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FISCAL IMPACT STATEMENT

LS 7378

BILL NUMBER: HB 1396

NOTE PREPARED: Feb 16, 2021

BILL AMENDED: Feb 16, 2021

SUBJECT: Alcoholic Beverages and Tobacco.

FIRST AUTHOR: Rep. Smaltz

FIRST SPONSOR:

BILL STATUS: 2nd Reading - 1st House

FUNDS AFFECTED: **GENERAL**
 DEDICATED
 FEDERAL

IMPACT: State & Local

Summary of Legislation: This bill makes the following changes to IC 7.1:

- (1) Provides that the Alcohol and Tobacco Commission (ATC) has additional powers with regard to tobacco.
- (2) Allows the holder of a food hall vendor's permit and a retailer's permit who also holds a permit for a small brewery, a farm winery, or an artisan distillery (craft manufacturer) to sell carryout alcoholic beverages at the retailer's permit premises that are produced under the craft manufacturer's permit.
- (3) Amends the definition of "entertainment complex" to include a venue with permanent seating for at least 600 (instead of 800) persons. It also amends the requirements for an entertainment complex to include, in part, a premises:
 - (A) located entirely within a two mile radius of the center of a consolidated city; and
 - (B) used by a nonprofit organization primarily as a fine arts theater or for the professional performance of musical or theatrical entertainment.
- (4) Removes the requirement that the Department of Local Government Finance (DLGF) consent to the continuation of a permittee's business by the permittee's heir.
- (5) Requires the disclosure of the names of the officers of a corporation or other entity applying for a permit in a published notice or Internet web site.
- (6) Eliminates the requirement of a public meeting for making an initial request to the ATC to deposit a permit in escrow.
- (7) Requires certain permit applicants to provide documentary evidence of United States citizenship or lawful entry into the United States.
- (8) Requires a municipality to notify the chairman of the ATC of any retailer or dealer premises annexed into the municipality, in order to ensure the correct distribution of excise funds.
- (9) Establishes requirements in order for a liquor to be advertised or labeled Indiana rye whiskey.

- (10) With certain exceptions, requires a permit applicant to provide the name and address of each person or entity holding at least a 2% interest in the permit and business.
- (11) Allows a craft manufacturer to locate near a school or church if the church or school does not object.
- (12) Eliminates Indiana residency requirements for retailers, dealers, and brewers.
- (13) Provides for "grab and go stores" that are accessible only by ticketed event attendees and provide self-service sales of alcoholic beverages in addition to sales of food and nonalcoholic beverages.
- (14) Allows a retailer, small brewery, farm winery, or artisan distillery to deliver alcoholic beverages to a customer in the parking lot or an adjacent area.
- (15) Allows a small brewery, farm winery, and artisan distillery to sell and deliver alcoholic beverages to a wholesaler directly from a separate storage building.
- (16) Allows a farm winery that:
- (A) does not distribute through an Indiana wine wholesaler to self distribute to a retailer or dealer up to 3,000 gallons in a calendar year, depending upon the amount of wine the farm winery takes out of bond the previous calendar year; or
 - (B) distributes through an Indiana wholesaler, to self distribute the greater of 1,000 gallons or 50% of the amount the farm winery distributed through the wholesaler the previous calendar year, not to exceed 3,000 gallons.
- It also allows an artisan distillery that:
- (A) does not distribute through an Indiana wholesaler, to self distribute to a retailer or dealer up to 300 proof gallons in a calendar year, depending upon the amount of liquor the artisan distillery takes out of bond the previous calendar year; or
 - (B) distributes through an Indiana wholesaler to self distribute the greater of 100 proof gallons or 50% of the amount the permit holder distributed through an Indiana wholesaler the previous calendar year, not to exceed 300 proof gallons.
- (17) Repeals provisions that require an artisan distiller's permit applicant to hold another manufacturer permit and that establish requirements for applicants who, as of January 1, 2014, do not hold another manufacturer's permit.
- (18) Provides that a farm winery may sell wine in any container permitted by federal law.
- (19) Requires alcoholic beverage quotas for permits in Indianapolis to be based on the population located within Marion County and outside the excluded cities of Beech Grove, Lawrence, and Southport and the excluded town of Speedway. (Current law provides that quotas for permits in the consolidated city are based on the population of the consolidated city's fire special service district.)
- (20) Amends the definition of "beer" to include the fermentation of cereal byproducts.
- (21) Amends the definition of "flavored malt beverage" to include canned beverages.
- (22) Provides that upon written request, the local board must provide to an individual by electronic mail a copy of the local board hearing schedule, and all subsequent monthly hearing schedules, not later than 24 hours after the schedule is posted.
- (23) Allows a small brewery, farm winery, and artisan distillery to host a trade show or exposition at a location that is subject to a retailer's permit or supplemental catering permit.
- (24) Provides that an employee who makes curbside delivery of alcoholic beverages to a consumer must be at least 21 years of age.
- (25) Creates a craft festival organizer permit (organizer permit) that entitles the permit holder to allow small brewers, farm wineries, and artisan distilleries (festival participants) to sell and serve alcoholic beverages by the glass and for carryout within a festival area. It requires a person who is at least 21 years of age to wear a wristband identification within the festival area. It provides that an organizer permittee is responsible to the ATC for all violations of alcohol laws and rules regarding sales and service of alcoholic beverages by festival participants and commits a Class B infraction for:
- (1) failing to issue a wristband identification to a person entering the festival area who is at least 21

