

# SENATE APPROPRIATIONS COMMITTEE FISCAL NOTE

**BILL NO.** House Bill 1497

**PRINTER NO.** 4246

**AMOUNT**

See Fiscal Impact

**FUND**

General Fund  
State Stores Fund

**DATE INTRODUCED**

July 5, 2017

**PRIME SPONSOR**

Representative Jozwiak

**DESCRIPTION**

House Bill 1497 amends the Liquor Code by making the following changes:

**Alcoholic Cider and Fermented Fruit Beverages**

The legislation defines “cider” as being primarily derived from apples and pears and creates a new definition for a “fermented fruit beverage” that can be made from any fruit or fruit juice. It also provides for the sale of fermented fruit beverages, which are currently considered alcoholic cider.

**Local Option Referendum**

The legislation clarifies existing provisions for placing a liquor referendum on the ballot in a general election.

The legislation also requires a manufacturer (breweries, wineries or distilleries) who locates in a dry municipality to obtain approval to sell alcohol for on-premises consumption through a local option referendum. It further provides that a manufacturer that began selling alcohol for on-premises consumption prior to the effective date of this act is not subject to the referendum and may continue to sell alcohol for on-premises consumption.

**Mixed-Use Town Center Development Projects**

The legislation allows the Liquor Control Board (board) to issue retail liquor licenses or eating place retail dispenser licenses for use at a mixed-use town center development project located in a fourth class county and a mixed-use town center development project located in a second class A county that is part of a project previously acknowledged by the board. It requires a mixed-use town center development project to be approved by the local municipal governing body. An interested party must petition the board to have a specific area designated as a mixed-use town center project and pay a fee of \$1,000,000. Each separate license applied for at a mixed-use town center includes a surcharge of \$50,000. The licenses issued may not be transferred to a location outside of the mixed-use town center, may not sell alcohol for off-premises consumption and are not eligible for wine expanded permits. The fees associated with these provisions are to be deposited into the State Stores Fund.

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### **Public Venue/Neighborhood Improvement Zones**

The legislation amends the definition of public venue to add a neighborhood improvement zone created under the Tax Reform Code located in a city of the third class.

### **Proof of Impossibility**

The legislation includes provisions that eliminate the need to prove impossibility as a condition to back out of a prior approval license application. The provisions stipulate that the time between the approval of the initial license application and the issuance of operating authority for the licensee shall be considered time in safekeeping and that a license with prior approval can be transferred if the transfer application includes a surcharge of \$20,000 for a license located in a county of the first through fourth class and \$5,000 for a county of the fifth through eighth class.

### **Wine and Spirits Auction Permits**

The legislation provides for wine and spirits auction permits to be issued to: (1) any community-based voluntary health organization committed to fighting cancer, (2) a community-based voluntary organization in a county of the second class which enriches the lives of children and adults with disabilities and chronic illnesses; and (3) any nonprofit organization located in any county of the third class established to provide general support and food assistance for students in pre-kindergarten through 12<sup>th</sup> grade.

### **Wine Expanded Permits**

The legislation allows licensees with wine expanded permits to sell wine to go at a different price than wine that is sold for on-premises consumption.

### **Public Venue and Performing Arts Facility Sunday Hours**

The legislation allows public venues and performing arts facilities to begin selling liquor at 10:00 a.m. on Sundays. Presently, the law provides for public venues and performing arts facilities to begin selling liquor at 1:00 p.m. on Sundays.

### **Casino Liquor Licenses**

The legislation allows a slot machine licensee to obtain a casino liquor license to serve liquor or malt or brewed beverages for a fee of \$1,000,000, to be paid in four equal installments of \$250,000 over four years. It requires a casino liquor license to pay an annual renewal fee of \$2,500 after the four-year installment period. Sales may occur anywhere within the licensed facility that is not subject to a different license issued by the board, and a casino license shall not be eligible for a wine expanded permit. Presently, a casino liquor license can be obtained for a fee of \$1,000,000 with an annual renewal fee of \$250,000. The legislation specifies that all fees collected or received related to a casino liquor license are to be paid into the State Treasury for deposit into the General Fund.

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### Taxes Due on Sale Made by a Holder of a Manufacturer's License

The legislation provides that the purchase price of malt or brewed beverages sold by a manufacturer directly to the ultimate consumer for consumption on premises shall be the wholesale price. The term "wholesale price" is defined as the price at which the manufacturer sells the same product to a distributor or importing distributor. It provides that if the manufacturer does not sell the product to a distributor or importing distributor, the manufacturer is required to determine a constructive price which would be charged in an arms-length transaction in which no common interest exists. Additionally, the language provides that a license holder is not prohibited from using the actual retail price of malt and brewed beverage sold to consumers as the purchase price upon which the sales tax is imposed. Further, the Department of Revenue (department) may require information necessary to document that the holder of a manufacturer's license making sales is in compliance. Finally, it requires the department to promulgate guidelines to implement these provisions within 180 days of the effective date of this section.

### Credit Card Payments

The legislation provides that an importing distributor or distributor that is authorized to deliver alcohol or malt and brewed beverages may accept a credit card for payment upon delivery so long as the purchaser holds a license issued by the board and the sale is finalized before the product leaves the seller's licensed premises.

### Other Provisions

The legislation moves existing distillery gallonage limitation language and nuisance bar stop-and-go language from the Fiscal Code into the Liquor Code.

The changes related to public venue and performing arts facility Sunday hours are scheduled to take effect immediately. The remainder of the provisions take effect in 30 days.

### **FISCAL IMPACT:**

The enactment of House Bill 1497 will have no adverse fiscal impact on Commonwealth funds.

It is anticipated that the mixed-use town center provisions contained in the legislation will generate \$1,250,000 in revenue for the State Stores Fund. This assumes one entity will submit an application to be designated as a mixed-use town center project for the \$1,000,000 fee and at least five retail licenses will be sought by businesses intending to occupy space in the mixed use town center at \$50,000 per retail license, or \$250,000 in total.

Based on information provided from the Liquor Control Board, it is estimated that annually 10 licensees will pay the surcharge to transfer a license with prior approval. Assuming that five (5) of these transfers occur in counties of the first through fourth class where the fee is \$20,000 and five (5) of the transfers occur in counties of the fifth through eighth class where the fee is \$5,000, \$125,000 in revenue will accrue to the State Stores Fund annually as a result of this provision.

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It is anticipated that one of the 12 slot machine licensees in the Commonwealth will seek a casino liquor license, generating \$250,000 in additional revenue to the General Fund in each of the next four years and \$2,500 in renewal fees each year thereafter.

Finally, with regard to the changes in the legislation that provide for the purchase price of malt or brewed beverages sold by a manufacturer directly to the ultimate consumer for consumption on premises to be the wholesale price, the Department of Revenue issued Tax Bulletin Sales and Use Tax 2018-02 on July 27, 2018, which takes effect on July 1, 2019. The six-page bulletin attempts to clarify the taxation of the sale of malt or brewed beverages by manufacturers. Because the imposition of sales tax on malt or brewed beverages by manufacturers currently is not uniform, it is unclear to what extent the sales tax is being properly collected at this time. Although House Bill 1497 changes the sales tax base from a retail price to a wholesale price, or constructive price, the certainty ensuing from a clear, uniform tax policy could offset potential revenue losses resulting from imposing the tax on a lower price.