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**FISCAL IMPACT STATEMENT**

**LS 7125**

**BILL NUMBER:** SB 339

**NOTE PREPARED:** Apr 11, 2007

**BILL AMENDED:** Apr 10, 2007

**SUBJECT:** Alcoholic Beverage.

**FIRST AUTHOR:** Sen. Riegsecker

**FIRST SPONSOR:** Rep. Van Haften

**BILL STATUS:** As Passed House

**FUNDS AFFECTED:**  GENERAL  
 DEDICATED  
 FEDERAL

**IMPACT:** State & Local

**Summary of Legislation:** *Definition of Grocery Store:* This bill defines "grocery store" for purposes of the law concerning alcohol and tobacco. The bill allows the Alcohol and Tobacco Commission (ATC) to renew or transfer ownership of a beer dealer's permit for a beer dealer who: (1) held a permit before July 1, 2007; and (2) does not qualify for a permit as a grocery store.

*Random ATC Inspections:* The bill also requires the ATC to: (1) conduct random unannounced inspections of locations where alcoholic beverages are sold or distributed; and (2) investigate the desirability of a permit in regard to the potential geographic location of the permit. This bill allows a person at least 18 years of age and less than 21 years of age to receive or purchase alcoholic beverages as part of an enforcement action.

*Changes to Dealer Permit Quotas:* The bill changes the quota provision for liquor dealers and beer dealers.

*Dealer Residency Requirements:* This bill eliminates residency requirements for dealers.

*Penalties for Sales to Minors:* The bill also provides for graduated civil penalties against a permittee for repeat violations of furnishing alcohol to a minor on the licensed premises and for the collected penalties to be deposited in the enforcement and administration fund. This bill increases the penalty for furnishing an alcoholic beverage to a minor to a Class B misdemeanor if the person is an adult.

*Local Alcoholic Beverage Board Changes:* The bill requires a member of a local board to complete a training program to educate the member on alcoholic beverage law and the operation of the board and the ATC. This bill also requires a local board member to be removed if the member does not complete the training within six months after the member is appointed. The bill provides that members appointed before January 1, 2008,

have until July 1, 2008, to receive training. This bill requires a local board to allow all individuals attending a public local board meeting or hearing to make oral comments at the meeting or hearing regarding the subject of the meeting or hearing. The bill also allows a local board to give greater weight to oral comments provided by a person who owns or operates a business, owns real property, or resides within 1,000 feet of the requested location of an alcoholic beverage permit. The bill provides that in investigating the desirability of the location of a grocery store or package liquor store permit, the local board may consider the number of existing grocery store and package liquor store permits within 1,000 feet of the proposed location. The bill also allows a local board to appoint at least one attorney to assist the local board in fulfilling its duties. The bill requires the ATC to give notice: (1) by mail to the local board that an objection has been filed and the date of any appeal hearing set by the commission; and (2) by publication of the date of any appeal hearing set by the ATC.

*Alcohol Displays:* This bill requires a liquor dealer (other than a package liquor store) to display liquor: (1) in a clearly separated area that prohibits the presence of a minor unless the minor is accompanied by a parent or guardian; and (2) more than 15 feet from a public entrance of a licensed premises.

*Permit Notice Requirements:* The bill changes the notice requirements for new permits and permit transfers.

*Limits on Guests at Event Sales:* The bill removes the limits on the number of guests and duration of an event where an excursion and adjacent land site permit holder provides alcoholic beverages to guests without charge.

*Liquor Samples:* This bill allows liquor retailers and liquor dealers to provide six ounce samples of flavored malt beverages and hard cider.

*Wine Sold/Purchased at an Estate Sale:* The bill establishes requirements for a wine wholesaler to resell wine purchased at an estate sale. The bill provides a wholesaler with immunity from product liability for wine that was purchased at an estate sale.

*Permittee Coercion:* The bill prohibits a permittee from knowingly or intentionally coercing another permittee to enter into an agreement or take an action that violates the alcoholic beverage statutes and rules. (Current law prohibits only a primary source of supply or a beer wholesaler from coercing a beer wholesaler.)

