottle;
- all empty wine bottles must be destroyed; and
- drive-through sampling is not allowed.

## **Worcester County**

The Worcester County Board of License Commissioners issues licenses for the retail sale of alcoholic beverages and may revoke or suspend licenses or issue fines for violations. After revoking a license, the board may not issue another license to the person whose license is revoked, and may decide not to issue another license for the same premises.

The Worcester County Department of Liquor Control maintains a monopoly on the sale and distribution of wine, liquor, or any other alcoholic beverage containing more than 14% of alcohol by volume. The department may not charge a license holder more than 85% of the retail price. A license holder may purchase beer and wine containing 14% alcohol or less from a wholesaler.

The department may purchase alcoholic beverages from manufacturers, wholesalers, and individuals with dealer permits. The department may resell alcoholic beverages in sealed containers, at dispensaries, at uniform prices determined by the department. The department may also determine the quantity of alcohol sold to an individual and may refuse to sell to anyone who is considered unsuitable. The department may act as a wholesaler for the county and may purchase wine and liquor on a pretax basis from a wholesaler, but any products purchased in this manner may be sold to a person other than a dispensary and may only be sold after taxes have been paid.

Dispensaries may sell any alcoholic beverage except beer, but may sell alcoholic beverages only in a sealed container. Dispensaries may be established only in Berlin, Ocean City, Pocomoke City, Snow Hill, a rural area approved by the department, and a housing development. In order for a dispensary to be established in a housing development, the development must have at least 10,000 individuals, a homeowners association, and a special police force. Currently, as the department transitions from acting as a wholesaler, there is only one dispensary in Pocomoke City.

Recently, the department has reduced both its wholesale and retail operations. In July 2014, a license holder in the county gained the opportunity to elect to purchase wine or liquor from a wholesaler, instead of or in addition to the department. The license holder must provide notice to the department at least 60 days before the date the purchasing activity is to start.

In 2016, as a result of the county's intention to phase out its dispensaries, the board acquired the authority to issue a Class A beer, wine, and liquor license to an individual for use at a dispensary previously operated by the department. With this license, a private retailer may sell wine and liquor for off-premises consumption directly to consumers.



## Chapter 3. Beer Manufacturer's Licenses and Permits

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### State Licenses

Brewers (beer manufacturers) in Maryland are required to obtain one of four types of State license: a Class 5 brewery license, a Class 6 pub-brewery license, a Class 7 micro-brewery license, or a Class 8 farm brewery license. Each license is issued by the Comptroller for an annual fee of \$200 or \$500 depending on license class. Each class of license specifies the amount of beer that may be brewed each year, the type of location that may be licensed, and the manner in which beer may be sold. According to the Comptroller's Office, as of September 2017, there were in the State:

- 35 licensed Class 5 breweries;
- 1 licensed Class 6 pub-brewery;
- 28 licensed Class 7 micro-breweries; and
- 16 licensed Class 8 farm breweries.

The specific brewing limits, permissions, and obligations for each type of license are discussed below.

#### Class 5 Brewery License

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. The annual license fee is \$200.

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. Subject to the requirements of an on-premises consumption permit, discussed later in this chapter, beer brewed at a brewery may also be sold for on-premises consumption.

### **Class 6 Pub-brewery License**

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. The annual license fee is \$500.

The beer may also be sold at retail for off-premises consumption if it is sold in a sealed refillable container. However, a holder of a Class 6 license may not sell beer to a retail dealer in the State for subsequent sale or distribution. The pub-brewery license is void if the business ceases to operate a restaurant, or the Class B beer, wine, and liquor (on-sale) license is revoked or transferred.

### **Class 7 Micro-brewery License**

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 annual license fee is \$500.

A holder of a Class 7 micro-brewery license may (1) brew and bottle malt beverages at the location described in the license; (2) obtain a Class 2 rectifying license for a premises located near the Class 7 micro-brewery location to bottle malt beverages brewed at the micro-brewery location; (3) contract to brew and bottle malt beverages on behalf of other license holders; (4) store the finished product for subsequent sale and delivery; and (5) enter into a temporary delivery agreement with a distributor to deliver beer to a beer festival or a wine and beer festival, and to return any unused beer.

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. A license holder may sell at retail beer brewed under the license for off-premises consumption in a sealed refillable container or a nonrefillable container as discussed later in this chapter.

### **Class 8 Farm Brewery License**

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. The annual license fee is \$200.

A license holder may sell beer produced by the license holder for on-premises consumption under specified circumstances. A holder may also (1) contract with other license holders to brew

and bottle beer from ingredients produced on the licensed farm; (2) import, export, and transport its beer; (3) store beer at a warehouse; and (4) enter into a temporary delivery agreement with a distributor only for delivery of beer to a beer festival or a wine and beer festival, and the return of any unused beer under specified circumstances. State law limits the location of the Class 8 farm brewery, the days of operation, and the hours of sale.

## **State Permits**

Licenses are generally required for the manufacturing, wholesaling, and retail selling of alcoholic beverages; however, other alcoholic beverages privileges, such as optional privileges that may be acquired by a license holder and privileges of limited duration are granted by the Comptroller by permit. The following section contains descriptions of a few of the most common permits issued by the State and one related permit issued by local licensing boards.

### **Brewery On-premises Consumption Permits – Tap Rooms**

Local licensing boards in the State may issue on-premise 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-premise consumption. Under Chapter 813 of 2017, discussed in greater detail later in this chapter, a brewery may sell up to 2,000 barrels of its own beer each year for on-premises consumption. Chapter 813 also authorizes a brewery to sell or sample an additional 1,000 barrels of its own beer each year, but to take advantage of this overall 3,000 barrel limit, the brewery must sell the additional 1,000 barrels of beer to a licensed wholesaler and then purchase it back. A local licensing board may charge a fee for the on-premise consumption permit.

Beer sold for on-premises consumption must meet specified requirements regarding where the beer is brewed. Holders of an on-premises consumption permit and a Class D license acquired after April 1, 2017, are restricted by shortened hours of sale.

