



Maryland State Licensed Beverage Association

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2009 MSLBA Legislative Wrap Up

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Steve Wise

The gavel dropped on the 2009 Session of the Maryland General Assembly on April 13th, at midnight. If you had taken pen to paper in January of this year and listed all of the “bad” bills that could be introduced in a given year, you could have placed check marks next to each because **we saw them all in 2009—chains stores, taxes, direct shipment of wine, retail privileges for wineries, and reduced lottery commissions. All of them were defeated, with the exception of the commissions**, which will return to 5.5% after a 3-year reduction to 5.0%. A review of these high-profile bills and other legislation affecting retailers is provided below.

Chain Stores

[House Bill \(HB\) 1365](#) proposed to allow Super Fresh to obtain a beer and wine license for use at its store (supposedly) coming to the Rockville Town Center. The bill was passed by the County’s House Delegation, but defeated in the House Economic Matters (ECM) Committee by virtue of not being voted on. Lobbying on this bill took an extensive amount of time to defeat; it was well-lobbied by the proponents and had the support of the County, the City of Rockville, and various labor unions. It could return in 2010. Likewise, [Senate Bill \(SB\) 490](#) and [HB 1499](#) allowing “specialty stores” to obtain beer and wine licenses (i.e. Trader Joe’s) in Prince George’s County received the support of the Prince George’s County Delegation, but [SB 490](#) died in the Senate Education Health & Environmental Affairs (EHE) Committee and [HB 1499](#) was never acted on by the House ECM Committee.

Although these were local bills, MSLBA deemed them to be of statewide significance because of the domino-effect threat that they pose to Maryland’s prohibition on the issuance on any new retail alcohol beverage licenses for chain stores, supermarkets or discount houses; however, legislators who support these exceptions for their local jurisdictions argue that they are local bills and “local courtesy” should be extended. **MSLBA members must make it a priority to monitor proposed legislation at the local city and county levels** to prevent passage of bills disguised as “local” from reaching the state legislature where local courtesy continues to challenge statewide legislation in favor of independent retailers.

Direct Shipment of Wine

[HB 1262/SB 338](#) would have allowed out of state wineries AND RETAILERS to ship wine to any address in Maryland. MSLBA strongly opposed this measure again this year. MSLBA Lobbyist Steve Wise, President Marty Kutlik, Past President Chuck Ferrar, and Legislative Chairman Jack Milani testified in front of the House ECM and Senate EHE Committees—raising concerns about delivery to minors, the inability to reprimand out of state

retailers (yes, *retailers*) who would be allowed to ship into Maryland, and the fact that we already have a direct ship permit in Maryland that allows shipment of wines not carried by wholesalers to a local retailer. The legislation was defeated by the House ECM Committee, with 5 votes in favor and 16 against. The vote is misleading, however, because many members of the Committee who voted against the bill indicated the pressure to vote for it was intense, and they may reconsider in 2010. Put simply, **members of the retail industry cannot take this issue for granted anymore**—as one of only 13 states that does not allow shipping, our industry better get in gear and contact their local legislators or this law will pass within 1 to 2 years.

Lottery Commissions

Contained in the Governor's *Budget Reconciliation and Financing Act of 2009* ([HB 101/SB 166](#)) was a permanent reduction in lottery commissions from 5.5% to 5.0%. The estimated gain to the State per year is about \$8 million. With the help of Senator DeGrange and others, the Senate put a two-year sunset on the reduction, meaning it would revert back to 5.5% in two years. The House had followed the Governor with a permanent reduction. Ultimately the Conference Committee sunset the reduction in 3 years, rather than two, and while certainly not optimal, still better than the permanent reduction that was originally proposed. If fiscal times improve, we will introduce legislation to eliminate the commission reduction even sooner.

