

Department of Finance and Administration

Legislative Impact Statement

Bill: SB378

Amendment Number: S1

Bill Subtitle: TO MODERNIZE THE LAW REGARDING THE BUSINESS OPERATIONS OF RETAIL LIQUOR STORES; TO ALLOW RETAIL LIQUOR STORES TO SHIP AND DELIVER ALCOHOLIC BEVERAGES; AND TO SELL FOOD AND ASSOCIATED MERCHANDISE.

Basic Change :

Sponsor: Senator J. Hutchinson

Senate Amendment 1 --- Deletes the provisions of the original bill and amends provisions of the Alcoholic Beverage laws in Arkansas. Provisions include:

1. Prohibits wholesalers, manufacturers, small farm wineries, or nonresident sellers holding or their agents who hold alcoholic permits to perform for grocery store wine permittees services involving shelving, dressing, displaying, or setting inventory owned or purchased by the grocery store.
2. Amends the code provision regarding "emergency circumstances" in relation to returning to business after closing that are beyond the control, planning, or foresight of the permit holder.
3. Amends the provisions of law regarding off-premise liquor permit issuance to allow not more than one (1) permit for every seven thousand five hundred (7,500) population. Current law is one (1) for every five thousand (5,000).
4. Amends provisions regarding Class B violations of ABC law to allow a rewards program offered by a retail liquor permittee to a retail customer who frequently makes purchases.
5. Authority for beverage wholesalers to extend credit on distilled spirits and wine sold to a retail liquor permit holder for a period not to exceed thirty (30) days from the date of invoice. When the thirty-day period has passed without payment in full, sales or deliveries of distilled spirits or wine shall not be made by a wholesaler to a retailer.
6. Allows shipment of vinous and spirituous liquors to private residences. The permittee may also sell food and merchandise related to the preparation and consumption of alcoholic beverages.
7. Creates Subchapter 11 to Title 3 Chapter 4 of the Arkansas Code to authorize "Pool Buying" by retail liquor permittees, who are members of a cooperative or pool buying group for maximizing purchasing power by combining orders into a single transaction. The bill creates the administrative procedures for the "Pool Buying".
8. Creates Subchapter 12 to Title 3 Chapter 4 of the Arkansas Code to authorize "Delivery Service Licenses" to be issued to businesses to deliver sealed packages of alcoholic beverages or beer sold by a retailer as part of a delivery of prepared food from a restaurant to a customer. The bill creates the administrative procedures for the "Delivery Service Licenses".
9. Amends provisions concerning consumption at wine tasting events to allow up to a six ounces (6 oz.) wine serving per customer; up an eight ounces (8 oz.) beer servings per customer; and up to a three ounces (3 oz.) spirit servings per customer.
10. For purposes of wine sales in grocery stores, the definition of "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 that are offered within or outside of this state, to which shall be added the full face value of any taxes, freight or delivery fees that may be required by any tax law of this state imposed upon wine supplied to retailers now in effect or hereafter enacted, and any other taxes or fees imposed by this title, if not already included by the wholesaler in this price. "Cost of doing business by the retailer" is defined as thirty percent (30%) 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.

Department of Finance and Administration

Legislative Impact Statement

Bill: SB378

Amendment Number: S1

Bill Subtitle: TO MODERNIZE THE LAW REGARDING THE BUSINESS OPERATIONS OF RETAIL LIQUOR STORES; TO ALLOW RETAIL LIQUOR STORES TO SHIP AND DELIVER ALCOHOLIC BEVERAGES; AND TO SELL FOOD AND ASSOCIATED MERCHANDISE.

11. Arkansas Code Title 3, Chapter 5, Subchapter 18, is amended to add an additional section to provide that a grocery store wine permittee is not allowed to sell wine below the cost to the retailer.

Original Bill --- SB378 would change Arkansas law relating to the operation of retail liquor stores to provide additional authorities for permissible business operations and procedures. The bill would authorize retail liquor stores to:

- Ship vinous and spirituous liquor to a private residence in Arkansas;
- Deliver vinous and spirituous liquors to a private residence in Arkansas;
- Sell food; and
- Sell merchandise related to the preparation and consumption of alcoholic beverages.

The Alcoholic Beverage Control Board would adopt rules regarding the sale of merchandise by the retail liquor stores.

The bill also adds provisions that would allow retail liquor store permittees to purchase vinous and spirituous liquors from wholesalers or distributors using credit cards and allows a group of no more than four (4) permittees to cooperate in purchasing vinous and spirituous liquors from wholesalers and distributors. The bill would be effective 90 days after final adjournment of the 91st General Assembly.

