

# Department of Finance and Administration

## Legislative Impact Statement

**Bill: HB2153**

**Amendment Number: H1**

**Bill Subtitle: TO AMEND TITLE 3 OF THE ARKANSAS CODE REGARDING PERMITS FOR ALCOHOLIC BEVERAGE BUSINESSES.**

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### **Basic Change :**

#### **Sponsor: Representative Penzo**

HB2153 would amend existing Arkansas law to prohibit a wholesaler, manufacturer, small farm winery, or nonresident seller holding a permit or an employee, agent, representative, or salesperson employed by or representing a wholesaler, manufacturer, small farm winery, or nonresident seller holding an Alcoholic Beverage Control permit from shelving, dressing, displaying, or setting inventory owned or purchased by a grocery store wine licensee.

HB2153 also would amend existing Arkansas law governing the number of permits that may be granted in each county to not exceed a ratio of one (1) permit for every seven thousand five hundred (7,500) population residing in the state for the off-premises sale of vinous (except small farm wines), spirituous, or malt liquor.

This proposal provides the definitions for "pool buying" which is the combining of orders into a single transaction, by two (2) or more retail liquor permittees, who are members of a cooperative or pool buying group for maximizing purchasing power. The Alcoholic Beverage Control Division is tasked with adopting rules for agent licensure, buying agreements, pool buying group operations, pool buying group orders, and recordkeeping.

The Act would be effective 90 days after final adjournment of the 91<sup>st</sup> General Assembly.

### **Revenue Impact :**

This bill has no impact on State General Revenue.

### **Taxpayer Impact :**

Taxpayers will be allowed to organize pool buying agreements, pending the approval of the agreement with the Alcoholic Beverage Control Division, allowing two (2) or more retail liquor permittees, who are members of a cooperative or pool buying group to join in an effort to maximize their purchasing power of products used in the normal course of business.

### **Resources Required :**

None.

### **Time Required :**

Adequate time is provided for implementation.

### **Procedural Changes :**

This proposal if adopted results in a modification to the Alcoholic Beverage Control Division rules and training of its staff concerning these changes would be required.

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### Other Comments :

None.

### Legal Analysis :

HB2153-H1 makes several changes to the Alcoholic Beverages section of the Arkansas Code. First, it prohibits manufacturers, wholesalers, or small farm wineries from providing "services" to a grocery store wine permittee, including, but not limited to, the stocking of shelves at a grocery store wine permittee. The bill specifically exempts the unloading of wine at a grocery store wine location. This prohibition may cause issues of enforcement for the Alcoholic Beverage Control Division ("ABC"), because it lacks a definitive definition for provision of services by the wholesalers, manufacturers, and small farm wineries.

Next, the bill limits the number of vinous, spirituous, or malt liquor permits to be granted by the ABC in the future. First, the bill would place a cap of total permits to 1 permit for every 7,500 residents of the state of Arkansas. Second, the bill would change the current county permit limit of 1 permit for every 5,000 residents of the county to 1 permit for every 7,500 residents of a county. The section has also been modified to allow liquor stores to transfer counties. The permit cap will not divest any current permit holders as of September 1, 2017. This modification will impact the ABC's availability of permits in the future.

Finally, the bill creates a section to allow "pool-buying" between multiple retail liquor permittees. The liquor store permittees will be allowed to enter into "pool-buying" agreements with other liquor stores and effectively create a new entity that orders on behalf of several permittees and can hire its own employees. However, individual liquor stores are required to place individually identifiable invoices and distributors are required to deliver these purchases to the individual liquor stores. The bill requires that distributors maintain records on pool-buying transactions for a period of 3 years that include the total order and the pool buying group member's individual portion. The bill also allows for permittees within the same pool buying group to sell products to one another.

The bill, as written, will cause significant issues for the Department of Finance and Administration's audit functions ("Department") and ABC's enforcement of the permits. Allowing inter-group transfers will frustrate the Department's ability to audit appropriate collection of taxes on the permittees. Additionally, the bill requires that pool buying groups and distributors only maintain records for three years on pool buying invoices. The Department will need at least 6 years of pool buying invoices to be able to fully implement its audit function.

Additionally, it is unclear how the pool buying group or agent fits into the three-tier scheme and whether it has authority under the currently drafted bill and existing law to purchase directly from the distributor on behalf of individual permittees.