Maryland Wineries

In our perennial battle with the Maryland Wineries Association about wineries seeking greater retail privileges, this year they requested no less than 9 local bills that would have created Class "W" licenses. The bills all allowed the wineries to become restaurants, and have extended hours, and multiple locations. The affected counties were Baltimore, Carroll, Dorchester, Frederick, Harford, Queen Anne's, St. Mary's, Talbot and Washington. All of this legislation was defeated by the House ECM and Senate EHE Committees. After the votes, the Deputy Comptroller contacted Lobbyist Steve Wise to see if MSLBA would agree to discuss these bills over the summer in a meeting organized by the Comptroller (to include MSLBA and the Maryland Wineries Association), and we agreed.

Legislation expanding the number of special event permits that can be used at farmer's markets in various jurisdictions was also defeated. [HB 970](#) (Delegate Ivey), for example, would have allowed wineries to get unlimited numbers of these permits for use at markets in that County. Fortunately this measure fell victim to the clock on the last night of session.

Alcohol Tax Increase

Several bills were defeated that would have raised the alcohol tax from anywhere between 200 and 400 percent ([HB 791](#)/Bronrott, [HB 951](#)/Hubbard, [HB 1160](#)/Gutierrez, [SB 729](#)/Madaleno & [SB 813](#)/Jones). The various bills would have dedicated the tax revenue to different programs, including expanded health care and individuals with disabilities. MSLBA Lobbyist Steve Wise, and members Jack Milani and Chuck Ferrar, testified that while there are obvious needs in disability aid, and in healthcare, the alcohol tax was not the right tax, and this year was not the right time for an increase that would be so harmful to alcoholic beverage retailers. (Notably, Delaware is considering a 100% increase in their tax, which would be a boon for bordering Maryland counties given the already significant difference in tax rate). Why Maryland would want to give up the advantage it enjoys versus surrounding states (except DC) is beyond our understanding.

Drunk Driving Laws

MSLBA supported legislation introduced by Governor O'Malley that would require the driver's licenses of teens to be suspended if the teen was caught consuming alcohol ([HB 299/SB 261](#)). This measure, and others aimed at drunk driving, was enacted but heavily amended. In fact, [HB 299](#) was amended to delete the provisions relating to driver's license suspensions and

the only real change made related to minors was with respect to issuing citations for publicly consuming alcoholic beverages.

The Senate passed [SB 735](#) which mandated ignition interlock devices for certain offenses. The House did not act on a cross-filed bill ([HB 1217](#)), but the fact that the Senate passed a bill that mandates interlock for certain offenses demonstrates the growing acceptance of these devices. The policy of the American Beverage Licensees (ABL) has been to support mandatory interlock for repeat and high blood alcohol content offenders. This bill deviates from that, so we are talking to House Committee members in a quiet and behind the scenes manner to either defeat or amend the bill. The industry took a strong stand in support of Governor O'Malley's legislation on drunk driving, but we believe this approach is overly punitive.

Flavored Malt Beverages/Enhanced Beer

In 2008, the industry passed a law confirming that flavored malt beverages ("FMB's") are beer for purposes of taxation and distribution—despite fierce opposition from public health and youth advocates who urged the Governor to veto the legislation. This year, [HB 1180](#) (Delegate Bronrott) and [SB 786](#) (Sen. Madaleno) were introduced which would have prevented these beers from being distributed by anyone who did not hold a beer, wine and liquor license; in other words, for purposes of distribution, they were to be liquor. This measure was defeated in the House ECM Committee, which understood our testimony that these beverages are not targeted toward youth and that the proper answer to minors purchasing them in "convenience stores" (as was alleged), was license action against the licensee—not stripping all beer and wine licensees of the product.

Gift Cards

[HB 126/SB 418](#) would have caused a percentage of the balance on gift cards that are not utilized within 4 years—or within 1 year of the last activity on the card—to inure to the State. The issuer would be required to keep records and remit 70% of the balance of these "abandoned" cards to the State for its use. Yes—you read this paragraph correctly! The proposal received an unfavorable report by both the House ECM and Senate Finance (FIN) Committees.