Revenue Impact :

No impact on existing state tax revenues on alcoholic beverages. Any increase in revenues would only occur if sales volumes of alcoholic beverages in Arkansas were to increase.

Taxpayer Impact :

Retail liquor stores could ship and deliver alcoholic beverages to Arkansas consumers.

Resources Required :

None.

Time Required :

Adequate time is provided for implementation.

Procedural Changes :

None.

Other Comments :

The bill does not appear to limit or exclude a retail liquor store from shipping or delivering alcoholic beverages to consumers located in dry counties in Arkansas.

Department of Finance and Administration

Legislative Impact Statement

Bill: SB378

Amendment Number: S1

Bill Subtitle: TO MODERNIZE THE LAW REGARDING THE BUSINESS OPERATIONS OF RETAIL LIQUOR STORES; TO ALLOW RETAIL LIQUOR STORES TO SHIP AND DELIVER ALCOHOLIC BEVERAGES; AND TO SELL FOOD AND ASSOCIATED MERCHANDISE.

Legal Analysis :

SB378-S1 completely rewrites the bill. This bill modifies the Alcoholic Beverages Title of the Arkansas Code. SB378-S1 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 MODERNIZE THE LAW REGARDING THE BUSINESS OPERATIONS OF RETAIL LIQUOR STORES; TO ALLOW RETAIL LIQUOR STORES TO SHIP AND DELIVER ALCOHOLIC BEVERAGES; TO ALLOW RETAIL LIQUOR STORES TO SELL FOOD AND ALCOHOL RELATED ITEMS; TO ALLOW RETAIL LIQUOR STORE PERMITTEES TO PAY DISTRIBUTORS WITH A CREDIT CARD; TO ALLOW RETAIL LIQUOR STORE PERMITTEES TO FORM GROUPS OF UP TO FOUR (4) PERMITTEES FOR THE PURPOSE OF POOLING PURCHASING POWER; AND FOR OTHER PURPOSES. " To the extent that any of the provisions of the amendment engrossed are not germane to the topic of the operations of liquor stores, the Amendment may run afoul of Article 5, § 21.

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.

The amendment also allows for retail liquor stores to offer a rewards program to frequent customers, without it being considered a violation of statute. It also allows for retail liquor stores to make purchases with debit and credit cards.

The amendment 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

Department of Finance and Administration

Legislative Impact Statement

Bill: SB378

Amendment Number: S1

Bill Subtitle: TO MODERNIZE THE LAW REGARDING THE BUSINESS OPERATIONS OF RETAIL LIQUOR STORES; TO ALLOW RETAIL LIQUOR STORES TO SHIP AND DELIVER ALCOHOLIC BEVERAGES; AND TO SELL FOOD AND ASSOCIATED MERCHANDISE.

existing regulations that require wholesalers must offer the same service to all retailers.

The amendment then includes language enclosed in the previous bill that gives retail liquor stores (1) the ability to ship vinous and spirituous liquors to private residences; (2) the ability to deliver vinous and spirituous liquors to private residences; (3) the ability to sell food and alcoholic beverage merchandise; and (4) the ability to pay wholesalers by credit card. It then states that a group of no more than four permittees may cooperate in purchasing vinous and spirituous liquors from a wholesaler or distributor.

The amendment then lays out the framework for "pool buying." Presumably, the previous section limiting cooperation in purchases to only four permittees applies to the pool buying section. The "pool-buying" framework allows liquor store permittees 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 three 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.

Next, the amendment establishes a framework for a new license under ABC for a "delivery service license." This license would be issued by ABC to a delivery service that delivers prepared food from restaurants and sealed packages of alcoholic beverages or beer sold by liquor store retailers. The framework requires that entities that seek this permit apply with ABC, pay a \$300 application fee, and that ABC will issue permits for each employee of same. The inclusion of this framework in the bill is constitutionally suspect.

The amendment then increases the sample size that are allowed at wine tasting events. Finally, the bill makes several substantive changes to the newly passed grocery store wine permit language. First, it establishes definitions for the basic cost of wine, the cost of doing business by the retailer, and the cost to the retailer. The amendment then uses these definitions to prohibit a grocery store wine permit holder from selling wine below the cost to the retailer. Finally, the bill delays the issuance of any grocery store wine permits until January 1, 2018. All of these modification are constitutionally suspect.