

THE 2019 MARYLAND LEGISLATIVE SESSION HAS CONCLUDED

A FINAL REPORT

How Will Your Business Be Affected?

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Despite the profound sadness over the passing of Speaker Busch the day before, work continued on Monday, April 8, until the curtain closed at midnight (sine die). With that came the end of 90 days filled with new faces in both chambers, and new Committee leadership in the Senate. This was the first year of the four-year term, following the 2018 election, which brought nearly 60 new legislators or almost a one-third turnover in the 188 member General Assembly. New legislators constituted over half of the membership of the Senate Education, Health and Environment Committee (EHE), where alcohol bills are considered. That Committee also had a new Chairman in Senator Paul Pinsky (D-Prince George's), who kindly spoke to those who attended Lobby Day on February 21st, as did new House Alcohol Subcommittee Chairman, Delegate Talmadge Branch (D-Balt. City).

The goals of the Maryland State Licensed Beverage Association (MSLBA) for this year were largely achieved, thanks to the efforts of our members and in particular our Legislative Committee, which reviewed, discussed and took positions on each of the 164 bills we identified as impacting the industry, amidst the nearly 2,500 total bills filed. Our Legislative Committee's work was made more difficult than usual, since

nearly half of the bills were introduced just ahead of the deadline during the week of February 4th, almost 30 days into the Session. This was a symptom of the 2018 election, which gave legislators, particularly new ones, less time than usual to prepare their legislation.

Below is a summary of the major issues and their outcomes. A detailed summary of the outcomes of all local legislation is available from the MSLBA.

WINE & SPIRIT BRANDS

Senate Bill 801/House Bill 1010--Brewery Modernization Act of 2019 passed after a compromise was reached between the MSLBA and the Brewers Association of Maryland (BAM). This was the culmination of 2 years of MSLBA's time and attention, following the passage of legislation in 2017 on these same issues. Despite substantial brewery growth in the State in recent years, both in the number of them and the barrelage produced, BAM sought further changes in the law. While BAM also sought changes during the 2018 Session, there was really no communication among the interested parties that year, and no legislation was adopted. Early in the 2019 Session, MSLBA met on numerous occasions with BAM representatives and reached an agreement that the General As-

sembly ultimately agreed with and adopted. The terms of the agreement are as follows:

- No change in operating hours for Class 5 Breweries (grandfather provisions still apply);
- Law remains that Class 5 Brewery "may" receive retail license, not "shall";
- BAM will not introduce, support or instigate local or state legislation on these provisions for the rest of this 4 year term.
- Increased tap room limits of 5,000 barrels for both Class 5 and Class 7 (microbreweries);
- Class 7's can brew up to 45,000 barrels per year (which was already the law in two counties);
- Microbreweries can have two locations with separate tap room limits, but law will clearly state that a person cannot have more than 2 microbreweries anywhere in the State.
- There are other minor provisions.

Also on the brewery front, **SB 704/HB 1080 Alcoholic Beverages - Beer Franchise Agreements - Notice of Nonrenewal or Termination** passed. This bill reduces, from 180 to 45, the number of days that a brewery must wait before

terminating a franchise agreement, if the brewery produces 20,000 or fewer barrels of beer per year. Such a brewery is authorized to terminate or refuse to continue or renew a franchise agreement without good cause and is no longer required to give its franchisee an opportunity to correct a deficiency if that is the reason the agreement is being terminated. The bill requires a termination agreement and arbitration, and takes effect January 1, 2020. For a brewery that produces 20,000 barrels of beer or less each year and that is party to a franchise agreement existing before January 1, 2020, the terms of the agreement relating to compensation and repurchasing of inventory must continue unless otherwise mutually agreed by the parties.

With these two pieces of legislation, the law is settled on breweries for a number of years and the industry can now spend its time promoting all Maryland products through our “Buy Local” efforts.

WINERIES & DISTILLERIES

We had numerous local bills that proposed to allow manufacturers to sell products other than their own. This is part of a national trend and one that has taken hold in our surrounding states, so we can expect this to be a battleground in the coming years. One of these passed, but most died.

HB 866/SB 667 Allegany County – Alcoholic Beverages – Licenses passed, which allows the Board in Allegany to issue a Class L license to any manufacturer, allowing them to sell their own products or products of any other manufacturer.

HB 354/SB 104—Washington County-Alcoholic Beverages—Wineries—Special Event Permits failed. The legislation sought to make permanent a bill that passed two years ago, allowing wineries in Washington County to sell beer and liquor at special events. MSLBA opposed this because it sets a precedent of allowing manufacturers to sell alcohol other than what they produce. In the end, we had agreed to extend the legislation for another

year to work on a long-term solution, but for whatever reason, the amendments to accomplish this were not adopted.

HB 936 Harford County - Alcoholic Beverages - Multiple Licensing Plans, and SB 928/HB 1337 Carroll County—Alcoholic Beverages-Class D Beer, Wine and Liquor License, would also have allowed manufacturers to sell products other than their own, but were defeated.

HB 549 Class 1 Distillery License - On-Site Consumption Permit also passed, which authorizes a local alcoholic beverages licensing board in the State to issue an on-site consumption permit to the holder of a Class 1 distillery license. The permit authorizes the sale of mixed drinks made from liquor produced by the distillery for on-premises consumption. A local licensing board must require the permit holder to abide by all applicable trade practice restric-

tions and comply with existing requirements for alcohol awareness training.

ALCOHOL AWARENESS / IDENTIFICATION LAWS

HB 508—Prohibited Acts-Defense to Prosecution for Sales to Underage Individuals failed. For the second year in a row, this legislation fell victim to the political process and died in the Senate. In 2018, it died in the House. So it has passed both chambers, but unfortunately not in the same year! This bill was an MSLBA initiative that would update the law setting out a good faith defense to serving a minor to include reliance upon an ID scanner for age verification. We will try again in 2020.

