Fiscal Note & Local Impact Statement

127 th General Assembly of Ohio

Ohio Legislative Service Commission
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BILL: **Am. Sub. S.B. 150** DATE: **April 14, 2008**

STATUS: **As Reported by House State Government** SPONSOR: **Sen. Roberts**

LOCAL IMPACT STATEMENT REQUIRED: **No — No local cost**

CONTENTS: **Modifies, clarifies, and corrects liquor control and alcoholic beverage tax laws**

State Fiscal Highlights

STATE FUND	FY 2009	FY 2010	FUTURE YEARS
Liquor Control Fund (Fund 7043) – Department of Commerce			
Revenues	(1) Gain of approximately $180,600 from product registration fees; (2) gain of approximately $11,500 from direct shipping permit fees; (3) potential gain from liquor permit processing fees; (4) loss of $10,500 to $12,800 from lower supplier registration fees	(1) Gain of approximately $11,500 from direct shipping liquor permit fees; (2) potential gain from liquor permit processing fees; (3) potential gain from product registration fees; (4) loss of $10,500 to $12,800 from lower supplier registration fees	(1) Gain of approximately $11,500 annually from direct shipping liquor permit fees; (2) potential gain from liquor permit processing fees; (3) potential gain from product registration fees; (4) loss of $10,500 to $12,800 annually from lower supplier registration fees
Expenditures	(1) Increase of $10,000 for postage; (2) increase of $5,750 for distribution to GRF	Increase of $5,750 for distribution to GRF	Increase of $5,750 annually for distribution to GRF
General Revenue Fund			
Revenues	(1) Gain of approximately $5,750 from direct shipping; (2) potential gain from other liquor permit fees	(1) Gain of approximately $5,750 from direct shipping; (2) potential gain from other liquor permit fees	(1) Gain of approximately $5,750 annually from direct shipping; (2) potential gain from other liquor permit fees
Expenditures	- 0 -	- 0 -	- 0 -

Undivided Liquor Permit Fund (Fund 7066)			
Revenues	(1) Potential gain from liquor permit fees; (2) loss of approximately $11,500 in direct shipping permit fees diverted to Fund 7043	(1) Potential gain from liquor permit fees; (2) loss of approximately $11,500 in direct shipping permit fees diverted to Fund 7043	(1) Potential gain from liquor permit fees; (2) loss of approximately $11,500 annually in direct shipping permit fees diverted to Fund 7043
Expenditures	Potential increase in distributions to the GRF, Fund 4750, and local governments	Potential increase in distributions to the GRF, Fund 4750, and local governments	Potential increase in distributions to the GRF, Fund 4750, and local governments
Statewide Treatment and Prevention Fund (Fund 4750) – ODADAS			
Revenues	Potential gain from liquor permit fees	Potential gain from liquor permit fees	Potential gain from liquor permit fees
Expenditures	- 0 -	- 0 -	- 0 -

Note: The state fiscal year is July 1 through June 30. For example, FY 2009 is July 1, 2008 – June 30, 2009.

- ***Product and supplier registration fees*.** The Liquor Control Fund (Fund 7043) may experience a gain in revenue of approximately $180,600 in FY 2009 from S liquor permit holders registering their products sold in Ohio. However, this fund may also experience a loss in revenue of $10,500 to $12,800 from B-2a permit holders and certain other wine manufacturers from paying a lower annual supplier registration fee.

- ***Direct shipping liquor permit fee disposition*.** Approximately $11,500 in direct shipping liquor permit fee revenue would be diverted from the Undivided Liquor Permit Fund (Fund 7066) to the Liquor Control Fund annually. Of this amount, $5,750 would subsequently be deposited in the GRF. The bill also increases the maximum wine production allowable for B-2a and S direct shipping liquor permits, meaning that amounts diverted to the Liquor Control Fund and the GRF may be higher than noted above.

- ***New or modified liquor permits*.** This bill creates or modifies the requirements for several liquor permits, which may result in the issuance of additional liquor permits. Liquor permit fees are deposited into the Undivided Liquor Permit Fund and then distributed to the GRF, the Statewide Treatment and Prevention Fund (Fund 4750), and local governments, meaning that those funds or local governments may experience a gain in liquor permit fee revenue. Processing fees of $100 for new permits issued are deposited in the Liquor Control Fund (Fund 7043).

- ***Permissible ID notification*.** The bill requires the Division of Liquor Control in the Department of Commerce to provide retail liquor permit holders with a notice of the permissible forms of identification when checking the age of the person buying alcohol. The Division noted that it would send out a mailing to retail permit holders containing the notice. One-time postage costs for these mailings would be approximately $10,000 in FY 2009.

Local Fiscal Highlights

LOCAL GOVERNMENT	FY 2008	FY 2009	FUTURE YEARS
Municipalities and Townships			
Revenues	Potential gain from the issuance of new liquor permits	Potential gain from the issuance of new liquor permits	Potential gain from the issuance of new liquor permits
Expenditures	- 0 -	- 0 -	- 0 -

Note: For most local governments, the fiscal year is the calendar year. The school district fiscal year is July 1 through June 30.