### **Refillable Container and Nonrefillable Container Permits**

The Comptroller may issue a refillable container permit for draft beer to a holder of a Class 5 brewery license. These refillable containers are commonly known as “growlers.” The hours of sale for a refillable container permit are the same as the hours when a guided tour, a promotional event, or other organized activity at the licensed premises may be conducted.

A nonrefillable container permit authorizes the sale of draft beer for off-premises consumption by packaging the beer in a nonrefillable container that meets certain standards. These nonrefillable containers, essentially large beer cans, are commonly known as “growlers.” This permit may be issued by the local licensing board in 19 counties, Baltimore City, and the City of Annapolis. The terms and hours of sale for a nonrefillable container permit are the same as those of the underlying license.

The permit fees for these permits vary by jurisdiction. However, in most cases, the fee for each permit is \$50, if the applicant for the permit has a license with an off-sale privilege (*i.e.*, the license allows the holder to sell booze for consumption off the licensed premises), and \$500 for an applicant whose license does not have an off-sale privilege.

### **Brewing Company Off-premise Permits**

A brewing company off-premise permit may be issued by the Comptroller to (1) a Class 5 brewery; (2) a Class 7 micro-brewery; or (3) a Class 8 farm brewery. During specified events listed in State law, such as the Maryland State Agricultural Fair, a permit holder may provide samples of beer, sell up to 288 ounces of beer that has been produced by the permit holder for off-premises consumption, and except for specified farmers’ markets, sell up to 288 ounces of beer produced by the permit holder for on- and off-premises consumption. The permit fee is \$100.

A person that holds a brewing company off-premise permit may use the permit at a nonprofit beer festival that has as its primary purpose the promotion of Maryland beer and is authorized by a local licensing board.

### **Nonprofit Beer Festival Permits**

A nonprofit beer festival permit authorizes the permit holder to conduct a nonprofit beer festival for one to three consecutive days, and purchase beer at wholesale to provide samples and sell for on- and off-premises consumption. The Comptroller may issue a nonprofit beer festival permit to a nonprofit organization. The permit fee is \$100.

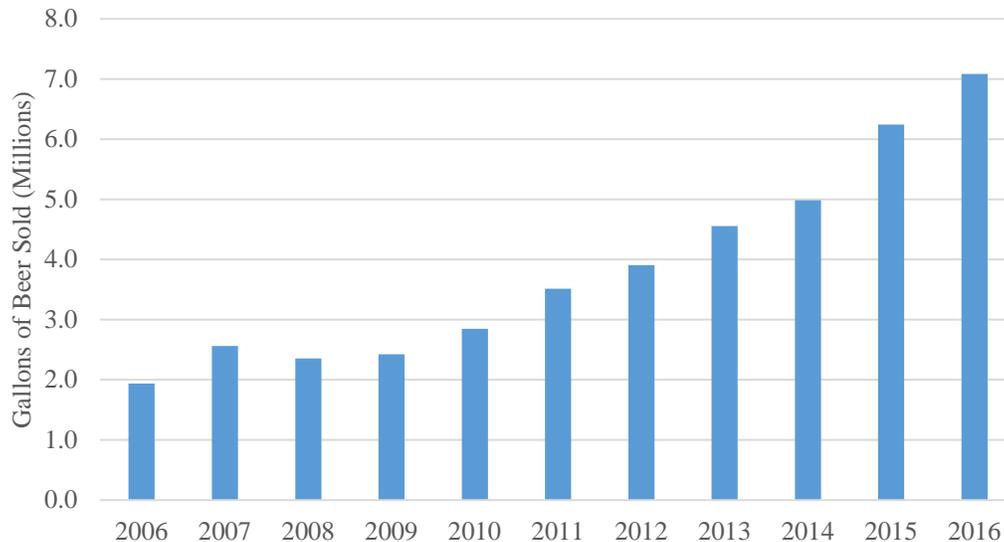
The permit holder must provide space at a nonprofit beer festival for holders of brewing company off-premise permits. A holder of a brewing company off-premise permit that attends a nonprofit beer festival may provide beer to a consumer in the same manner as the holder of the nonprofit beer festival permit.

## **Class 5 Breweries – Tap Rooms (On-premise Consumption), Contract Brewing, and Hours of Operation**

As shown below in **Exhibit 3.1**, the Maryland brewery industry has grown substantially in recent years. This has largely been in tandem with a national trend towards craft beer. With the

industry expanding so rapidly, the legislature has passed and proposed numerous bills to alter the regulation of brewing.

**Exhibit 3.1**  
**Total Beer Sales by Breweries in Maryland (Galleonage)**  
**2006-2016**



Note: Includes sales at a brewery, out-of-state sales, beer consumed on premises, tour sales, and beer returned to a brewery.

Source: Comptroller's Office, the Department of Legislative Services

### **Legislation During the 2017 Legislative Session**

In January 2017, the alcoholic beverage conglomerate Diageo announced its plans to open a Guinness brewery in southwest Baltimore County. Diageo is a London-based company that owns common alcoholic beverage brands including Smirnoff, Bailey's, and Guinness. The company planned for the brewery to produce beer other than its trademark Guinness stout, but expressed interest in establishing a tap room to sell and sample the stout and its other products. At that time, Guinness lobbied the General Assembly to change the law regulating on-premises sales and sampling for Class 5 breweries because the law only allowed the sale and sampling of up to 500 barrels (approximately 125,000 pints) of beer in tap rooms and it did not allow the sale and sampling of beer that was brewed at another location. This meant that Guinness would not have been able to sell its trademark stout at the brewery.

After numerous debates and discussions of proposed bills and the involvement of the Brewer’s Association of Maryland (BAM) and the Maryland Restaurant Association, House Bill 1283 of 2017 was passed, enacted as Chapter 813 of 2017, and took effect on July 1, 2017. Among other things, the Act addressed three significant issues that were brought up during the discussions.