*Waiver by Governor of Sunday Sales Restrictions:* The bill allows the governor to issue an executive order waiving the hours of service restrictions regarding sales of alcoholic beverages on Sunday by retailers if the state or a municipality hosts an event that has the potential to benefit the state and local economy, and other criteria is satisfied.

*New Year's Day Sales off Premises:* The bill allows the sale of alcoholic beverages on New Year's day for off premises consumption.

*Wholesaler Changes:* The bill provides that if a beer wholesaler's warehouse is transferred, the warehouse does not have to be transferred to a location within an incorporated area. This bill makes it a Class D felony for a wholesaler to sell an unauthorized brand of alcoholic beverages and allows an injured permittee to bring a civil action against the wholesaler. The bill also prohibits a beer wholesaler from selling beer to a consumer other than an employee.

*Direct Shipment of Wine Violations:* The bill also provides that a seller does not violate the law if the seller

sold and shipped wine directly to a consumer before January 15, 2007, and did not fulfill the seller's obligation to obtain confirmation of age and provide the name and address of the consumer to the commission before January 15, 2007.

*Postwar Construction Fund Uses:* The bill allows money deposited in the Postwar Construction Fund to be used for construction by the state public safety uses.

*Brewer Changes:* This bill requires criteria established jointly by the Indiana Department of Transportation and the Office of Tourism Development for Tourist Attraction signage to include a category for a tourist attraction that is a small brewery. The bill also allows a small brewery to sell and deliver beer to a consumer. This bill removes a provision that allows a large brewery to sell and deliver beer to a consumer.

*Sales Clerk Requirements:* The bill requires alcoholic beverage sales in a drug store or grocery store to be rung up by a sales clerk who: (1) has an employee permit; (2) has alcohol server training; and (3) is at least 19 years of age. The bill prohibits a proprietor of a package liquor store, drug store, or grocery store from allowing any person who is not a sales clerk from ringing up an alcoholic beverage sale.

*Airline Employee's and Permits:* The bill provides that an airline employee does not have to obtain an employee permit to sell alcoholic beverages.

*Permits Allowances in Certain Localities:* The bill also allows the ATC to issue five additional alcoholic beverage permits to restaurants located in the following: (1) An economic development area in Clarksville in Clark County. (2) A redevelopment project areas in Carmel. The bill allows the ATC to issue not more than eight new three-way permits within economic development areas near Schererville. The bill removes a provision that allows the ATC to issue additional alcoholic beverage permits in Mishawaka. The bill also allows alcoholic beverage permits to be issued in a riverfront development project in a town.

**Effective Date:** July 1, 2007.

**Explanation of State Expenditures:** This bill will increase administrative costs for the Alcohol and Tobacco Commission (ATC). The ATC will have to amend rules, forms, permit, and enforcement procedures to implement the provisions of this bill. The amount of increase in administrative costs is indeterminable.

This bill also requires the ATC, upon application for a new permit or transfer of a location of an existing permit, to investigate the desirability of the permit in regard to the potential geographical location of the permit. The bill provides that the ATC may consider the following in conducting this investigation:

- (1) The need for the services at the requested location of the permit.
- (2) The desire of the neighborhood or the community to receive the services.
- (3) The impact of the services on other business in the neighborhood or community.
- (4) The impact of the services on the neighborhood or community.

The impact of this provision on the administrative expenditures of the ATC is indeterminable and will ultimately depend upon administrative decisions of the ATC in choosing the extent of the required investigations. The impact of this provision will also depend upon the cost of the current investigation procedures of the ATC. The language of this provision mirrors language contained in the ATC's administrative rules at 905 IAC 1-27-4.

