

**COMMONWEALTH OF KENTUCKY STATE FISCAL NOTE STATEMENT
LEGISLATIVE RESEARCH COMMISSION
2018 REGULAR SESSION**

MEASURE

2018 BR NUMBER **0856**

HOUSE BILL NUMBER **580**

RESOLUTION NUMBER _____

AMENDMENT NUMBER _____

SUBJECT/TITLE **An ACT relating to alcoholic beverages.**

SPONSOR **Representative St. Onge**

NOTE SUMMARY

FISCAL ANALYSIS: IMPACT NO IMPACT INDETERMINABLE IMPACT

LEVEL(S) OF IMPACT: STATE LOCAL FEDERAL

BUDGET UNIT(S) IMPACT: _____

FUND(S) IMPACT: GENERAL ROAD FEDERAL RESTRICTED AGENCY Alcoholic Beverage Control OTHER

FISCAL SUMMARY

FISCAL ESTIMATES	2017-2018	2018-2019	2019-2020	ANNUAL IMPACT AT FULL IMPLEMENTATION
REVENUES		Indeterminable	Indeterminable	Indeterminable
EXPENDITURES		Indeterminable	Indeterminable	Indeterminable
NET EFFECT		Indeterminable	Indeterminable	Indeterminable

() indicates a decrease/negative

MEASURE'S PURPOSE: The purpose of the measure is to establish lawful shipment and delivery of alcohol from producers, wholesalers, and retailers to Kentucky consumers and consumers in other states.

PROVISIONS/MECHANICS: Section 1 amends KRS 241.010 to add definitions for consumer, direct shipment, and direct shipper to the terms used in KRS 241 to 244 and to edit the definition of manufacturer.

Section 2 creates a new section of KRS 243 that outlines the issuance, use, and limitations of a direct shipping license for the direct shipment of wine, beer, and liquor alcohol within the Commonwealth and for delivery outside the state. The section sets beverage shipping limits for liquor, beer, and wine, and requires Alcoholic Beverage Control (ABC) maintain a database to identify wet, moist, and dry territories. This section also makes it unlawful for a direct shipper to ship any alcoholic beverages to consumers in dry territories.

Section 3 creates a new section of KRS 243 to establish responsibilities of common carriers, establish responsibilities of shippers, and outline processes for the delivery of alcoholic beverages. The section clarifies that carriers may travel through dry or moist territories, but that alcoholic beverages may not be delivered to consumers in dry territories. The section holds shippers and common carriers responsible for the delivery of alcohol to a minor. Lastly, the section requires direct shippers to maintain shipment records for two years.

Section 4 creates a new section of KRS 243 to instruct the licensee to collect excise tax and applicable sales tax revenues for direct shipment of alcohol sales and to remit these funds to the Department of Revenue.

Section 5 amends KRS 242.260 to prevent common carriers from being held liable for violations of KRS 242.260. The section also allows direct shipping licensees to use as a defense for violations of KRS 242.260 the written representation from the consumer that the delivery address is in a wet territory.

Section 6 amends KRS 242.270 to prevent common carriers from being held liable for violations of KRS 242.270. The section also allows direct shipping licensees to use as a defense for violations of KRS 242.270 the written representation from the consumer that the delivery address is in a wet territory.

Section 7 amends KRS 242.280 to make it unlawful for persons in dry counties to receive or accept alcoholic beverages from direct shippers and carriers.

Section 8 amends KRS 243.030 to add a new \$450 annual direct shipping license.

Section 9 amends KRS 243.0305 to require wholesalers to permit distillers to deliver its products to any portion of the distiller's premises. The bill would require direct shipments and sales from distillers to be invoiced through wholesalers when purchased at retail by distillery visitors, when purchased on the distillery premises through a NQ2 license, and when sold at special events such as fairs and festivals.

Section 10 amends KRS 243.130 to conform.

Section 11 amends KRS 243.200 to conform.

Section 12 amends KRS 243.355 to allow direct shipping licensees to also hold a distilled spirits and wine storage license.

Section 13 amends KRS 244.165 to conform.

Section 14 amends KRS 244.240 to allow distilleries and small farm wineries to sell alcohol at retail at distilleries and wineries.

Section 15 amends KRS 243.034 to conform.

Section 16 amends KRS 243.0341 to conform.

Section 17 repeals KRS 243.886 to eliminate the one percent tax discount for paying and reporting the wholesale tax on time.

FISCAL EXPLANATION: The bill would have an indeterminable effect on expenditures and revenues.

The responsibilities to issue direct shipper licenses, maintain an electronic database for territorial alcohol laws, oversee carriage of alcoholic beverages, among other responsibilities of ABC outlined in the bill would result in little to no increase in administrative costs on the Department. The Department reported these increased responsibilities will not create an undue burden on existing staff, and thus can be assumed with existing resources.

The \$450 per annum fee for direct shipping licenses would have a positive effect on restricted fund revenues for ABC. The number of licenses that would be issued is unknown, therefore the fiscal impact of the direct shipping license on restricted fund revenues is indeterminable.

Current law allows wineries in other states to ship wine purchased on-site to Kentucky consumers. While Kentucky statutes allow for these shipments, the three largest domestic carriers (USPS, FedEx, and UPS) do not deliver wine to Kentucky. USPS does not ship any alcohol in any state. UPS and FedEx deliver wine and other alcohol in other states where it is lawful to do so, but they choose not to deliver wine to Kentucky consumers, even though it is lawful. It is uncertain whether UPS and FedEx would choose to begin delivering wine and alcohol in the state if the bill were to become law. If UPS and FedEx continue not to deliver alcohol in Kentucky, the positive impact on excise and sales tax revenue would not be as large as it would be if UPS and FedEx chose to be common carriers for alcohol deliveries in Kentucky. In contrast from UPS and FedEx's current policies to not deliver alcohol to Kentucky, it is unclear whether UPS and FedEx would choose to pick up alcohol in Kentucky for delivery to consumers in other states. An emerging alternative to common carriers such as UPS and FedEx is the alcohol delivery smartphone app industry. These alcohol delivery smartphone app companies would likely be a faster and cheaper alternative for delivery of local direct to consumer alcohol sales, but the alcohol delivery smartphone app companies would not be an alternative for long-distance out-of-state deliveries. The uncertainty of these smartphone app companies establishing business in Kentucky leads to the indeterminable nature of the fiscal impact of this bill.

The bill is likely to have an impact on alcohol sales from a Kentucky shipper to a Kentucky consumer, which would be subject to the excise tax and the Kentucky sales tax. Increased direct shipment of alcohol within the Commonwealth would therefore have a positive effect on sales tax revenue and excise tax revenue, but the effects are indeterminable. Direct shipment of alcohol has potential to have a larger impact on sales from a Kentucky shipper to a consumer in another state, which would only have a positive effect on excise tax revenues, since the consumer would be subject to the sales tax in the state where the alcohol is delivered.

Beyond changes to Kentucky statutes to allow for the shipment of alcohol to consumers in other states, the states where the alcohol is being shipped must have the appropriate legislation for those consumers to accept shipment of alcohol. While most states have legislation that allows for the shipment of wine to consumers, there are fewer states that have laws that allow for shipment of liquor and beer. The impact on excise tax revenues for sales to out-of-state consumers is dependent on legislation in other states. The more states that have laws that allow for the shipment of alcohol to their consumers, the greater the impact on excise tax revenues.

DATA SOURCE(S): Alcoholic Beverage Control, Department of Revenue, National Conference of State Legislatures

PREPARER: Nick Peak NOTE NUMBER: 127 REVIEW: JAB DATE: 3/1/2018