### **Tap Rooms (On-premises Consumption)**

The first issue addressed by the Act was the barrel limit for on-premises sales and sampling. 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. Additionally, 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. The change allows a brewery to sell significantly more of its own beer in its tap room; however, if a brewery produces more than 1.0 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. The bill also altered limits on sampling of beer, authorizing a brewery to provide up to 18 ounces of beer for sampling.

A comparison of the on-premises consumption brewery laws for Maryland and its surrounding states can be found below in **Exhibit 3.2**.

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### **Exhibit 3.2**

#### **Comparison of On-premises Consumption Brewery Laws By State**

#### **As of June 2017**

	<u><b>MD</b></u>	<u><b>DC</b></u>	<u><b>DE</b></u>	<u><b>PA</b></u>	<u><b>VA</b></u>	<u><b>WV</b></u>
On-premises Sales	Yes – 2,000 barrel limit*	Yes No limit	Yes No limit	Yes No limit	Yes No limit	Yes
Samples	Yes Limit: 18 oz	Yes Limit: 12 oz	Yes Limit: None	Yes Limit: None	Yes Limit: 12 oz	Yes Limit: 20 oz

\* A brewery in Maryland may sell an additional 1,000 barrels if certain conditions are met.

Source: Comptroller’s Office Field Enforcement Division

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### **Contract Brewing**

The second issue addressed by the Act was “contract brewing.” Contract brewing is the process by which a brewery, usually a small or new brewery, contracts with another alcoholic

beverage manufacturer to complete some or all of the brewing process on behalf of the brewery and under the brewery's trade name. For example, a new brewery might not have the equipment necessary to bottle its beer. The new brewery could contract with another brewery to use its equipment, shipping the completed product for the bottling process, then taking the completed product back to its own warehouse. Although it had been generally assumed that any production brewery would be authorized to do contract brewing, it became clear during the debate on House Bill 1283 that the existing Class 5 statute did not actually authorize contract brewing, unlike the Class 7 and Class 8 brewery laws. Chapter 813 authorizes contract brewed beer and allows the contract brewed beer produced at another location to be sold and sampled at the brewery in limited quantities.

### **Hours of Operation**

The third major issue that was addressed by the Act relates to the hours during which a brewery may sell and serve beer for on-premises consumption. An early version of House Bill 1283 would have limited the hours and days of sale at all Class 5 breweries for on-premises consumption as enacted, Chapter 813 does not limit the hours of sale for existing breweries that serve and sell beer on-premises, but does limit hours for new breweries. Specifically, the limitation applies to any brewery that obtains an on-premise consumption permit and a Class D beer license or equivalent license or an interest in such a license and permit after April 1, 2017, unless the brewery had already filed a brewer's notice form with the U.S. Department of Treasury by that same date. Such a brewery may only sell or serve beer from 10 a.m. to 10 p.m. each day.

### **Establishment of Reform on Tap Task Force**

In April 2017, BAM published a number of criticisms of the final version of House Bill 1283. Specifically BAM expressed concerns over the limited operating hours for new breweries, and the bill's requirement that a brewery purchase its own beer back from a licensed wholesaler under the circumstances described above.

As a result of these and other industry concerns, the Comptroller established the Reform on Tap Task Force in April 2017. The stated goal of the task force is to modernize Maryland's beer laws and promote economic growth across the State. At this time, the task force has had numerous meetings located at breweries throughout the State to discuss the benefits and challenges associated with the three tier system, as well as the laws and regulations governing the business relationship between manufacturers and wholesalers, wholesalers and retailers, and retailers and manufacturers.

The task force is planning to publish its findings soon after its last meeting scheduled for November 2017.



## Chapter 4. Winery Licenses and Permits

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### State Licenses

The Comptroller issues two classes of licenses for wineries: the Class 3 winery license and the Class 4 limited winery license. According to the Maryland Wineries Association, there were only 7 total wineries in the State in 1970, whereas, according to the Comptroller's Office, as of September 2017, there were:

- 4 licensed Class 3 wineries; and
- 87 licensed Class 4 limited wineries.

The specific production limits, permissions, and obligations for each type of license are discussed below.

#### Class 3 Winery License

A Class 3 license allows the license holder to acquire bulk wine from out of state. The holder may import bulk wine from the holder of a nonresident dealer's permit and may sell and deliver wine to a holder of a wholesaler's license, a holder of a permit that is authorized to acquire wine, and a person outside the State that is authorized to acquire wine. The license also allows the holder to sell at retail wine made at the plant from products grown in the State to persons on a guided tour of the plant. The annual license fee is \$750.

