

**LEGISLATIVE SERVICES AGENCY
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FISCAL IMPACT STATEMENT

LS 7378

BILL NUMBER: HB 1396

NOTE PREPARED: Apr 13, 2021

BILL AMENDED: Apr 12, 2021

SUBJECT: Alcoholic Beverages and Tobacco.

FIRST AUTHOR: Rep. Smaltz

FIRST SPONSOR: Sen. Alting

BILL STATUS: As Passed Senate

FUNDS AFFECTED: GENERAL
 DEDICATED
 FEDERAL

IMPACT: State & Local

Summary of Legislation: This bill has the following provisions:

- Provides that if any provision, or application of any provision, concerning the manufacture, importation, distribution, or retail sale of alcoholic beverages is deemed to be in conflict with federal law or unconstitutional, certain alcoholic beverage laws shall be construed to limit rather than expand the manufacture, importation, distribution, and retail sale of alcoholic beverages through a three-tier system. It provides a definition of "three-tier system".
- Defines the term "channel price" and allows a wholesaler to offer a channel price to a retailer if certain conditions are met.
- Amends the "entertainment complex" definition.
- Provides that the Alcohol and Tobacco Commission (ATC) has additional powers with regard to tobacco.
- Provides that certain references to alcoholic beverages in bottles include alcoholic beverages in containers.
- Modifies certain dates concerning alcohol retailer and dealer permits that are deposited with the ATC and that may revert to the ATC if the permit does not become active.
- 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.
- Adds requirements for a permit holder when making an initial request for deposit of a permit.
- Eliminates Indiana residency requirements for retailers, dealers, and brewers.
- Provides that residential delivery by a beer retailer, liquor retailer, or wine retailer may only be performed by the permit holder or an employee who holds an employee permit.
- Requires a permit holder to maintain a written record of each delivery for at least one year that shows the customer's name, location of delivery, and quantity sold.

- 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.
- Provides that certain provisions of the food hall master permit section do not apply to a food hall that: (1) is located in a certified technology park; and (2) operates in a certain type of building or complex of buildings.
- 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.
- Removes the requirement that the Department of Local Government Finance consent to the continuation of a permittee's business by the permittee's heir.
- 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.
- 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 to sell certain carry out alcoholic beverages at the retailer's permit premises.
- Provides that a farm winery may place wine in bottles or other permissible containers.
- Allows a farm winery to sell wine by the can.
- Allows a farm winery to transfer wine from a storage facility or certain locations.
- Allows a farm winery to sell or transfer wine directly to a wine wholesaler.
- Provides that an artisan distiller may transfer liquor from a separate storage facility back to the artisan distiller.
- Allows an artisan distiller to sell or transfer liquor directly to a liquor wholesaler.
- Makes technical corrections and 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 could 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. 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 allow more applicants to be eligible for certain permits. To the extent that additional permits are issued, revenue from permit fees would increase.

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.) The bill removes residency requirements for retailer, dealer, and brewer permits, potentially allowing more applicants to be eligible for these permits depending on quota availability. The bill also extends the deadline for certain permits that have been deposited with the ATC to become active, which could reduce the number of permits that revert to the ATC.

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. However, any increase in revenue would likely be minimal.

The bill provides that certain requirements do not apply to certain applicants for food hall master permits, which could increase revenue to the Enforcement and Administration Fund from fees for food hall master permits and food hall vendor permits.

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. It also requires that home delivery of alcoholic beverages be performed by a permit holder or an employee that holds an employee permit. If these provisions result in additional applicants for employee permits, revenue from employee permit fees could increase. However, any increase in revenue would likely be small. 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 farm 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.

The provision that requires certain alcoholic beverage laws to be construed to limit rather than expand the manufacture, importation, distribution, and retail sale of alcoholic beverages is not expected to have a significant impact on alcoholic beverage sales. However, it could potentially reduce sales by an indeterminate amount depending on future rulings on alcoholic beverage laws.

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%).

Channel Pricing: The bill allows a wholesaler to offer channel pricing to a retailer under certain conditions. Under current law, it is a Class B misdemeanor for a permittee to give a discount that is not available to all purchasers at the same time. If fewer court cases occur and fewer fines are collected, revenue to both the Common School Fund (from fines) and the state General Fund (from court fees) would decrease. The maximum fine for a Class B misdemeanor is \$1,000. However, any decrease in revenue would likely 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.

Food Hall Permits: If additional food hall master permits are issued, additional permits for food hall vendors would likely also be issued, and permit fee revenue would increase. The initial fee for a food hall master permit is \$50,000, and the annual renewal fee is \$5,000. The initial fee for a food hall vendor's permit is \$2,500 if the space is less than 1,000 square feet or \$5,000 if the space is less than 2,000 square feet, with annual renewal fees of \$1,000. If the vending space is more than 2,000 square feet, the vendor must purchase a permit subject to availability under the quota system. All revenue from these fees is deposited in the Enforcement and Administration Fund.

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.

Channel Pricing: A Class B misdemeanor is punishable by up to 180 days in jail.

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.]

Channel Pricing: If fewer court actions occur and fewer guilty verdicts are entered, local governments would receive less revenue from court fees. However, any change in revenue would likely 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:

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