

**LEGISLATIVE SERVICES AGENCY
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FISCAL IMPACT STATEMENT

LS 7128
BILL NUMBER: SB 394

NOTE PREPARED: Jan 24, 2007
BILL AMENDED: Jan 23, 2007

SUBJECT: Alcoholic Beverage Issues.

FIRST AUTHOR: Sen. Weatherwax
FIRST SPONSOR:

BILL STATUS: CR Adopted - 1st House

FUNDS AFFECTED: **GENERAL**
 DEDICATED
 FEDERAL

IMPACT: State & Local

Summary of Legislation: *Brewer Sales to Consumers:* This bill allows a brewer of a small brewery to sell and deliver beer to a consumer. The bill removes a provision that allows a brewer of a large brewery to sell and deliver beer to a consumer.

Wholesaler Warehouses: The bill requires an applicant for a beer wholesaler's permit to describe all premises to be used as a warehouse. The bill also provides that a warehouse of a beer wholesaler does not have to be located within the corporate limits of an incorporated city or town.

Wholesaler Permit Changes: The bill removes a provision that allows the Alcohol and Tobacco Commission (ATC) to issue only one beer wholesaler's permit to an applicant.

The bill establishes quotas for liquor wholesaler permits and wine wholesaler permits. This bill allows a beer wholesaler to have an interest in a wine or liquor wholesaler's permit.

The bill repeals a provision prohibiting the ATC from issuing a beer wholesaler's permit to a person who holds a wine wholesaler's permit and a liquor wholesaler's permit.

Dealer Residency Requirements: The bill eliminates residency requirements for dealers.

Beer Wholesaler Sales to Consumers: This bill prohibits a beer wholesaler from selling beer to a consumer other than an employee of the wholesaler. The bill allows a beer wholesaler to have an interest in another permit to sell at wholesale alcoholic beverages of any type.

Failing to Return a Keg: This bill makes it a Class A misdemeanor for a person to fail to return a keg to a wholesaler or dealer within 120 days after the date the keg of beer was purchased.

Alcohol Samples: The bill allows liquor retailers and liquor dealers to provide samples of flavored malt beverages and hard cider.

Wine Purchased at an Estate Sale: This bill establishes requirements that a wine wholesaler must meet to resell wine purchased at an estate sale. This bill provides a wholesaler with immunity from civil liability for product liability or negligence regarding wine the wholesaler purchased at an estate auction and resold. The bill also makes it a Class D felony for a wholesaler to sell a brand of alcoholic beverages that the permittee has not been authorized to sell by the brand's primary source of supply and allows an injured permittee to bring a civil action against the wholesaler.

Alcohol Sales on Election Day: The bill allows the sale of alcoholic beverages on election day while the polls are open.

Effective Date: July 1, 2007.

Explanation of State Expenditures: *Summary of ATC Expenditures:* This bill will cause an increase in administrative costs for the ATC. The ATC will have to amend rules and enforcement procedures of the state Excise Police to implement the provisions of this bill. It is estimated that these changes could be made through the use of existing staff and resources available to the ATC.

Penalty Provisions: The provisions of this bill which set forth standards and requirements for wine purchased at an estate sale, and returning kegs will have a fiscal impact because of the new penalties created in those provisions.

Wine Purchased at an Estate Sale: The bill also makes it a Class D felony for a wholesaler to sell a brand of alcoholic beverages that the permittee has not been authorized to sell by the brand's primary source of supply and allows an injured permittee to bring a civil action against the wholesaler.

Failing to Return a Keg: This bill makes it a Class A misdemeanor for a person to fail to return a keg to a wholesaler or dealer within 120 days after the date the keg of beer was purchased.

A Class D felony is punishable by a prison term ranging from six months to three years or reduction to Class A misdemeanor depending upon mitigating and aggravating circumstances. Assuming offenders can be housed in existing facilities with no additional staff, the average cost for medical care, food, and clothing is approximately \$1,825 annually, or \$5 daily, per prisoner. However, any additional expenditures are likely to be small. The average length of stay in Department of Correction (DOC) facilities for all Class D felony offenders is approximately ten months.

Explanation of State Revenues: *Wholesaler Permit Changes:* The changes in the bill concerning wholesaler permits could have an impact on permit fee revenues. The fee for any wholesaler permit is \$2,000 annually, except for a wine wholesaler permit for a wine wholesaler who sells less than 12,000 gallons per year the fee is \$100 annually. All fees from wholesaler permits are deposited in the state General Fund. The overall impact on wholesaler fee revenue is indeterminable and will ultimately be determined by the administrative actions of the ATC and the number of new applicants.

The bill allows an applicant to be issued more than one beer wholesaler permit. The bill also would allow issuance of a beer wholesaler permit to the current holder of a wine or liquor wholesaler permit.

The bill also contains a quota for the number of liquor and wine wholesaler permits that may be issued. The bill provides that ATC may only issue one liquor and one wine wholesaler permit in each county. The bill allows the ATC to issue one permit beyond this quota in a county, for each increment of 35,000 people. For example, a county with population of 70,000 may have two of each permit issued, \$105,000 of population would allow three of each permit to be issued, and so on.

Due to the provision allowing additional permits for higher population, this provision is not expected to impact the number of permits currently issued in any county. According to the ATC, there are currently 28 wine wholesaler permits and 10 liquor wholesaler permits issued statewide. The counties that currently have more than one of these permits issued are as follows (according to the October 2006 ATC Statewide Permit Counts):

County	Wine Wholesaler Permits	Liquor Wholesaler Permits	2005 Population	Eligible # of Permits
Marion	12	4	863,133	24
St. Joseph	3	2	266,160	7
Vanderburgh	4	1	173,187	4

Dealer Residency Requirements: The bill eliminates residency requirements for dealers. Deleting these residency requirements increases the possible pool of applicants for dealer permits. The amount of an increase in fee revenue is indeterminable, and will depend upon the number of newly issued permits.

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%).

Penalty Provisions: If additional court cases occur and fines are collected, revenue to both the Common School Fund (from criminal fines) and the state General Fund (from court fees) would increase. The maximum fine for a Class D felony is \$10,000. The maximum fine for a Class A misdemeanor is \$5,000.

Explanation of Local Expenditures: *Penalty Provisions:* If more defendants are detained in county jails prior to their court hearings, local expenditures for jail operations may increase. However, any additional

expenditures would likely be small. Class A misdemeanor is punishable by up to one year in jail.

Explanation of Local Revenues: *Background on Alcohol Sales:* 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.

Penalty Provisions: If additional court actions occur and a guilty verdict is entered, local governments would receive revenue from court fees. However, the amounts would likely be small.

State Agencies Affected: Alcohol and Tobacco Commission; Department of Correction.

Local Agencies Affected: Trial courts, local law enforcement agencies. Trial courts, local law enforcement agencies.

Information Sources: October 2006, ATC Statewide Permit Counts.

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