years of age;

(2) sale of an alcoholic beverage by a festival participant to a person who is not wearing a wristband identification; or

(3) selling or serving: (A) more than one open container of alcoholic beverage; or (B) an open container of alcoholic beverages in an amount that exceeds the amount set by statute.

The bill also makes stylistic changes.

Effective Date: Upon passage; July 1, 2021.

Explanation of State Expenditures: *Alcohol and Tobacco Commission (ATC):* The bill provides that the ATC has the authority to do the following with regard to tobacco sales certificates:

- Prescribe forms;
- Promulgate rules and regulations governing the conduct of business of a certificate holder;
- Issue, deny, suspend, revoke, or not renew certificates;
- Prohibit the sale, transportation, or movement of tobacco during a time of public emergency, civil disturbance, riot, or epidemic; and
- Regulate or prohibit a practice, relationship, or dealing by or between certificate holders.

[The ATC currently has these same powers with regard to alcoholic beverage permits.] The ATC's workload and costs would likely increase to carry out the enforcement and administrative duties in this bill.

In addition, the ATC would administer and enforce bill's provisions regarding alcoholic beverages. Some of the bill's provisions may require the ATC to revise application forms for alcoholic beverage permits. In addition, the ATC would review and approve applications for craft festival organizer permits created by the bill. These provisions are within the ATC's routine administrative functions and should be able to be implemented with no additional appropriations, assuming near customary agency staffing and resource levels.

The bill's provision eliminating the requirement of a public meeting for an initial request to deposit a permit in escrow could potentially reduce ATC's administrative workload if fewer public hearings are held. The requirement in the bill for municipalities to notify the ATC of permits located within annexed areas could also potentially reduce the ATC's workload. However, expenditures are not likely to be significantly affected by these provisions.

Department of Local Government Finance (DLGF): The bill could potentially reduce the workload of the DLGF because it would no longer be required to provide consent for a surviving spouse or heir of a deceased permittee to continue the permittee's business. [The bill does not change the other requirements in current law that must be met for a surviving spouse or heir to continue the business of a deceased permittee.]

Explanation of State Revenues: *Alcoholic Beverage Permit Fees:* Some of the bill's provisions could increase the number of certain alcoholic beverage permits that are available or allow more applicants to be eligible for certain permits. Additionally, the bill creates a new type of temporary event permit, known as a craft festival organizer permit. To the extent that additional permits are issued, revenue from permit fees would increase.

The provisions affecting the Marion County permit quota could increase the number of retailer and dealer permits that may be issued in the county. The provisions repealing residency requirements could potentially allow more applicants to qualify for retailer, dealer, and brewer permits. However, these permits would still be subject to the quota limits in current law.

The bill changes the definition of “entertainment complex” in a way that could potentially allow more facilities to qualify for civic center permits. (Current law allows the ATC to issue a civic center permit to the proprietor of an entertainment complex.) However, any increase in revenue would likely be minimal.

