

Department of Finance and Administration

Legislative Impact Statement

Bill: HB2151

As Engrossed: 3/14/2017

Bill Subtitle: TO AMEND THE LAW REGARDING RETAIL LIQUOR STORE SAMPLING PERMITS.

Basic Change :

Sponsor: Representative Penzo

The bill would make changes to the alcoholic beverage laws in Arkansas. Changes would include:

- Authorization is granted to beverage wholesalers to extend credit on distilled spirits and wine sold to retail liquor permit holders. Credit provided by the wholesaler would be limited to a period not to exceed thirty (30) days from the date of invoice. Product sales would be prohibited to a retailer who has not paid in full for the purchase within the 30-day time period.
- Deletes the licensing fees required for issuance of sampling permits by Alcoholic Beverage Control Division (ABC). Current fees are five hundred dollars (\$500) for either a wine license, beer license, or spirits license or one thousand dollars (\$1,000) for a combined wine, beer, and spirits license.
- Establishing as a violation of the alcoholic beverage laws the sale at retail of any wine or beer below the cost to purchase the product from a beverage wholesaler.
- Establishing definitions for "basic cost of wine", "cost of doing business by the retailer", and "cost to the retailer" for grocery store wine permit holders. "Basic cost of wine" is defined to mean the invoice cost of wine to the retailer in the quantity last purchased from the wholesaler at prices generally available in the marketplace, absent any cash or other discounts, incentives or concessions to which have been added the full face value of any taxes, freight or delivery fees. "Cost of doing business by the retailer" means forty percent (40%) of the basic cost of wine to the retailer. "Cost to the retailer" means the basic cost of wine to the retailer plus the cost of wine to the retailer.
- Provision added in a new section of Subchapter 18 of Title 3, Chapter 5 that authorizes wine sales in grocery stores to provide that below-cost sales are prohibited.
- Provision added in a new section of Subchapter 18 of Title 3, Chapter 5 that authorizes wine sales in grocery stores to provide that grocery store personnel shall not deliver wine to the curbside or to a vehicle for pick-up.
- Provision added to provide that grocery store wine permits would not be issued until July 1, 2019.

Revenue Impact :

Elimination of the sampling permit fees will result in a reduction of revenue for ABC in the amount of \$115,000.

Current permits:

Liquor/Wine/Beer (\$1,000) – 109 permits

Beer (\$500) – 2 permits

Wine (\$500) – 9 permits

Liquor (\$500) – 1 permit

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ABC licensing fees for issuance of sampling permits would be eliminated. Current sampling permit fees are five hundred dollars (\$500) for holders of either a wine license, beer license, or spirits license, or one thousand dollars (\$1,000) for a combined sampling permit authorizing sampling of wine, beer, and spirits.

Taxpayer Impact :

Grocery store wine permit holders would establish prices subject to the minimum requirements.

Resources Required :

None.

Time Required :

None.

Procedural Changes :

ABC would no longer collect fees for sampling permits.

Other Comments :

None.

Legal Analysis :

HB2151 as engrossed is constitutionally suspect and likely to be challenged as an unconstitutional bill. Article 5, § 21 of the Arkansas Constitution provides in pertinent part "no bill shall be so altered or amended on its passage through either house, as to change its original purpose." As described by the Arkansas Supreme Court, Article 5, § 21 is intended to "forbid amendments which should not be germane to the subject expressed by the title of the act." *E.g., Cone v. Garner*, 175 Ark. 860, 3 S.W.2d 1 (1927). As originally introduced, the title of the bill read, "AN ACT TO AMEND THE LAW REGARDING RETAIL LIQUOR STORE SAMPLING PERMITS; AND FOR OTHER PURPOSES." To the extent that any of the provisions of the amendment engrossed are not germane to the topic of "retail liquor store sampling permits", the Amendment would violate Article 5, § 21.

HB2151, as engrossed March 14, 2017, modifies several sections of the Alcoholic Beverages Title of the Arkansas Code. First, the bill allows for wholesalers to extend credit to retail liquor store permit holders on wine and distilled spirits for a period of 30 days. This change contemplates a list to be compiled of all retailers who have not timely made their payments to wholesalers. If any retailer is on this list, remaining wholesalers may not deliver to those retailers. If the retailer makes payment after placement on the list, the wholesaler will notify the Alcoholic Beverage Control Division (ABC) within 24 hours' payment. The language of this bill provides that wholesalers "may" extend credit to retailers. This may conflict with existing regulations that require wholesalers must offer the same service to all retailers. This provision is constitutionally suspect.

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The bill completely eliminates the sampling permit fee. The bill then amends § 3-5-203 to provide it is a violation of a permit under that chapter to sell any retail wine or beer below the cost to purchase the product from a wholesaler. § 3-5-203 concerns penalties under that section. It appears that § 3-5-221 concerning miscellaneous prohibited practices and penalties would be a more appropriate location for this prohibition.

The bill then makes several changes to the grocery store wine permit section of the Alcoholic Beverages Title. These changes do not appear to be germane to the title of the bill and may be unconstitutional per Article 5, § 21.

The bill amends Act 508 of 2017 to provide definitions for "basic cost of wine," "cost of doing business by the retailer," and "cost to the retailer." The bill then creates a new section to Act 508 that states, "A person holding a grocery store wine permit shall not sell wine below the cost to the person." This provision is unclear as to whom the second "person" refers. This ambiguity could cause issues with interpretation of the prohibition and should likely read "a grocery store wine permittee shall not sell wine below their cost." The bill also forbids wine store permittees or its agents from delivering wine to a consumer by curbside delivery or vehicle pick-up. This provision is constitutionally suspect.

Finally, the bill enacts a conflicting effective date for grocery store wine permits. While Act 508 regarding grocery store wine permits becomes effective on October 1, 2017, this bill requires that no permit be issued until July 1, 2019. This creates a substantial issue for the Department, because permit fees for the grocery store wine permits are the sole source of funding for the Arkansas Wine Grants Fund. Under Act 508, wineries in Arkansas become eligible to apply for grants from the Arkansas Wine Grants Fund on January 1, 2018. If this bill passes as written, the Department will be responsible for paying out grants from an unfunded fund. This provision is constitutionally suspect.