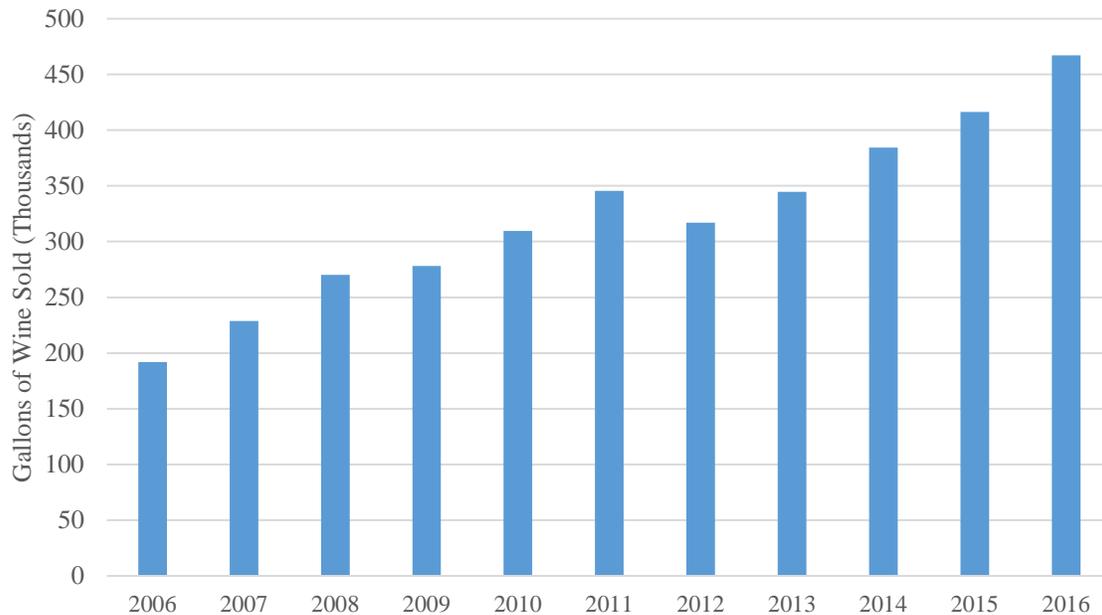
#### Class 4 Limited Winery License

By far the more popular of the two winery licenses, the Class 4 limited winery license is designed for license holders who seek to ferment and bottle wine from available Maryland agricultural products. If the Maryland Department of Agriculture (MDA) determines, however, that an insufficient supply of Maryland agricultural products exists, the license holder may use agricultural products from outside the State to manufacture wine and pomace brandy during the period covered by MDA's determination. The annual license fee is \$200.

### Recent Trends

The Maryland wine industry has grown substantially in recent years, as shown in **Exhibit 4.1**. Growth in the industry has been spurred by two pieces of legislation enacted in the last seven years.

**Exhibit 4.1**  
**Total Wine Sales by Wineries in Maryland (Galleonage)**  
**2006-2016**



Source: Comptroller's Office, the Department of Legislative Services

In 2010, the Maryland Winery Modernization Act greatly expanded the scope of operations and activities of the holder of a Class 4 limited winery license. A license holder may serve samples of wine and pomace brandy to consumers, sell or serve an array of more than a dozen food items, hold planned promotional events, purchase bulk wine and blend the wine with the license holder's wine and pomace brandy if the aggregate purchase does not exceed 25% of the license holder's annual wine and pomace brandy production, and conduct winemaking and packaging activities at another winery under certain circumstances.

In 2011, after a study by the Comptroller on authorizing the shipment of wine from wineries located in-state and out-of-state directly to Maryland consumers, the General Assembly passed legislation creating direct wine shipper's permit. An in-state or out-of-state winery that is a permit holder need not sell its product to a wholesaler but instead may ship the product directly to Maryland consumers using an authorized common carrier. Not more than 18 9-liter cases of wine may be shipped this way to a single delivery address in a single year.

The direct wine shipper's permit has proven popular. In its report issued in 2012, the Comptroller reported that 629 direct wine shippers were in operation. In 2017, that number had climbed to 868. The Comptroller stated in the report that direct wine shipping has had "a

measurable positive impact on product availability and consumer choice.” In recent years, the number of complaints submitted to the Comptroller about the difficulty in acquiring a wide variety of wines – once a major source of consumer frustration – has been very small.

## **State Permits**

### **Winery Off-site Permits**

A winery off-site permit, which may be issued to a holder of a Class 4 limited winery license, allows the permit holder to sell its product for off-premises consumption. The permit may be used at the Montgomery County Agricultural Fair, certain farmers’ markets, wine festivals, and other events. Each calendar year, a permit holder may participate in not more than 32 events and not more than 9 events at a single venue. The permit fee is \$100.

### **Wine Festival Permits**

A wine festival permit authorizes the permit holder to conduct a wine festival for at least one day and not more than three consecutive days. The holder may purchase wine at wholesale to sell to a consumer of wine for off-premises consumption and provide to a consumer at no cost or, for a fee, a sample that does not exceed one fluid ounce for each offering. The wine festival permit holder may serve or sell only wine provided by the permit holder or winery off-site permit holder who is in attendance. The permit fee is \$100.



## Chapter 5. Distillery (Liquor) Licenses and Permits

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### State Licenses

The Comptroller issues two classes of licenses for distilleries: the Class 1 distillery license and the Class 9 limited distillery license. According to the Maryland Wineries Association, there were only 8 total distilleries in the State in 1970, whereas, according to the Comptroller's Office, as of September, 2017, there were:

- 21 licensed Class 1 distilleries; and
- 2 licensed Class 9 limited distilleries.

The specific production limits, permissions, and obligations for each type of license are discussed below.

#### Class 1 Distillery License

A Class 1 distillery license authorizes the establishment and operation of a plant for distilling, rectifying, and blending an unlimited amount of brandy, rum, whiskey, alcohol, and neutral spirits at the location described in the license. The license also authorizes the distillery to sell and deliver the alcoholic beverages to a person in the State or outside the State that is authorized to acquire them, manufacture alcoholic beverages in the name of certain other persons, acquire alcoholic beverages from certain persons, conduct guided tours of the license premises, and sell or serve limited quantities of products manufactured at the licensed premises.

A license holder may sell up to 2.25 liters of product for off-premises consumption to a person on a guided tour of the distillery if the license holder manufactures no more than 27,500 gallons of products each year. The annual license fee is \$2,000.

#### Class 9 Limited Distillery License

In 2015, the General Assembly enacted legislation creating a limited distillery license for use in conjunction with a restaurant or bar. Issued only to a holder of a Class B or Class D beer, wine, and liquor license, the Class 9 limited distillery license authorizes the license holder to establish and operate a plant for distilling, rectifying, and bottling not more than 100,000 gallons of brandy, rum, whiskey, alcohol, and neutral spirits each year. A holder of a Class 9 license may avoid the 100,000 gallon limit by divesting itself of any Class D or Class B retail license and obtaining a Class 1 distillery license.

Additionally, a holder of a Class 9 license may sell at retail on the premises of the Class B or Class D license, for on-premises or off-premises consumption, not more than 15,500 gallons each year under specified conditions.

A license holder may (1) acquire bulk alcoholic beverages from the holder of a distillery or rectifying license or from the holder of a nonresident dealer's permit; (2) after acquiring an individual storage permit, store products manufactured on the licensed premises; (3) sell and deliver those products to specified entities; (4) sell the products at retail in a manner consistent with the underlying Class D license; (5) conduct guided tours of the licensed premises, as specified; and (6) serve not more than three one-half ounce samples of products to persons who have attained the legal drinking age, participated in a guided tour of the premises, and are present in the portion of the premises used for the limited distillery operation. The annual license fee is \$500.