- ***New liquor permit types*.** Municipalities and townships receive a portion of liquor permit fee revenue. The issuance of new D-5m, D-5l and D-5j liquor permits would result in a minimal gain in liquor permit revenue for the local government where the liquor permits are issued.

Detailed Fiscal Analysis

In addition to allowing a liquor permit holder to accept a military identification card that contains a picture and age data as proof of a purchaser's age in addition to a driver's license or other appropriate identification card, the bill contains modifications, clarifications, and corrections to Ohio's liquor and alcoholic beverage tax laws. Those with fiscal effects are described in detail below.

Direct shipping wine manufacturers

The bill makes a number of changes or clarifications to the laws governing holders of S and B-2a liquor permits, which are permits issued to wine manufacturers that enable the direct shipment of wine to consumers and retail permit holders, respectively. Currently, there are 602 S and 180 B-2a liquor permit holders. Of these permit holders, 443 S and 17 B-2a permit holders are located outside of Ohio. Specifically, the bill:

- Specifies that B-2a and S permit holders must register the products they sell in Ohio. There is a $50 product registration fee for each new beer or intoxicating liquor product sold in the state. Currently, only B-2a permit holders must register their products with the Division of Liquor Control (DOLC). If S permit holders register around the same number of products as B-2a permit holders (an average of six), revenue gained from product registration fees would be approximately $180,600 in FY 2009.

  If each of the 602 S permit holders were to register six products, this would mean that DOLC staff in the Beer and Wine Compliance section would have to process approximately 3,600 product registrations. There are two employees currently working in that section and one vacancy that is already within DOLC's budget. DOLC indicated that once the vacant position is filled, the three staff members would be able to handle the temporary increase in administrative work without the need for additional staff.

- Requires B-2a permit holders and small domestic wine manufacturers not holding either direct shipment permit to pay an annual $76 supplier registration fee. Currently, B-2a permit holders and all wine manufacturers outside of Ohio who sell through a licensed wholesale distributor in Ohio and not holding either direct shipping permit pay a $300 annual supplier registration fee and a $100 initial application fee. Based on the number of out-of-state B-2a permit holders (17) and the number of small (producing less than 250,000 gallons annually), out-of-state wine manufacturers paying the supplier registration fee, but not holding either direct shipping permit (30-40), the lower fee for these entities would reduce revenue by up to $12,800 (57 manufacturers x ($300 current fee - $76 proposed fee) = $12,800 loss) annually.

- Clarifies that manufacturers holding only an S permit are exempt from the $300 annual supplier registration fee. There is no fiscal effect from this provision since these permit holders are already exempt as long as they do not sell through a licensed wholesale distributor in Ohio.

- Modifies the disposition of B-2a and S liquor permit fee revenue for out-of-state wine manufacturers (manufacturers that do not hold A-2 permits). Currently, the $25 fee for these liquor permits is deposited in the Undivided Liquor Permit Fund (Fund 7066), part of which is distributed to the local government in which the permit was issued. Instead, the bill routes the permit fees from out-of-state wine manufacturers to the Liquor Control Fund (Fund 7043) from which, once each fiscal year, 50% of the fees collected are to be paid from the Liquor Control Fund to the GRF.

  Based on the current number of out-of-state direct shipping permits, this would have the effect of diverting approximately $11,500 from the Undivided Liquor Permit Fund to the Liquor Control Fund annually (460 permits x $25 fee). Of this amount, $5,750 would be deposited in the GRF.

- Increases from 150,000 to 250,000 gallons the maximum annual amount of wine that a wine manufacturer can produce and still qualify for a B-2a or S permit. This provision may enable additional manufacturers to qualify for direct shipping permits. If additional permits were granted, there would be a gain in revenue to the Liquor Control Fund and the GRF.

Other liquor permit changes

The bill also creates or modifies a number of other liquor permits. They are described in detail below. While it is uncertain how many new liquor permits may be issued as a result of the bill, liquor permit fees are deposited into the Undivided Liquor Permit Fund and distributed to the GRF (45%), the Ohio Department of Alcohol and Drug Addiction Services' Statewide Treatment and Prevention Fund (Fund 4750) for treatment and prevention programming (20%), and the local governments where the liquor permits are issued (35%). All of these would gain their proportionate share of revenue if there are additional licenses issued. All permanent liquor permits, in addition to the stated fee, carry a $100 processing fee that covers the Division of Liquor Control's expenses in fingerprinting and making background checks for permanent license applications. This fee is deposited into the Liquor Control Fund.

D-5l permit – revitalization districts

The bill allows for the creation of revitalization districts for municipalities and townships with populations of less than 100,000. Revitalization districts are bounded areas that include or will include a mix of entertainment, retail, educational, sporting, social, cultural, or arts establishments. The bill specifies the steps in creating such a district with application fees determined and received by the municipality or township. All townships would be eligible to create the districts, but Parma is the largest municipality eligible.