Soda Fountain License

In March, the Comptroller notified local Clerks of the Court that he intended to start enforcing collection of an ancient tax on soda fountain dispensers, and would count each dispenser separately for purposes of the tax. The tax ranged from \$10 to \$60 depending on jurisdiction. Restaurants, bars and taverns reacted as you would expect with astonishment, given the economic times, and the Clerks resisted enforcing the notice as well. Delegates Nic Kipke and Jim Mathias then introduced a bill ([HB 1573](#)) to repeal the tax altogether, and on Sine Die the bill passed. So, instead of an expanded tax, the tax is no more!

Miscellaneous

- [HB 1306](#) (Delegate Carter) would have mandated that all bars and restaurants recycle all aluminum, glass and plastic bottles. This was soundly defeated by the House Environmental Matters (ENV) Committee.
- [HB 1527](#) (Delegate Walker) would have allowed a "roving" alcohol license for a person that organized parties in various venues. The bill was not given a hearing.

To view the entire profile of over 200 bills monitored by MSLBA visit www.mslba.org:

Then click "Legislative" in the left-hand index

Then click "View the list of legislation we monitored in 2009"

Following is a review of local alcohol beverage legislation

Provided by the Department of Legislative Services

Excerpts from “The 90 Day Report, A Review of the 2009 Legislative Session”

<http://mlis.state.md.us/2009rs/90-Day-report/index.htm>

Alcoholic Beverages Local Laws Part H – Business and Economic Issues, Pg. H 43 to H 49

Allegany County

Volunteer Company License: [House Bill 624](#) (Ch. 147) establishes a Class C volunteer company (on-sale and off-sale) beer, wine, and liquor license for a volunteer fire company, a volunteer ambulance company, or a combined volunteer fire and ambulance company. The annual license fee is \$500. Patrons of an establishment licensed under the Act are not limited to the members and guests of the fire or ambulance companies that hold the license.

City of Annapolis

Administrative Action: [Senate Bill 25](#) (Ch. 14) adds the City of Annapolis to the list of jurisdictions in which the granting of probation before judgment for an alcoholic beverages violation does not bar the board of license commissioners from taking administrative action against the violator. The bill also raises, from \$1,000 to \$2,000, the maximum fine that the board may impose instead of suspending a license.

Anne Arundel County

Omnibus Bill: [House Bill 1304](#) (passed) makes a variety of changes to the alcoholic beverages laws in the county. Most notably, the bill establishes a beer, wine, and liquor hotel-limited service (on-sale) license that allows large hotels to sell alcoholic beverages daily at one or more locations within the hotel. The bill alters the current beer and wine hotel-limited service (on sale) license. The annual fee is \$2,400 for a beer and wine license and \$2,800 for a beer, wine, and liquor license. The bill also creates a similar license for beer and wine sales only. Further, the bill increases the salary of the Board of License Commissioners’ attorney from \$12,000 to \$20,000, requires the board to obtain State and national criminal history records checks for license applicants, and allows the board to issue a special outdoor license to certain license holders that allows them to provide outdoor entertainment. The annual fee for a special outdoor license is \$100. The bill increases the maximum fine, from \$1,000 to \$2,500 that the board may impose on violators of the alcoholic beverages laws.

Yacht Club License: Under [Senate Bill 434](#) (Ch. 65) a Class C (yacht club) license may be issued to a yacht club that maintains slips, boat parking spaces, or berths for at least 50 boats on at least one acre. Currently, a license may only be issued to yacht clubs with at least 75 boats on at least five acres.

Baltimore City

BWLT License: Beer, wine, and liquor tasting or sampling events may take place in certain locations in the city, under [Senate Bill 983/](#)[House Bill 1454](#) (both passed). The bills allow a Class BWLT beer, wine, and liquor tasting license to be issued to a holder of a Class A beer, wine, and liquor license for ward 27, precinct 41 of the 43rd legislative district, ward 27, precinct 42 of the 41st legislative district, and ward 11, precinct 5 of the 44th legislative district. An applicant for a BWLT license may obtain a daily tasting license that may be used for up to 12 times in any annual license year (\$20 for a daily license), a 26-day license (\$200 for an annual license), or a 52-day license (\$300 for an annual license).