The bill repeals certain eligibility requirements for artisan distiller permits, potentially allowing more applicants to be eligible to apply for these permits. In addition, the bill adds small breweries, farm wineries, and artisan distilleries to the list of permittees that may locate within 200 feet of a school or church under certain circumstances.

The bill requires an employee of a grab and go store that has an employee permit to be present in the store during business hours. If this provision results in additional applicants for employee permits, revenue from employee permit fees could increase. However, any increase in revenue would likely be small.

The annual fee for a retailer or dealer permit is equal to \$500 if the permittee sells only beer or only wine; \$750 if the permittee sells both beer and wine but no liquor; and \$1,000 if the permittee sells beer, wine, and liquor. Revenue is initially deposited in the Excise Fund. These receipts are then distributed to the state General Fund (37%); the city, town, or county in which the licensed premises are located (33%); and the Enforcement and Administration Fund (30%). The price paid for an initial permit at auction varies and is deposited in the Enforcement and Administration Fund.

The annual permit fee for a brewer that manufactures more than 90,000 barrels in a year is \$2,000, and the fee for a brewer that manufactures less than 90,000 barrels is \$500. The annual fee for a farm winery permit is \$500, and the annual fee for an artisan distillery permit is \$250. Revenue is distributed to the General Fund (66%) and the Enforcement and Administration Fund (34%).

The \$45 fee for an employee permit is paid every three years. Revenue is deposited in the Excise Police Retirement Fund to pay benefits and administrative costs. Surplus revenue goes to the Enforcement and Administration Fund for ATC administrative costs.

Alcoholic Beverage Sales: Some of the bill’s provisions could either increase the number of locations at which alcoholic beverages may be sold or increase the convenience of purchasing alcoholic beverages. The bill also allows (1) breweries to manufacture hard seltzer, (2) flavored malt beverages to be sold in cans, and (3) wineries to sell wine in cans. If these provisions result in increased alcohol sales, revenue from Alcoholic Beverage Taxes and Sales Tax could increase. The impact on tax revenue is indeterminable, but would likely be small.

Alcoholic Beverage Tax revenue is distributed in varying amounts to the following funds: General Fund, State Construction Fund, Enforcement and Administration Fund, Pension Relief Fund, Addiction Services Fund, and Wine Grape Market Development Fund. Fifty percent of the General Fund distribution is allocated to cities and towns according to a formula based on population.

Sales Tax revenue is deposited in the General Fund (99.838%), Commuter Rail Service Fund (0.131%), and Industrial Rail Service Fund (0.031%).

(Revised) Fines and Penalties: The ATC may impose civil penalties for violations of state alcoholic beverage laws. If the ATC imposes penalties for violations of the bill’s requirements regarding craft festival organizer permits or advertising or labeling liquor as Indiana rye whiskey, revenue could increase. A penalty may not exceed \$4,000 for each violation if the permittee is a brewer, artisan distiller, or distiller; \$2,000 if the

permittee is a wholesaler; and \$1,000 for all other permittees. Revenue is deposited in the Enforcement and Administration Fund.

The bill specifies that permittees delivering alcoholic beverages to a consumer's residence or conveying alcoholic beverages to a consumer in a parking lot or adjacent area must verify the customer's age pursuant to IC 7.1-5-10-23. Under this statute, it is a Class C infraction for a permittee or employee to sell an alcoholic beverage to a person who appears to be less than 40 years of age without requiring the customer to produce a driver's license or other government issued identification showing that they are at least 21 years of age. The maximum judgment for a Class C infraction is \$500, which is deposited in the General Fund. However, any additional revenue is likely to be small.

Additional Information:

Retailer, Dealer, and Brewer Residency: Current law requires a person to be a continuous bona fide resident of Indiana for five years before applying for a retailer's or dealer's permit of any type. It requires that at least 60% of the interest in a retailer's permit or package liquor store permit is owned by persons who have been continuous bona fide residents of Indiana for five years if the business is a corporation, limited liability company, or limited partnership. Current law also requires the partners or members of a limited liability company that hold a brewer's permit be residents of Indiana. The bill repeals these requirements. To the extent that the ATC would issue additional permits, revenue from permit fees would increase. However, the number of alcoholic beverage retailer, dealer, and brewer permits would still be subject to the quota limits in current law.

