



Ohio Legislative Service Commission

Tom Middleton

Fiscal Note & Local Impact Statement

Bill: Sub. S.B. 173 of the 130th G.A.

Date: January 9, 2014

Status: As Passed by the Senate

Sponsor: Sen. Hughes

Local Impact Statement Procedure Required: No

Contents: Modifies the law governing tasting samples of spirituous liquor, beer, wine, and mixed beverages

State Fiscal Highlights

- The bill adjusts the laws governing both spirituous liquor tasting events and sample servings of beer, wine, and mixed beverages. In both cases, the retail store where the tasting events or sample servings are offered must hold a D-8 liquor permit.
- The changes in the bill may result in an increase in D-8 permit applications from businesses and issuances by the Division of Liquor Control under the Department of Commerce. Additional D-8 permit fee revenue would be deposited into the Undivided Liquor Permit Fund (Fund 7066) and subsequently distributed to the State Liquor Regulatory Fund (Fund 5LP0) used by the Division of Liquor Control within the Department of Commerce (45%), the local taxing district where the permit is issued (35%), and the Statewide Treatment and Prevention Fund (Fund 4750) used by the Department of Alcohol and Drug Addiction Services (20%).
- The bill may result in an increase in the number of sales representatives of beer, wine, mixed beverages, and spirituous liquor who register with the Division of Liquor Control and pay a \$50 fee biennially. Fee revenue is paid into the Liquor Control Fund (Fund 7043).

Local Fiscal Highlights

- If more D-8 liquor permits are issued, the local taxing district would receive a portion of the liquor permit fees collected by the state and deposited into the Undivided Liquor Permit Fund (Fund 7066). Current law specifies that local taxing districts are to receive 35% of the permit fees attributable to permitted establishments within their jurisdiction. These revenues would presumably offset any local costs as a result of additional liquor permits.

Detailed Fiscal Analysis

Overview

The bill alters the Liquor Control Law concerning the sale of tasting samples of spirituous liquor and beer, wine, and mixed beverages. Specifically, the bill modifies existing laws dealing with (1) spirituous liquor tasting events conducted within contract liquor agency stores that hold a D-8 permit, and (2) beer, wine, and mixed beverage sampling events. Altogether, the bill would likely result in increased revenue to the state from two sources. First, there could be an overall gain in revenue from the additional D-8 liquor permit issuances that are possible under the bill. Secondly, it is likely that there will be additional liquor sales representatives registering with the Division of Liquor Control (DOLC) within the Department of Commerce. The potential fiscal effects are described in more detail below.

Spirituous liquor tasting events at liquor agency stores

Currently, DOLC contracts with 466 privately owned contract liquor agencies to sell spirituous liquor (alcoholic products containing more than 21% alcohol content by volume). DOLC administers the contracts with these agency stores. Current law allows for agency stores that hold D-8 liquor permits to host spirituous liquor tasting events conducted by trade marketing professionals, brokers, or sales representatives where tasting samples of spirituous liquor products may be sold to consumers. A sample must cost at least 50 cents. Under current law, the spirituous liquor available for sampling must be purchased by the agency store, which is then reimbursed by the individual conducting the tasting event from the proceeds collected from the sale of tasting samples. The bill makes two changes to the guidelines that apply to hosting these tasting events by (1) increasing the number of events that can be hosted at an agency store, from five times per month in current law to ten times per month, and (2) modifying the payment process so that spirituous liquor trade marketing professionals, brokers, or sales representatives can purchase the liquor to be tasted at retail directly from the agency store.

Fiscal effects – gain in D-8 permit revenue from liquor agency stores

These changes may result in more agency stores applying for and being issued D-8 permits to host spirituous liquor tasting events. Of the 466 agency stores under contract with DOLC, 206 already hold D-8 liquor permits and can already host tastings. The D-8 permit application fee is \$500, and permits are renewed annually. If all of the 260 agency stores that do not currently have D-8 permits apply for and are issued D-8 permits, then \$130,000 in new permit revenue could be generated annually ($\$500 \times 260$ agency stores). Additional liquor permit fee revenue would be deposited into the Undivided Liquor Permit Fund (Fund 7066) and subsequently distributed to the State Liquor Regulatory Fund (Fund 5LP0) used by the Division of Liquor Control (45%), the

local taxing district where the permit is issued (35%), and the Statewide Treatment and Prevention Fund (Fund 4750) used by the Department of Alcohol and Drug Addiction Services (20%). There would also be a minimal gain in revenue to the Liquor Control Fund (Fund 7043) from the \$100 processing fee that accompanies all permanent liquor permit applications.