Drinking Games: [Senate Bill 233](#) (failed) would have prohibited the holder of a retail alcoholic beverages license or the owner or operator of a bottle club from allowing drinking games or contests on the premises.

Baltimore County

Towson Commercial Revitalization District: [Senate Bill 543/House Bill 1439](#) (*both passed*) increases, from 2 to 10, the number of beer, wine, and liquor (on-sale) licenses that may be transferred into the Towson Commercial Revitalization District, provided the licenses are from election district 15 in the county, were issued on or before December 31, 2008, and are in existence on June 1, 2009.

Citizenship Status: [House Bill 731](#) (*Ch. 152*) requires that an application for an alcoholic beverages license include a statement whether the applicant is a natural-born citizen or a naturalized citizen and, if the applicant is not a natural-born citizen or a naturalized citizen, information or documentation required by the board of liquor license commissioners to show proof of alien status. The board may obtain information from the Social Security Administration and the Department of Homeland Security – Immigration and Customs Enforcement to verify the applicant’s citizenship or alien status.

Calvert County

BWST License and Winery Permits: [Senate Bill 518/House Bill 217](#) (*both passed*) establish a special beer, wine, and spirits tasting (BWST) license to enable a holder of a Class A beer and wine license or a Class A beer, wine, and liquor license to hold tastings 365 days a year. Another feature of the bills is that they allow a winery special event permit to be issued to a winery in the State for unlimited use for one night each week, from June through November, at the North Beach Friday Night Farmers’ Market. The bills impose certain fines relating to the sale of alcoholic beverages to underage individuals and to individuals who are visibly under the influence of any alcoholic beverage. The bills also increase the salaries of the chairman and members of the board of license commissioners. The salary raises will take effect at the beginning of the next following term of office.

Caroline County

Special Multiple Event Licenses: Instead of a license holder having to purchase several individual event licenses for a particular class of license, [Senate Bill 37/House Bill 46](#) (*both passed*) establish a special multiple event license so that a license holder conveniently may purchase one license to cover multiple events.

Charles County

License Suspensions: [House Bill 1364](#) (*passed*) repeals the provision preventing a license suspension for four days or less from taking effect on a Friday, Saturday, or Sunday.

Administrative Proceedings: [House Bill 442](#) (*passed*) adds Charles County to the list of counties in which the granting of a probation before judgment to a license holder for selling or furnishing alcoholic beverages to an underage individual does not bar the board of license commissioners from proceeding administratively against the license holder for the violation.

Proximity to Church: The prohibition against issuing a license to sell alcoholic beverages in a building within 500 feet of a church or other place of worship is repealed by [House Bill 1463](#) (*passed*).

Increased Penalties: [House Bill 372](#) (*passed*) increases the fine from \$1,000 to \$2,500 for any violation of the alcoholic beverages laws that affect the county. The bill also raises the specific fine for selling alcoholic beverages to underage individuals from \$500 to \$750 for a first offense by a license holder, with the amount of the fine for each subsequent offense to be determined by the board of license commissioners, and from \$150 to \$500 for an offense by an employee of the license holder.

Dorchester County

Omnibus Bill: [Senate Bill 333/House Bill 425](#) (Chs. 50 and 51) authorize the board of license commissioners to issue Class B caterer's licenses and beer and wine sampling or tasting licenses, establish license fees, specify eligibility and maintenance criteria for the licenses, modify statutory language pertaining to geographic areas in the county in which premises may not be issued an alcoholic beverage licenses, create additional exemptions from the geographic restrictions for certain premises, and authorize the alcoholic beverages inspector to issue summonses for witnesses to appear at inquiries and hearings conducted by the board. The bill also increases the compensation for the board's chairman and regular members by \$500 to \$3,000 and \$2,500, respectively; the increase will take effect at the beginning of the next following term of office.