The funds and resources required above could be supplied through a variety of sources, including the

following: (1) existing staff and resources not currently being used to capacity; (2) existing staff and resources currently being used in another program; (3) authorized, but vacant, staff positions, including those positions that would need to be reclassified; (4) funds that, otherwise, would be reverted; or (5) new appropriations. Ultimately, the source of funds and resources required to satisfy the requirements of this bill will depend upon legislative and administrative actions. The ATC reverted \$694 in FY 06, and according to the April 2, 2007 State Vacant Positions Report, the ATC had 15 vacant positions worth approximately \$520,000.

*Postwar Construction Fund Uses:* The bill allows money deposited in the Postwar Construction Fund to be used for public safety construction. Currently, the fund may only be used for construction of penal, benevolent, charitable, and educational institutions of the state. The fund receives approximately \$17 M per year in alcoholic beverage excise tax revenue as follows: (1) \$0.0475 from the beer excise tax; (2) \$1.17 from the liquor excise tax; and (3) \$0.16 from the wine excise tax.

**Explanation of State Revenues: Definition of Grocery Store:** The bill defines "grocery store" to mean a store or part of a store that meets the following requirements:

- (1) A store generally known as a:
  - (A) supermarket, grocery store, or delicatessen, and primarily engaged in selling a general food line which may include canned or frozen food, fresh fruit and vegetables, and fresh and prepared meats, fish, and poultry.
  - (2) convenience store or food mart but not a gas station.
  - (3) warehouse club, superstore, supercenter, or general merchandise store that primarily sells a general line of groceries or gourmet foods in combination with merchandise which may include apparel, furniture, and appliances.
  - (4) specialty or gourmet food store that primarily sells miscellaneous specialty food not for immediate consumption and not made on the premises not including meat, fish, seafood, fruits, vegetables, confections, nuts, popcorn, and baked goods.
- (2) The store must also meet the minimum annual gross sales of food for human consumption established in the bill under the new IC 7.1-3-5-5 which requires at least \$84,000 in annual gross sales of food. This minimum is adjusted annually by the ATC by a percentage not to exceed the percentage increase in the CPI during the preceding calendar year.

This definition's impact on dealer permit fee revenue is indeterminable. The impact on fee revenue will ultimately depend on the administrative actions of the ATC, and the number of permits issued to dealers' that previously may not have qualified as a grocery store. According to the ATC there are approximately 1,240 grocery store dealer permits issued under IC 7.1-3-5-2. The bill gives the ATC the option of renewing or transferring ownership of a beer dealer's permit for a grocery store held by a permittee who falls outside this new definition of grocery store in the bill and is a proprietor of a drug store, grocery store, or a package liquor store. Therefore, the total number of permits issued may not decrease.

*Alcohol Displays:* This bill requires a liquor dealer (other than a package liquor store) to display liquor: (1) in a clearly separated area that prohibits the presence of a minor unless the minor is accompanied by a parent or guardian; and (2) more than 15 feet from a public entrance of a licensed premises. This provision of the bill will only have a fiscal impact to the extent that alcohol sales are affected by the display requirements set forth in the bill (also see *Background on Alcohol Sales:* section below). The impact of this bill on state revenues is indeterminable. This bill could decrease dealer permit fee revenue, as well as Sales Tax and Alcoholic Beverage Tax collections.

*Waiver by Governor of Sunday Sales Restrictions:* The bill allows the Governor to issue an executive order waiving the hours of service restrictions regarding sales of alcoholic beverages on Sunday by retailers if the following criteria is satisfied:

- (1) The state or municipality, or both, are hosting an event to benefit the state and local economy and bring prestige to the state.
- (2) The event would involve at least 40,000 people.
- (3) There would potentially be negative economic consequences for retailers without a waiver.
- (4) The state or a municipality would potentially risk losing the right to host the event because of the hours of service restrictions.

This waiver provision will only have an impact to the extent that a waiver is granted, and even then only to the extent that alcohol sales are increased. The amount of any impact is indeterminable, and will ultimately depend upon actions of the Governor.