Sample servings of beer, wine, and mixed beverages at retail carryouts

Under current law, sales representatives of beer, wine, and mixed beverages who are registered with DOLC may offer sample servings of their products, at no charge to the sampler, in places where there is a liquor permit for on-premises consumption of that alcohol, such as a bar or restaurant. The person conducting the sampling event must pay the retail price of the product available for sampling to the permit holder. The person may be a representative of the manufacturer, supplier, or broker of the particular product. The bill would allow this same practice to be conducted at a retail store that sells beer, wine, and mixed beverages for *off-premises* consumption, typically carryout establishments, as long as the store has a D-8 permit. Under current law, a retail store that holds a D-8 permit can itself offer samples. Consequently, the effect of the change under the bill is to allow manufacturer representatives, suppliers, or brokers to conduct sampling events at carryout locations.

Fiscal effects – gain in D-8 permit revenue from carryout stores

These changes would likely also result in an increase in D-8 permit applications and issuances to retail stores. However, it is difficult to determine the magnitude of a potential increase in D-8 permits as a result of the altered law governing sample servings because more retail stores are eligible to offer the servings (as opposed to only the 466 contract agency stores eligible to host spirituous liquor tasting events). In addition to liquor agency stores, C permit holders (beer, wine, and mixed beverage carryouts) can also apply for D-8 permits to offer product samples for consumption on premises. Generally, C permit holders are carryout stores that do not sell spirituous liquor. Currently, 422 of these carryout stores have a D-8 permit, while around 8,100 stores could be eligible in addition to those stores. However, the actual number of additional carryout stores eligible for the D-8 permit is likely much smaller since, to qualify under current law, they must have (1) more than 500 square feet of floor area, and at least 60% of the value of the store's sales deriving from general merchandise or food, or (2) wine inventory valuing at least 60% of the value of the store's overall inventory.¹ As a result, LSC cannot determine the number of eligible C permit stores that would additionally qualify for the D-8 permit under these conditions.

Although LSC was not able to confirm the number of C permit holders that also might qualify for the D-8 permit, it may be helpful to provide an example of the

¹ Section 4303.184 of the Revised Code is the continuing law that outlines these qualifications for D-8 permits to be issued for C permit holders.

potential gain in permit revenue that could occur. If we assume that 10% of the approximately 8,100 C permit holders that currently do not hold a D-8 permit are eligible, this would equal 810 C permit store locations. If half of those 810 stores then apply for the D-8 permit, this would result in an additional \$202,500 in revenue generated annually (\$500 D-8 permit fee x 405 stores). However, please note that this estimate is merely an exercise to provide a sense of scale for the potential revenue increase as a result of this provision.

Overall, any increase in D-8 permit issuances would result in additional revenue to the state. Additional liquor permit fee revenue would be deposited into the Undivided Liquor Permit Fund (Fund 7066) and subsequently distributed to the State Liquor Regulatory Fund (Fund 5LP0) used by the Division of Liquor Control (45%), the local taxing district where the permit is issued (35%), and the Statewide Treatment and Prevention Fund (Fund 4750) used by the Department of Alcohol and Drug Addiction Services (20%). There would also be a minimal gain in revenue to the Liquor Control Fund (Fund 7043) from the \$100 processing fee that accompanies all permanent liquor permit applications.

Potential increase in the number of liquor sales representatives

A manufacturer, supplier, wholesale distributor, or broker of beer, wine, mixed beverages, or spirituous liquor must register with DOLC and pay a \$50 registration fee biennially. It is likely that the bill will result in an increase in the number of sales representatives desiring to conduct sales and marketing activities in the state. Currently 4,168 sales representatives are registered. The Liquor Control Fund (Fund 7043) would receive any additional revenue from an increase in sales representatives registering with DOLC.

Finally, it should be noted that any increase in revenue to the state from this bill would at least partially be offset by an increase in oversight and enforcement costs to DOLC and local governments in monitoring the revised Liquor Control Law provisions.