New Board of License Commissioners: [Senate Bill 1010/House Bill 1508](#) (both failed) would have repealed statutory provisions designating the Dorchester County Council as the Dorchester County Board of License Commissioners and specified nomination and appointment procedures for a new board of license commissioners.

Frederick County

Multivenue Wine License: Nonprofit organizations may hold simultaneous fundraising wine events at up to five venues within walking distance of each other, under [House Bill 1512](#) (passed). The venues must be located in districts in the county that allow the consumption of wine. Holders of the one-day multivenue wine license may sell wine by the glass for on-premises consumption or by the bottle for off-premises consumption or may allow a holder of a Class 4 limited winery license to conduct a wine tasting. Under regulations to be adopted by the board of license commissioners, guests are to be prohibited from transporting wine from one venue to another.

Fundraisers for Nonprofits in the 10th Election District: Under [House Bill 905](#) (failed) a nonprofit organization in the 10th election district would have been able to obtain a one-day special beer and wine license for use at a fundraising event for the organization.

Part-time Inspectors: [Senate Bill 608](#) (Ch. 83) authorizes the board of license commissioners to appoint not more than two part-time alcoholic beverages inspectors to add to the one full-time inspector that the board has on staff.

Garrett County

Off-site Retail Deliveries: [House Bill 334](#) (Ch. 137) authorizes an alcoholic beverages license holder or a holder's employee to make an off-site retail delivery of alcoholic beverages if the deliverer is at least 21 years old and certified by an approved alcohol awareness program and the deliverer and purchaser endorse a delivery form that the board of license commissioners approves. The annual license fee for the delivery option is \$150 plus an issuing fee of \$150. The bill also requires the board to charge an issuing fee of \$100 for a wine and beer tasting license, a \$10 fee for the issuance of any duplicate alcoholic beverages license fee, and a \$200 fee for the assignment of transfer of an alcoholic beverages fee.

Howard County

Citizenship Status: [House Bill 731](#) (Ch. 152) requires that an application for an alcoholic beverages license include a statement whether the applicant is a natural-born citizen or a naturalized citizen and, if the applicant is not a natural-born citizen or a naturalized citizen, information or documentation required by the board of liquor license commissioners to show proof of alien status. The board may obtain information from the Social Security Administration and the Department of Homeland Security – Immigration and Customs Enforcement to verify the applicant's citizenship or alien status.

Howard County Cont'd.

Hearing Board and Liquor Board Personnel: Under [House Bill 616 \(Ch. 146\)](#), personnel needed to carry out the duties of the Appointed Alcoholic Beverage Hearing Board and the board of license commissioners are to be included in the staff of the county council and supervised by the county council administrator.

Montgomery County

Licenses in Kensington: [House Bill 835 \(Ch. 157\)](#) expands the commercial area in the Town of Kensington in which the board of license commissioners may issue special B-K beer and wine or special B-K beer, wine, and liquor licenses for restaurants. The expanded area includes Kensington Parkway and Frederick Avenue, from Montgomery Avenue to Silver Creek.

Corporate Training Center License: [House Bill 821 \(Ch. 155\)](#) establishes a Special Class B-Corporate Training Center beer, wine, and liquor license for use in a corporate headquarters support facility that services only the workforce training and education needs of employees, customers, and visitors to the corporate headquarters of a corporation that employs at least 500 employees in the county. The bill allows only on-premises consumption of alcoholic beverages. The annual license fee is \$2,500.

Supermarkets: [House Bill 1365 \(failed\)](#) would have authorized a Class A beer and light wine license to be issued to a supermarket in the Rockville Town Center.

Prince George's County

Laurel Commons: [Senate Bill 886 \(passed\)](#) adds Laurel Commons to the list of areas designated as underserved in the county in which a license holder may hold or have an interest in an additional Class B beer, wine, and liquor license for a restaurant. Under the bill, a license holder may hold not more than four Class B beer, wine, and liquor licenses in underserved areas, if Laurel Commons is one of those areas.

