

Department of Finance and Administration

Legislative Impact Statement

Bill: HB1066

Bill Subtitle: TO ESTABLISH A BEER DIRECT SHIPPER PERMIT.

Basic Change :

Sponsor: Rep. Pilkington

HB1066 creates a new "beer direct shipper permit" for both in-state and out-of-state operators of microbreweries. The bill also provides these entities the authority to ship beer directly to the residence of a consumer of legal age regardless of the state the consumer resides. These permits will be issued for a fee of \$100 and shall expire on June 30 of each year and may be renewed annually for a fee of \$50.00.

These microbreweries would be required to register with the Alcoholic Beverage Control Division (ABC) and provide a copy of the microbrewery's current license to manufacture beer issued by:

1. The state where the microbrewery is located; and
2. The Alcohol and Tobacco Tax and Trade Bureau of the United States Department of the Treasury.

These microbreweries must be registered with the Department of Finance and Administration (DFA) as well and shall collect and remit all sales taxes and excise taxes due on a sale to a consumer as required under current Arkansas law.

Revenue Impact :

No impact to existing state General Revenues.

It can be assumed that there would be an increase in revenue derived from permitting fees that are paid directly to the ABC and distributed according to existing Arkansas Law.

Taxpayer Impact :

In-state and out-of-state microbreweries holding a "beer direct shipper permit" would be able to ship beer directly to a consumer's residence in the State of Arkansas. They may also be able to ship to a consumer's residence outside of Arkansas if that state allows alcohol to be directly shipped to consumers.

Resources Required :

None.

Time Required :

Adequate time is provided for implementation.

Procedural Changes :

Updates to the sales and use tax rules will need to be promulgated.

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Other Comments :

There is no limitation on the alcohol by volume (ABV) of the products to be shipped and certainly no indication that it is below 6.3%. The term "beer" is used and not "malt liquor" or "malt products," and as such, the beer that is shipped will need to be below 6.3% ABV per definitions of the Alcoholic Beverage Control Division (ABC). Many microbreweries create malt products that have a higher ABV than 6.3% and as written those products may not be shipped. The bill currently indicates that it can ship any beer with no limitation to the beer being shipped exclusively be manufactured at the microbrewery. This would allow for a sub-distribution of products that have been purchased by the microbrewery from other wholesalers. Additionally, ABC rules mandate that to wholesale to private clubs one must have a Federal Wholesale permit. There is no such requirement in HB1066. There are also no requirements for the microbrewery to maintain records of who they are shipping the product to as is required for small farm wine shipping. The last issue of concern is that there is no prohibition on the sale of alcoholic beverage in a dry county and there are no requirements for assuring that a sale is only completed to someone that is over the age of 21. The sale occurs and taxes are applied dependent on the purchaser's address. This will circumvent the vote of the residents that have prohibited the sale of alcoholic beverages within their county if allowed to be shipped into a dry county. Private clubs currently are the only entity allowed to distribute alcoholic beverages within the dry county and that is because the beverages are property of the members of the non-profit and the distribution of those beverages are to members only of the non-profit as a service, not a sale of beverages.

Legal Analysis :

HB1066 may benefit from some clarifications. First, the bill does not contain a definition for the term "microbrewery." Title 3, Chapter 4, of the Arkansas Code, which is where this new permit would be codified, does not include a definition for "microbrewery." This issue could be solved by the inclusion of a definition, or by moving the proposed new Arkansas Code section to a different Chapter wherein a definition of "microbrewery" is already provided.

Second, the bill states that microbreweries are required to "collect and pay" all applicable sales and excise taxes required by law. The bill would benefit from the clarification that all microbreweries "shall collect and *remit* all sales taxes and excise taxes due on a sale to a consumer to the Department of Finance and Administration as required under state law."