## **State Permits**

In 2016, the General Assembly created two liquor permits modeled after similar wine permits (Chapter 418).

### **Distillery Off-site Permits**

A distillery off-site permit authorizes the holder of a Class 1 distillery license or a Class 9 limited distillery license to sell the holder's product at (1) specific agricultural fairs, farmers' markets, and liquor festivals and (2) not more than six other events in a year that have as their major purpose an activity that is not the sale and promotion of alcoholic beverages and for which the distillery's participation is a subordinate activity. The permit fee is \$250.

### **Liquor Festival Permits**

A liquor festival permit authorizes the holder to conduct a liquor festival for at least one day but not more than three consecutive days. The holder may purchase liquor at wholesale to sell to a consumer liquor for off-premises consumption and provide to a consumer at no cost or for a fee not more than four samples, not to exceed one-quarter fluid ounce for each offering. The liquor festival permit holder may provide or sell only alcoholic beverages provided by the permit holder or distillery off-site permit holder who is in attendance. A sample may be served that is blended with products manufactured by a distillery off-site permit holder and nonalcoholic ingredients, *i.e.*, as a mixed drink sample. The permit fee is \$100.

## Chapter 6. Comparison of Maryland’s Manufacturing Laws and Privileges to Neighboring States

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Alcoholic beverage regulation differs significantly from state to state. With the recent enactment of Chapter 813 of 2017, which altered the rights and privileges of Class 5 breweries, there has been legislative and public interest in how neighboring states regulate alcoholic beverages, specifically, the rights and privileges of an alcoholic beverage manufacturer in regard to sales and sampling of the manufacturer’s own products. The following section provides more detail on the alcoholic beverage manufacturing regulatory systems employed by Delaware, Pennsylvania, Virginia, West Virginia, and the District of Columbia, and how each compares to Maryland. The following are general comparisons:

- Each of the jurisdictions observed has a single regulatory body that licenses manufacturers, wholesalers, and retailers, unlike Maryland, which divides those responsibilities between the State and local licensing boards.
- Additionally, each jurisdiction allows a brewery to provide samples of its products to consumers, while most jurisdictions allow distilleries and wineries to do the same. Many of the jurisdictions have limits similar to Maryland’s limits of 1.5 ounces of liquor, 2 ounces of wine per brand of wine, and 18 ounces of beer. However, West Virginia limits samples to “moderate quantities.”
- The largest difference between jurisdictions involves on-premises and off-premises sales for breweries. For breweries, Maryland is the only jurisdiction that limits the total amount of beer that may be sold on-premises by a brewery, or that requires a brewery to purchase its own beer back from a wholesaler in order to sell it for on-premises consumption in any manner. Virginia, Delaware, and Pennsylvania each authorize a brewery to sell on- and off-premises consumption with no additional requirements, while the District of Columbia authorizes both, but on-premises sales are only allowed if the brewery acquires a permit. West Virginia distinguishes between beer and nonintoxicating beer and only allows the latter to be sold for on- or off-premises consumption. Furthermore, in West Virginia, on-premises sales are only authorized for a brewpub.

### **Delaware** (Delaware Code Annotated, Title 4, primarily Chapter 5)

Alcoholic beverages in Delaware are regulated by the Office of the Delaware Alcoholic Beverage Control Commissioner (OABCC). OABCC is responsible for licensing all aspects of the beer, wine, and liquor markets. To obtain a license to manufacture alcoholic beverages (as a brewery, winery, or distillery) in the state, an applicant must apply to and be approved by OABCC. There is no limit to the amount of beer, wine, or liquor a manufacturer can produce and OABCC

charges a two-year license fee based on the amount of beer, wine, or liquor produced by the manufacturer.

Additionally, and similar to Maryland, OABCC offers a brewery-pub license and a microbrewery license. A brewery-pub can brew up to 4,000 barrels of beer each year to sell at its associated restaurant. The brewery must be located on the premises of or be physically a part of a restaurant. A microbrewery can brew up to 60,000 barrels of beer each year. This figure is based on the amount that is taxed at a reduced rate by the federal government. Both types of brewery can sell beer for on- and off-premises consumption.

In regard to manufacturer samples, Delaware law simply states, “[a]ny microbrewery or brewery licensed by the Commissioner to manufacture beer, mead, or cider in this State may provide samples of the beer, mead, or cider manufactured at said premises in a manner approved by the Commissioner.” Distilleries and wineries are not authorized to provide samples. (§ 512C)

### **Pennsylvania** (Pennsylvania Statutes Annotated, Title 47)

Alcoholic beverages in Pennsylvania are regulated by the Pennsylvania Liquor Control Board (PLCB). PLCB is responsible for licensing and controlling all aspects of the beer, wine, and liquor markets, including consumption of alcohol. To obtain a license to manufacture alcoholic beverages (as a brewery, winery, or distillery) in the state, an applicant must apply to and be approved by PLCB.

Pennsylvania law explicitly authorizes a brewery to operate a restaurant or brew pub and to sell malt or brewed beverages for on-premises and off-premises consumption. There is no limit to the amount of beer a brewery can sell to a customer for off-premises consumption. A brewery is also authorized to operate a restaurant or brew pub to serve food and other types of alcohol, but the brewery’s own products must account for at least 50% of total sales. (47, §§ 4-446, 4-440)

A limited winery may produce up to 200,000 gallons of alcoholic cider, mead, wine, and wine cooler gallons each year, and a limited distillery may produce up to 100,000 gallons of spirits each year. Limited wineries and distilleries may sell their products to individuals on the licensed premises, provide samples for testing at no charge, and sell products by the glass that may otherwise be sold by the bottle. A winery or distillery license without a production limit is available, but such a licensee may only sell to PLCB, and may not sell directly to the public or to retail establishments.