The bill creates the D-5l permit for restaurants or food service operations located in revitalization districts that are in a municipality or township in which the number of D-5 permits issued exceeds the one permit per 2,000 population quota restriction, and that are located in a county having a population of no more than 125,000 as of CY 2006. As of April 9, 2008, the Division of Liquor Control's permit quota report indicates that there are 40 municipalities or townships that meet these qualifications. Not more than one D-5l permit can be issued within each revitalization district for each five acres of land within the district. The fee for this permit is $2,344.

D-5m permit – center for the preservation of wild animals

The bill also creates the D-5m permit for a retail food establishment or food service operation located in or affiliated with a center for the preservation of wild animals. There are no quota restrictions on the number of D-5m permits. The fee for the D-5m permit is also $2,344. This permit appears to apply primarily to The Wilds conservation center in southeast Ohio.

Additionally, the bill allows a permit authorizing Sunday liquor sales (a D-6 permit) to be issued to a center for the preservation of wild animals if the center already has a D-5m permit irrespective of whether or not Sunday liquor sales have been authorized in that area. The fee for a D-6 permit under this circumstance is $500.

D-5j permit – community entertainment districts

The D-5j permit is issued to retail food establishments or food service operations located within community entertainment districts, which are similar to the revitalization districts discussed above. Current law allows such permits only if the community entertainment district meets one of several qualifications regarding population and developer investment. The bill expands the circumstances under which a D-5j permit can be issued by allowing community entertainment districts in municipal corporations having a population of at least 5,000 and at least $100 million will be invested in development and construction in the district. The permit fee for each D-5j permit is $2,344. Current law requires that only a maximum of 15 D-5j permits may be issued in each community entertainment district.

Military identification cards – acceptable identification

Under current law, a liquor permit holder, agent, or employee of a permit holder cannot be found guilty of a violation of the Liquor Control Law or any rule of the Liquor Control Commission in which age is an element of the offense if certain conditions are met. One of those conditions is that the person buying alcohol exhibited to the permit holder a driver's license

or an identification card issued under the Driver's License Law showing that the person buying alcohol was of the age required to purchase beer, intoxicating liquor, or low-alcohol beverages.

This bill authorizes a liquor permit holder to accept a military identification card that contains a picture and age data as proof of a purchaser's age in addition to a driver's license or other appropriate identification card. This provision appears to have no direct fiscal effect on the state or local governments.

Notice to permit holders

The bill also requires the Division of Liquor Control in the Department of Commerce to provide, not later than 90 days after the bill's effective date, retail liquor permit holders with a notice of the permissible forms of identification when checking the age of the person buying alcohol. The Division of Liquor Control currently licenses over 24,000 privately owned and operated manufacturers, distributors, and retailers of alcoholic beverages. Retail permit holders hold the vast majority of the liquor permits the Division issues.

The Division noted that it would send out a mailing to retail permit holders containing the notice in addition to posting the notice at its web site. It is likely that these mailings would not qualify for bulk postage rates since bulk rates require a minimum number of presorted pieces per zip code (500 pieces for first-class mail) and permit quotas limit the number of liquor permit holders in any given municipality or township to one per 1,000 or 2,000 people, depending on permit type. Therefore, it appears that one-time postage costs for these mailings, at 42 cents per piece (effective May 12, 2008), would be approximately $10,000 in FY 2009.

Tax payments and small manufacturer exemptions

The bill makes changes relating to reporting requirements and the tax payment period for wine and mixed beverage manufacturers and wholesalers. Specifically, B-2a and S permit holders must file a monthly report with the Tax Commissioner providing the amount of the wine, cider, and mixed beverages produced and/or sold in the state along with the appropriate excise taxes. Currently, B-2a and S permit holders file annual tax reports. However, the bill also allows the Tax Commissioner to authorize filing of returns and the payment of tax for periods of longer than one month, meaning that there likely would be no practical effect from this provision if these permit holders were authorized to submit reports as they do currently.

The bill also clarifies that holders of direct shipment permits are required to pay the two cent per gallon tax on wine sales and distribution. This tax is deposited to the Ohio Grape Industries Fund (Fund 4960), which is used to fund viticulture research and grape product marketing efforts. Under current law, B-2a and S permit holders should already be remitting all applicable taxes.

Currently, any licensed Ohio wine manufacturer who produces 500,000 gallons or less in a calendar year is granted an exemption from the wine excise tax during the following year and a refund on any excise tax paid during the current year. The bill removes the stipulation that the exemption is allowed in the following calendar year and also allows the exemption to be claimed monthly against *current* taxes levied. Essentially, this would mean that a small wine manufacturer would take the credit up front rather than receiving a refund at a later date. As a

result, there may be some timing issues related to when the exemptions are claimed, but there appears to be no net direct fiscal effect on excise tax revenue to the GRF.

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