Successor Corporations: If two corporations with alcoholic beverages licenses for restaurants merge, consolidate, or undergo a share exchange that results in a single successor corporation during the time period beginning on September 1, 2007, and ending on June 1, 2008 hold is the sum of the licenses held by the two corporations after the successor corporation was formed if the number of licenses held is eight or less.

Salaries of Inspectors: [House Bill 1019 \(failed\)](#) would have provided that the salaries of each alcoholic beverages inspector be \$10,900. The board of license commissioners employs 32 inspectors.

Specialty Stores: [House Bill 1499 \(failed\)](#) would have authorized the issuance of a Class A (off-sale) beer and light wine license to certain specialty food stores.

Bottle Clubs: A bottle club is an establishment that is not licensed by the board of license commissioners but that allows patrons to bring their own alcoholic beverages to the establishment. [House Bill 969 \(passed\)](#), in effect, prohibits a "bottle club" from operating in the county. The bill prohibits a bottle club selling, giving, serving, dispensing, keeping, or allowing to be consumed in the bottle club any alcoholic beverage, setups, or other component parts of mixed alcoholic drinks. The bill also prohibits a bottle club from evading the alcoholic beverages laws in the county. Further, the bill extends its prohibition to a bottle club that allows a paying patron to consume alcoholic beverages from supplies that are purchased or otherwise brought to the premises or establishment by an owner or operator of the establishment or an agent of the owner or operator.

Beer, Wine, and Liquor License at National Harbor: [House Bill 1021 \(passed\)](#) establishes a special three-day Class C beer, wine, and liquor license for a nonprofit organization for use at the National Harbor complex. The license allows beer, wine, and liquor to be sold for consumption on or off the premises. The fee for the license is \$150 per day. The bill also allows a wholesaler licensed in Maryland to donate alcoholic beverages to the holder of the license.

Prince George's County Cont'd.

Proof of Applicant's Legal Status: An applicant for an alcoholic beverages license in the county who is not a United States citizen will have to provide a statement with accompanying proof that the applicant is in legal status in accordance with federal law, under [House Bill 964](#) (*passed*).

Open Containers: It is illegal in the county for a person to drink an alcoholic beverage or possess an alcoholic beverage in an open container in certain areas in the county, such as in a shopping center or adjacent parking area or other outside areas to which the general public is invited for business purposes, unless authorized by the owner of the establishment. [House Bill 963](#) (*passed*) requires a person who is charged with a misdemeanor for a violation to comply with the command in the charging document to appear in court by appearing in court in person.

Wine Festival License: [House Bill 962](#) (*passed*) establishes a wine festival license entitling a license holder to display and sell wine at the Prince George's County Wine Festival for consumption on or off the premises. The bill requires that the weekend chosen for the wine festival not conflict with the Anne Arundel County Beer and Wine Festival, the Calvert County Wine Festival, the Charles County Beer and Wine Festival, or the Howard County Wine Festival, and that it not occur within 14 days before or after the Maryland Wine Festival in Carroll County.

St. Mary's County

Maximum Fine for Sales Violations: [House Bill 1271](#) (*passed*) increases the maximum fine for a violation of the laws regulating the sale of alcoholic beverages in the county from \$500 to \$1,000.

Somerset County

Liquor Board Borrowing Limit: The amount that the county liquor control board may borrow is raised from \$50,000 to \$150,000, under [House Bill 227](#) (*passed*).

Talbot County

Limited Wineries: A Class 4 manufacturer's (limited winery) license entitles the license holder to produce wine and pomace brandy at the licensed plant. [Senate Bill 334](#)/[House Bill 105](#) (*both passed*) allow a license holder in the county to produce wine and pomace brandy also at each warehouse for which the holder has been issued an individual storage permit. The bills, however, prohibit the holder from serving or selling wine and pomace brandy at a warehouse to the public.

Worcester County

Liquor Board Borrowing Limit: The amount that the county liquor control board may borrow is raised, from \$5 million to \$6 million, under [House Bill 1522](#) (*passed*).