## **Virginia** (Virginia Code Annotated, Title 4.1)

Alcoholic beverages in Virginia are regulated by the Virginia Department of Alcoholic Beverage Control (VABC). VABC is responsible for licensing and controlling all aspects of the beer, wine, and liquor markets. As of September 2017, VABC is considered 1 of 11 public safety agencies in Virginia; however, House Bill 1776 of 2015 will convert VABC from an agency to an “authority,” an independent subdivision of the state, which is currently planned for 2018. VABC reports that the transition better positions VABC to be more flexible and efficient as a retailer, wholesaler, and regulator of the sale of distilled spirits.

The board of VABC is responsible for licensing alcoholic beverage manufacturers in the state. VABC issues a distiller’s license for the production of liquor, or a limited distiller’s license to a distillery that produces less than 36,000 gallons of product in a year. The agency issues a winery or farm winery license for the production of wine. VABC issues a brewery license for the brewing of beer, or a limited brewery license to a brewery that produces less than 15,000 barrels of beer in a year. Manufacturers may conduct product tastings; however, samples are limited to a total of 12 ounces of beer, 5 ounces of wine, or 1.5 ounces of liquor. (4.1 § 201.1)

Virginia law expressly authorizes a brewery to sell its own beer and a winery to sell its own wine, both for on- and off-premises consumption. (4.1 §207,208) There is no limit to the amount of beer a brewery in Virginia can sell in this manner.

## **West Virginia** (West Virginia Code)

Alcoholic beverages in West Virginia are regulated by the West Virginia Alcohol Beverage Control Administration (WVABCA). WVABCA is responsible for licensing all aspects of the beer, wine, and liquor markets, including distilleries, mini-distilleries, wineries, farm wineries, and breweries. West Virginia distinguishes between breweries that brew “nonintoxicating beer” having not more than 12% alcohol by volume, and breweries that brew other kinds of beer.

A brewer that produces “beer” is not explicitly granted the right to sell its product directly to consumers in any circumstance, whereas a brewer that produces “nonintoxicating beer” is authorized to sell its own beer for off-premises consumption in a keg, bottle, can, or growler. Such a brewery is also authorized to provide up to 10 two-ounce samples of beer to each customer each day, but cannot otherwise sell or serve beer for on-premises consumption. A brewery that is licensed as a brewpub and, therefore sells food, is authorized to sell its product for on-premises consumption. (§§ 11-16-6, 6a)

A winery, farm winery, distillery, and mini-distillery are each authorized to sell wine or liquor directly to consumers, but only for off-premises consumption. However, samples may be provided in “moderate quantities” for tasting on the licensed premises.

**District of Columbia** (District of Columbia Code Annotated)

Alcoholic beverages in the District of Columbia are regulated by the Alcoholic Beverage Regulation Administration (ABRA), which is under the control of the Alcohol Beverage Control Board. ABRA licenses all aspects of the beer, wine, and liquor markets including manufacturers, wholesalers, retailers, special events, and festivals. A Class A manufacturer's license issued by ABRA authorizes the production of wine and liquor while a Class B manufacturer's license authorizes the production of beer.

Each type of manufacturer is authorized to sell its products to consumers for off-premises consumption without any additional permits; however, the product must be sold in a barrel, can, keg, or sealed bottle. If a manufacturer obtains an on-site sales consumption permit from ABRA, it may also sell beer, wine, or liquor for on-premises consumption. ABRA's specifications for the type of product that can be sold for on-premises consumption are less complex than Maryland's, merely stating, "The holder of an on-site sales and consumption permit shall only sell, serve, and permit the consumption of beer brewed by the brewery, wine manufactured by the winery, and beverages with spirits distilled by the distillery and purchased by the customer between the hours of 8:00 a.m. and 12:00 a.m., 7 days a week." Additionally, there are no limits to the total amount of alcoholic beverages that a manufacturer may sell for off-premises or on-premises consumption. (§§ 25-110, 25-126)

ABRA may also issue a tasting permit to a manufacturer that authorizes product sampling. Samples are limited to up to 3 ounces of liquor, 6 ounces of wine, and 12 ounces of beer each day. (§ 25-118)

## **Chapter 7. Miscellaneous Alcoholic Beverage Issues**

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Legislation enacted in 2017 relates to ethical standards for local regulatory board officials. Legislation introduced in 2016 and 2017 relate to altering or abolishing Montgomery County's wholesale and liquor retail monopolies. Alcoholic beverage licenses may be issued to a variety of types of retail businesses engaged in activities that are not bar or restaurant related.

### **2017 Legislation Strengthens Ethical Standards for Regulatory Boards**

#### **Local Boards of License Commissioners, Local Liquor Control Boards, and Local Ethics**

Generally, members of the boards of license commissioners in each county, Baltimore City, and the City of Annapolis are considered "local officials," must adhere to local ethics laws, and are subject to local ethics commissions. However, some boards are State entities, and their members are subject to State ethics requirements.

The Maryland Public Ethics Law requires each county, municipality, and local school board to enact provisions governing the public ethics of local officials related to conflicts of interest, financial disclosure, and lobbying. The ethics laws of a county or municipality must be similar to, or substantively similar to, the State Public Ethics Law but may be more stringent based on local circumstances where more stringent provisions are necessary to prevent conflicts of interest. However, the ethics laws for a local elected official or school board member must be at least as stringent as the State Public Ethics Law.

Similarly, the financial disclosure laws of a county, municipality, or school board must equal or exceed the requirements of the State Public Ethics Law and may be modified, if necessary, to make the provisions relevant to the prevention of conflicts of interest in the jurisdiction. Chapter 201 of 2016 clarified that the public ethics requirements adopted or modified by a county, municipality, or local school board must be made in accordance with regulations adopted by the State Ethics Commission and must be consistent with the intent of the Public Ethics Law.