Brewery, Winery, or Distillery near School or Church: Under current law, grocery stores, drug stores, restaurants, hotels, catering halls, and locations for which the use of a supplemental catering permit has been approved may locate within 200 feet of a church or school if the church or school submits a written statement that they do not object. The bill adds small breweries, farm wineries, and artisan distilleries to the list of permit types that may locate within 200 feet of a church or school under these circumstances.

Artisan Distiller's Permits: Current law requires applicants for an artisan distiller's permit to hold either a farm winery permit, small brewer's permit, or distiller's permit for 18 months immediately preceding the date of application, with certain exceptions. Applicants must also have no more than one violation of alcoholic beverage laws in the 18 months before application and no violations in the 12 months immediately preceding application. The bill repeals these requirements, potentially allowing more applicants to be eligible to apply for an artisan distiller's permit. [Current law unchanged by the bill requires artisan distillers to (1) produce not more than 10,000 gallons of liquor in a calendar year excluding liquor sold through a wholesaler and (2) obtain the necessary permit or license from the federal government to manufacture liquor.]

Craft Festival Organizer Permit: The bill creates a craft festival organizer permit, under which small breweries, farm wineries, and artisan distilleries would participate in a festival in an approved location and may sell alcohol by the drink and for carryout. The term of the permit is up to three days. The ATC may issue one permit per quarter in each county. The permit fee is equal to \$500 and would be deposited in the Enforcement and Administration Fund.

The bill provides that an organizer permittee who violates the provisions regarding wristbands and sales of open containers commits a Class B infraction. The maximum judgment for a Class B infraction is \$1,000, which would be deposited in the state General Fund. However, any additional revenue is likely to be small.

Hard Seltzer: The bill changes the definition of beer to include an alcoholic beverage obtained by the fermentation of cereal byproducts. This provision would allow breweries to manufacture hard seltzer. The bill also allows flavored malt beverages, including hard seltzer, to be sold in cans and hard seltzer produced by wineries to be sold in cans. Under current law, hard seltzer may be manufactured by a winery and is subject to the \$0.47 per gallon Wine Excise Tax.

Explanation of Local Expenditures: *Notice of Annexation to ATC:* The bill requires municipalities to provide notice of licensed premises located within annexed territory to the ATC within ten days after an annexation ordinance is filed. The bill's reporting requirement could increase the administrative workload of municipalities that annex territory that contains a retailer's or dealer's permit. However, any increase in costs would likely be minimal.

Explanation of Local Revenues: *Alcoholic Beverage Permit Fees/Notice of Annexation to ATC:* Revenue distributed to cities, towns, and counties could increase to the extent that retailer and dealer permit fee revenue increases. The extent of the potential increase in revenue to local governments is indeterminable, but likely minor.

The bill's requirement to notify the ATC of licensed premises located in annexed territory could potentially affect the timing of changes to distributions of retailer and dealer permit fees from the Excise Fund if the ATC is made aware of annexations more quickly.

Permit fees for retailer's and dealer's permits are deposited in the state Excise Fund, and 33% of that revenue is distributed to the city or town in which the licensed premises are located. If the retailer's or dealer's premises are located in an unincorporated area, the money is paid to the county. [In FY 2020, \$9.4 M in permit fee revenue was deposited in the Excise Fund.]

Alcoholic Beverage Sales: To the extent that Alcoholic Beverage Tax revenue increases, the amount distributed to cities and towns would increase. However, any increase would likely be small. [Fifty percent of Alcoholic Beverage Tax revenue that is distributed to the General Fund is allocated to cities and towns according to a formula based on population.]

(Revised) *Fines and Penalties; Craft Festival Organizer Permit:* If additional court actions are filed and a judgment is entered, local governments would receive revenue from court fees. However, any additional revenue is likely to be small.

State Agencies Affected: Alcohol and Tobacco Commission; Department of Local Government Finance.

Local Agencies Affected: Cities, towns, and counties; trial courts, local law enforcement agencies.

Information Sources: Alcohol and Tobacco Commission Advisory Opinion 19-02, https://www.in.gov/atc/files/Advisory-Opinion-19-02_FINAL.PDF

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