*Dealer Permit Quota Change:* This bill changes the quota for issuance of beer and liquor dealer permits. These provisions will have a fiscal impact to the extent that a different number of beer or liquor dealer permits could be issued in a city or town than what could be issued under current law. The amount of the impact is indeterminable.

*Dealer Residency Requirements:* The bill also eliminates residency requirements for dealers. To the extent that eliminating these residency requirements increases the number of applications for dealer permits filed by nonresidents there could be an increase in dealer permit fee revenue.

*Penalties for Sales to Minors:* The bill establishes civil penalties for an alcohol permit holder, the holder's agent, or the holder's employee that furnishes alcohol to a minor. Any civil penalties collected would increase revenue to the Enforcement and Administration Fund (EAF). The bill provides that any fines collected under this provision shall be deposited in the EAF.

*Sales Clerks:* The bill requires alcoholic beverage sales in a drug store or grocery store to be rung up by a sales clerk who: (1) has an employee permit; (2) has alcohol server training; and (3) is at least 19 years of age. The bill prohibits a proprietor of a package liquor store, drug store, or grocery store from allowing any person who is not a sales clerk from ringing up an alcoholic beverage sale. This provision of the bill will increase employee permit fee revenue to the Excise Police Retirement Fund and the ATC's Enforcement and Administration Fund. The increase in fee revenue is expected to be over \$110,000 in FY 2008, and \$110,000 every two years thereafter since employee permits are issued on a biennial basis. This estimate is based on the assumption that all dealer permit holders will have at least two sales clerks that obtain an employee permit at each establishment. This estimate was also offset by the fact that under current law, package liquor store sales clerks are already required to obtain employee permits. The ATC estimates that there are approximately 1,850 dealer permit holders that are not package liquor stores. The fee for an employee permit is \$30.

*Permits Allowances in Certain Localities:* This bill provides for 18 new three-way permits to be issued to various localities meeting the requirements set forth in the bill. The bill requires a minimum bid of \$35,000 for the initial issuance of these permits, and therefore permit fee revenue will be increased by at least \$630,000. The timing of this impact will ultimately depend upon the timing of issuance of these permits.

*Background on Permit Fees:* The fees are as follows: (1) a one-way permit is \$500; (2) a two-way permit is \$750; (3) a three-way permit is \$1,000. The fee for a beer, liquor, or wine dealer permit is \$500

each, paid annually. These fees are deposited in the Excise Fund, and then redistributed 37% to the state General Fund, 33% to the general funds of cities, towns and counties, and 30% to the Enforcement and Administration Fund.

*Background on Alcohol Sales:* To the extent that any of the provisions of this bill affect alcoholic beverage sales, state revenues will be impacted. Sales changes will affect collections of both alcoholic beverage excise taxes and the Sales Tax. The alcoholic beverage excise taxes are distributed in varying amounts to the following funds: state General Fund, the Post War Construction Fund, the ATC Enforcement and Administration Fund, the Addiction Services Fund, and the Wine Grape Market Development Fund. The state retains 50% of the General Fund distribution of beer and wine excise tax revenue. The remainder is distributed to cities and towns based on population. Sales Tax revenue is deposited in the: Property Tax Replacement Fund (50%), the state General Fund (49.192%), the Public Mass Transportation Fund (0.635%), the Commuter Rail Service Fund (0.14%), and the Industrial Rail Service Fund (0.033%).

**Explanation of Local Expenditures:** *Local Alcoholic Beverage Board Changes:* This bill imposes several new requirements on local alcoholic beverage boards. It is estimated that implementing these provisions will increase administrative costs of the local boards. The amount of any increase is indeterminable.

**Explanation of Local Revenues:** Any increase in alcoholic beverage excise taxes, dealer permit fee revenue, or retailer permit fee revenue would increase revenue distributed to local governments as required by the distribution formulas for these revenue sources.

**State Agencies Affected:** Alcohol and Tobacco Commission.

**Local Agencies Affected:** Trial courts; local law enforcement agencies; local alcoholic beverage boards.

**Information Sources:** ATC Permit Count, October 2006.

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