#### **Ethics Requirements for State Officials**

Generally, a State employee or official may not participate in a matter if the employee or official encounters a conflict of interest, with specified exceptions. For example, an interest of a member of the General Assembly conflicts with the public interest if the legislator's interest tends to impair the legislator's independence of judgment. In this case, the conflict disqualifies the legislator from participating in any legislative action or otherwise attempting to influence any legislation to which the conflict relates. Most public officials, all State officials, and candidates to

be State officials are also required to file financial disclosure statements on an annual basis. This statement must be filed under oath with the State Ethics Commission before April 30 of each year, and it covers the calendar year that precedes the filing.

## **Corruption and 2017 Legislation**

In January 2017, two Prince George's County liquor board commissioners and two license holders were the subject of federal indictments for corruption. Subsequently, a former county council member and a State delegate pleaded guilty to accepting bribes in the scheme. Other public officials have since been implicated in the scheme.

Of the several bills introduced during the 2017 legislative session in response to this situation, two were enacted. House Bill 1386, enacted as Chapter 516 of 2017, was a statewide measure. The Act applies the requirements of the Maryland Public Ethics Law to members and employees of local boards of license commissioners and local liquor control boards by designating these individuals as "public officials" subject to the Maryland Public Ethics Law. Accordingly, the bill also adds the local liquor control boards of Somerset and Wicomico counties to those local entities that are subject to the Maryland Public Ethics Law. The bill does not apply in counties in which the county councils or board of county commissioners sit as a board of license commissioners or liquor control board.

In addition, Senate Bill 488, enacted as Chapter 811 of 2017, was an emergency bill that reorganized local alcoholic beverages regulation in Prince George's County. The Act alters the appointment process for the Prince George's County Board of License Commissioners and limits the number of terms a board member may serve to three. The Act expands ethics rules for the board by establishing additional conflict of interest and disclosure rules for board members and applying the county public ethics law to board employees as specified. The Act also (1) subjects board activities to the State Public Information Act; (2) establishes complaint and investigation procedures; and (3) requires the Office of Legislative Audits to conduct regular performance audits of board operations. The term of office for board members, or their successors selected to fill a vacancy, who were in office as of the effective date of the Act, terminated on enactment of the legislation.

## **Proposed 2016 and 2017 Legislation to End the Wholesale and Liquor Retail Monopolies in Montgomery County**

As previously discussed, Montgomery County has a hybrid license and control structure. In the county, the Department of Liquor Control (DLC) operates a dispensary system that acts as the primary wholesaler in the county. Generally, no person, firm, or corporation may keep for sale any alcoholic beverage not purchased from DLC; however, there are some exceptions that allow a manufacturer to bypass the wholesaler to deliver alcoholic beverages directly to a retail licensee. For example, Chapter 310 of 2016 authorizes Class 8 liquor wholesalers to sell and deliver their

own liquor to retailers. Similarly, Class 7 limited beer wholesalers, nonresident brewers, and Class 6 limited wine wholesalers are authorized to sell and deliver their own products directly to retailers.

In addition to acting as the primary wholesaler in the county, DLC also operates retail dispensaries to sell beer, wine, and liquor. Aside from a single Class A beer, wine, and liquor license issued for use in Takoma Park, liquor can only be purchased in the county for off-premises consumption from one of these DLC-operated liquor stores.

DLC's finances and contributions to the Montgomery County general fund are summarized below in **Exhibit 7.1**.

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**Exhibit 7.1**  
**DLC Sales and Transfers to the Montgomery County General Fund**  
**Fiscal 2012-2016**  
**(\$ in Millions)**

	<u>FY 2012</u>	<u>FY 2013</u>	<u>FY 2014</u>	<u>FY 2015</u>	<u>FY 2016</u>
<b>Total Expenditures</b>	<b>\$220.2</b>	<b>\$225.7</b>	<b>\$239.2</b>	<b>\$249.0</b>	<b>\$264.8</b>
Debt Service Payments	6.4	6.4	9.8	5.8	5.8
<b>Total Revenues</b>	<b>\$252.3</b>	<b>\$259.3</b>	<b>\$268.7</b>	<b>\$278.6</b>	<b>\$294.6</b>
Total Retail Sales	120.0	122.4	127.2	N/A	N/A
Total Warehouse Sales	130.4	134.4	139.4	N/A	N/A
<b>Total Sales</b>	<b>250.4</b>	<b>256.8</b>	<b>266.6</b>	<b>276.7</b>	<b>292.5</b>
License and Other Revenue	1.9	2.5	2.1	1.9	2.1
<b>General Fund Transfers</b>	<b>\$28.5</b>	<b>\$25.7</b>	<b>\$26.4</b>	<b>\$28.3</b>	<b>\$24.6</b>

Note: Totals may not sum due to rounding. Data for total retail and wholesale sales in 2015 and 2016 is not currently available.

Source: Montgomery County Department of Liquor Control, *Montgomery County Comprehensive Annual Financial Report*

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During recent legislative sessions, numerous bills have been discussed and proposed to alter or abolish DLC's wholesale and liquor retail monopolies. During the 2016 legislative session, the following bills were proposed, but none passed.

- House Bill 1237 of 2016 would have established a Class A beer, wine, and liquor license in Montgomery County and would have authorized retail license holders to purchase alcoholic beverages from any wholesaler instead of just DLC.
- House Bill 1033 of 2016 would have authorized the governing body of Montgomery County to allow a licensed wholesaler to distribute beer and wine that is not purchased from DLC in the county; however, DLC would have been required to classify and approve of the products that could be sold and distributed.
- House Bill 598 of 2016 would have authorized DLC to (1) allow other wholesale distribution of alcoholic beverages through a franchise agreement and (2) sell its interest in any dispensary, which would allow the purchaser to open a Class A beer, wine, and liquor retail store.

Historically, DLC has contracted with some retail outlets to allow the sale of liquor, but was previously limited to only contract with a person who had an existing contract; however, Chapter 442 of 2017 expanded DLC's authority by allowing it to contract with any person if that person meets the eligibility requirements. Additionally, a person who contracts with DLC may sell any type of alcoholic beverage, instead of only liquor.