HB 1057—Alcohol Awareness Programs Certification Requirements-Alterations was withdrawn by the sponsor after it had passed from the

INCREASE TO MINIMUM WAGE

HB 166/SB 280—Labor and Employment-Payment of Wages-Minimum Wage was also passed, vetoed by the Governor and then overridden by the General Assembly during the Session. The bill phases in the increase and does so at a different pace for small businesses (those with 14 or fewer employees):

- o January 1, 2020 = \$11.00/hour; small business - \$11.00/hour
- o January 1, 2021 = \$11.75/hour; small business - \$11.60/hour
- o January 1, 2022 = \$12.50/hour; small business - \$12.20/hour
- o January 1, 2023 = \$13.25/hour; small business - \$12.80/hour
- o January 1, 2024 = \$14.00/hour; small business - \$13.40/hour
- o January 1, 2025 = \$15.00/hour; small business - \$14.00/hour
- o Small business – January 1, 2026 \$14.60/hour
- o Small business – July 1, 2026 \$15.00/hour

Other relevant provisions include:

- o There is no automatic cost of living escalator for minimum wage as included in the bill as introduced.
- o Lowering the maximum age from 20 to 18 that an employer can pay a rate equal to 85 percent of the minimum wage, meaning this sub-minimum rate applies up to the age of 18.
- o Maintaining current law regarding tipped wages but requires the Department of Labor (DLLR) to adopt regulations requiring restaurant employers that include a tip credit to provide tipped employees with a certain written or electronic wage statement showing the effective hourly tip rate.

House to the Senate. This bill would have required anyone serving alcohol to have alcohol awareness training. MSLBA did not object to the bill, but on further analysis agreed that there were issues that needed to be considered in more detail before any bill was passed. These included laws in some jurisdictions that permit some employees to serve but not pour alcohol, and the availability of training programs in certain parts of the State.

HB 180—Motor Vehicle Administration—Licenses and Identification Cards—Electronic Credentials passed, which enables the MVA to create an electronic credential that can be issued in addition to, but not in place of, a normal hard-copy identification. MSLBA asked for and got an amendment to the legislation clarifying that this credential MAY be accepted as proof of age, but does not have to be. The credential requires an electronic verification system operated by the State, so if a retailer does not have that system, they do not have to accept the credential and can demand the hard copy of the identification.

GENERAL BUSINESS LEGISLATION

HB 109/SB 285—Environment-Expanded Polystyrene Food Service Products—Prohibitions was passed, which prohibits, beginning July 1, 2020, a person from selling or offering for sale in the State an “expanded polystyrene food service product”. These are defined as a product made of “expanded polystyrene” that is (1) used for selling or providing food or beverages and (2) intended by the manufacturer to be used once for eating or drinking or generally recognized by the public as an item to be discarded after one use. It includes food containers, plates, hot and cold beverage cups, trays, and cartons for eggs or other food, but does not include (1) food or beverages that have been packaged in expanded polystyrene containers before receipt by a food service business; (2) a product made of expanded polystyrene that is used to package raw, uncooked, or butchered meat, fish, poultry, or seafood; or (3) nonfoam polystyrene food service products.

SB 694/HB 777—Credit Card Processors—Merchant Processing Agreements passed, which prohibits a credit card processor from assessing or charging a fee, fine, or penalty of more than \$500 if a business entity cancels a “merchant processing agreement” before the expiration of the initial term. Additionally, a credit card processor may not assess a fee, fine, or penalty if a business entity terminates the merchant processing agreement after the expiration of the initial term. The bill does not apply to an agreement that may be terminated without fees, fines, penalties, or liquidated damages, or to a business entity that employs 50 or more employees or estimates that it will generate more than \$2 million annually in credit card or electronic commerce transactions. The agreement must disclose the amount of any early termination fee, fine, penalty, or liquidated damages, the expiration and renewal dates of the agreement, and the customer service contact information of the processor. The information must be provided on the signature page of an agreement and be initialed separately by the business entity. ■

FIELD ENFORCEMENT LEAVING COMPTROLLER'S OFFICE; WILL BE AN INDEPENDENT COMMISSION APPOINTED BY GOVERNOR WITH CONSENT OF SENATE

HB 1052/SB 703—Alcohol and Tobacco Commission was also adopted, although MSLBA did not take a position on these bills. This legislation passed, vetoed by Governor Hogan, and then overridden by the General Assembly during the Session. Effective in June of 2020, this legislation will transfer the Field Enforcement Division and its role in enforcing the alcohol and tobacco laws (but not petroleum) from the Comptroller's Office to a five-member independent Commission, whose members will be appointed by the Governor with the advice and consent of the Senate. The background of the members include one from law enforcement, one from public health, one from the alcohol industry, and the remaining two must come from a financial background. Its members cannot accept contributions from the industry. For alcohol retailers, this shift does not mark a major change in enforcement, as the vast majority of it will continue to be done through the local liquor boards. On larger issues of policy and so forth, the Commission will certainly play a role. For manufacturers and wholesalers, they will now be regulated through the Commission. Sales and alcohol taxes will still be collected through the Comptroller's Office.

MSLBA was formed to represent the interests of the retail alcohol beverage operator in legislative and executive matters in connection with the sale and distribution of beer, wine and liquor, and to promote friendly relations between members of this association and allied branches of the beer, wine and liquor industries.

Beverage Alcohol Licensees who are not already members are encouraged to join. Membership information is available by contacting the MSLBA office: 410-871-1377, 410-876-3464 or mslba@msn.com.

The Maryland State Licensed Beverage Association, Inc., is a non-profit trade association whose members are alcohol beverage licensees throughout the State.