## **Other Types of Retail Alcoholic Beverage Licenses**

In Maryland, alcoholic beverages licenses are granted by each jurisdiction's board of license commissioners to authorize the sale and consumption of alcohol at specified places such as restaurants, taverns, hotels, clubs, or places of public entertainment. Other types of establishments cannot normally acquire a license but may be granted eligibility to apply by legislation.

Generally, for a premises that is licensed to sell alcoholic beverages with an off-sale privilege, or a premises that is licensed with on-sale privileges and sells alcoholic beverages directly to a customer from a bar or service bar, the license holder or specified employees must complete training in an approved alcohol awareness program in order to obtain and retain their alcoholic beverages license. The training program must be approved and certified by the Comptroller and it must provide information on how alcohol affects a person's body and behavior, the dangers of drinking and driving, refusing service before a customer becomes intoxicated, and determining if a customer is old enough to legally consume alcohol. The training is valid for four years.

Below are several examples of other types of alcoholic beverage licenses.

### **Art Gallery License**

Frederick, Montgomery, and St. Mary's counties issue an alcoholic beverages license to a nonprofit or for-profit retail business engaged in the display and sale of original artwork by an individual artist or a group of artists. In these counties, the board may not issue the license to a

business that displays and sells commercially prepared or mass-produced artistic products. In Frederick County, the license may be issued to an establishment engaged in the display and sale of copies of original artwork that are reproduced not more than 300 times. In St. Mary's County, the license may also be issued to a business that instructs clients in the creation of art.

### **Beauty Salon License**

Frederick, Montgomery, and St. Mary's counties may issue an alcoholic beverages license to a holder of a beauty salon permit. The license authorizes the holder to provide limited amounts of beer or wine by the glass for on-premises consumption by a beauty salon customer when the customer is provided a cosmetology service, or while the customer is attending an authorized fundraising event at the beauty salon.

### **Bed and Breakfast**

Several jurisdictions, including Charles, Frederick, Garrett, Harford, and Kent counties, issue a specific license for bed and breakfast establishments separate from other licenses typically issued to hotels. Some jurisdictions, such as Charles County, vary the price of the license based on the number of rooms in the establishment. Other jurisdictions, such as Frederick County, charge a flat fee.

### **Continuing Care Retirement Community**

Several jurisdictions, including Calvert, Frederick, Howard, Montgomery, and Prince George's counties, specifically offer Class C alcoholic beverages licenses, or explicit exceptions to prohibitions against on-premises consumption, to continuing care retirement communities. Generally, in order to qualify, the facility must have obtained a certificate of registration from the Department of Aging.

### **Golf Course License**

Most jurisdictions issue a special Class GC (golf course) license. Qualifications vary by jurisdiction with some jurisdictions, such as Baltimore City, only authorizing the license for municipal courses. Other jurisdictions, like Caroline County, limit issuance to courses with a minimum of 18 holes. The license generally covers both the land and the buildings, including the club house, that are used for golfing purposes.

### **Racetrack License**

Certain jurisdictions, such as Baltimore City and Anne Arundel, Baltimore, Howard, Prince George's, and Worcester counties, issue licenses to State-licensed racetracks. The licenses typically authorize the sale of alcoholic beverages at one or more locations on the premises. Several jurisdictions, including Baltimore City and Baltimore County, charge a per day fee for the racetrack license, while other jurisdictions, such as Howard County, charge an annual fee.

## **Stadium License**

Several jurisdictions, including Baltimore City and Charles, Frederick, Harford, Montgomery, Prince George's, Washington, and Wicomico counties, issue a stadium license. Some jurisdictions, such as Frederick County, only issue a license for a stadium used by a team that plays a specific sport, such as baseball. Other jurisdictions, such as Harford County, limit the geographic area in which the license may be issued, in that case, the City of Aberdeen. Other jurisdictions, such as Montgomery County, have minimum capacity and/or capital investment requirements in place.

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<sup>2</sup> *Id.*

<sup>3</sup> Pollan, M., *The Botany of Desire*, 39, Random House, 2001.

<sup>4</sup> Jurkiewicz, C.L., and Painter, M.J., “Why We Control Alcohol the Way We Do,” at 4.

<sup>5</sup> Lawson, E.T., “The Future of the Three-Tiered System as a Control of Marketing Alcoholic Beverages,” *Social and Economic Control of Alcohol*, 32 (2008).

<sup>6</sup> Daniels, M.R., “Toward Liquor Control: A Retrospective,” *Social and Economic Control of Alcohol*, 219 (2008).

<sup>7</sup> Sinclair, A., *Prohibition the era of excess*, 116, Atlantic Monthly Press (1962).

<sup>8</sup> *Id.*, at 121.

<sup>9</sup> Lawson, E.T., “The Future of the Three-Tiered System as a Control of Marketing Alcoholic Beverages,” at 33.

<sup>10</sup> Rockefeller, J.,D., “Forward”, *Toward Liquor Control*, xiii, The Center for Alcohol Policy (reprinted 2011).

<sup>11</sup> Rhodes, T.L., “Policy, Regulation, and Legislation”, *Social and Economic Control of Alcohol*, 81.

<sup>12</sup> Fosdick, R.B., and Scott, A.L., *Toward Liquor Control*, at 20.

<sup>13</sup> Jurkiewicz, C.L., and Painter, M.J., “Why We Control Alcohol the Way We Do,” at 6.

<sup>14</sup> Fosdick, R.B., and Scott, A.L., *Toward Liquor Control*, at 107.

<sup>15</sup> Lawson, E.T., “The Future of the Three-Tiered System as a Control of Marketing Alcoholic Beverages,” at 33–34.

<sup>16</sup> Fosdick, R.B., and Scott, A.L., *Toward Liquor Control*, at 59–60.

<sup>17</sup> *Id.* at 82.

<sup>18</sup> *Ziffirin, Inc. v. Reeves*, 308 U.S. 132, 138.

<sup>19</sup> *TFWS, Inc., v. Schaefer*, 572 F. 3d 186 at 195 (2009), quoting *TFWS, Inc. v. Schaefer* (“*TFWS I*”), 242 F. 3d 198, 212 (4th Cir. 2001).