

SENATE APPROPRIATIONS COMMITTEE FISCAL NOTE

BILL NO. House Bill 466

PRINTER NO. 1985

AMOUNT

\$220,151,041

FUND

Net State Fiscal Impact

DATE INTRODUCED

February 12, 2015

PRIME SPONSOR

Representative Turzai

DESCRIPTION

House Bill 466 amends the act April 12, 1951 (P.L. 90, No. 21), known as the Liquor Code, to make the following changes:

Enhanced Permits

Provides for a distributor, importing distributor or an unlicensed entity to obtain a wine and/or a liquor enhanced permit to sell any quantity of wine or liquor for off-premise consumption. Provides for the board to issue wine and liquor enhanced permits in a number equal to the number of licensed distributors and importing distributors in a county and in existence as of the effective date of the act. Provides distributors and importing distributors with the exclusive right to obtain a wine and/or liquor enhanced permit for 6 months from the effective date of the act.

Provides for any remaining wine or liquor enhanced permits to be auctioned by the board to an unlicensed entity not possessing a distributor or importing distributor license and meeting all the conditions of a distributor under the law. Provides that an unlicensed entity may not hold more than one wine enhanced permit and one liquor enhanced permit. Provides for a minimum bid at auction of \$150,000 for a wine or liquor enhanced permit. Requires the board to post a listing of permits available within 60 days of the close of the 6-month initial purchase period and the auction to be held 60 days after the posting.

Provides for a distributor or importing distributor to pay an initial permit fee of \$45,000 for a wine or liquor enhanced permit and annual renewal fees based on the permit holder's annual wholesale purchases in the following amounts: (1) \$2,000 for purchases < than \$100,000; (2) \$4,000 for purchases >=\$100,000 and < \$200,000; and, (3) \$6,000 for purchases >= \$200,000. Provides for an unlicensed entity to pay annual renewal fees based on the permit holder's annual wholesale purchases in the following amounts: (1) \$2,000 for purchases < than \$100,000; (2) \$4,000 for purchases >=\$100,000 and < \$200,000; and, (3) \$6,000 for purchases >= \$200,000. Provides for all fees related to wine or liquor enhanced permits to be paid into the General Fund.

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Expanded Permits

Provides for a restaurant and hotel licensee to obtain a wine and or a liquor expanded permit to sell up to 192 ounces of wine and up to 1.75 liters of liquor for off-premise consumption. Provides for a restaurant or hotel licensee to pay an initial permit fee of \$2,500 for a wine or liquor expanded permit and annual renewal fees based on the permit holder's annual wholesale purchases in the following amounts: (1) \$1,000 for purchases < than \$100,000; (2) \$2,000 for purchases \geq \$100,000 and < \$200,000; and, (3) \$3,000 for purchases \geq \$200,000. Provides for all fees related to wine or liquor expanded permits to be paid into the General Fund.

Wholesale Permits and Licenses

Provides for a licensed importer to obtain a wholesale permit for a 10-year period for the purpose of selling and distributing wholesale wine and liquor to licensees and unlicensed enhanced permit holders. Provides for the board to accept an application for a wholesale permit within 30 days of the effective date of the act and approve the application 60 days after its receipt if the applicant meets the requirements of the law. Requires a wholesale permit holder to have a contractual relationship with one or more manufactures or suppliers of wine and liquor. Provides for the applicant for a wholesale permit to pay an initial fee equal to 15% of the cost of goods sold (the purchase price the board paid to the licensed importer for products sold by the board in the most recent 12 month period). Provides for a renewal fee to be paid by the wholesale permit holder equal to 15% of its gross receipts (total sales made to the board, licensees and unlicensed enhanced permit holders) on a quarterly basis on the 20th day of April, July, October, and January. Prohibits the board from selling products at wholesale to licensees and unlicensed entities when wholesale permit holders have commenced operations. Provides for all fees related to wholesale permits to be paid into the General Fund.

Divestiture

Provides for the Commonwealth's wholesale wine and spirits system to be divested at the conclusion of the 10-year wholesale permit period. Provides that upon divestiture the wholesale permit holder will be issued a wholesale license. Provides for the wholesale license to be subject to an annual renewal fee of 5% of the wholesale licensee's gross receipts. Provides for all fees related to wholesale licenses to be paid into the General Fund.

Tax Implications

Provides that the emergency State tax imposed under 1st Special Session Act 4 of 1936 (i.e. "Johnstown Flood Tax" or "Liquor Tax") shall be included in the retail price of wine or liquor offered for sale by a wine or liquor expanded permit holder or by a wine or liquor enhanced permit holder. The tax may not be assessed at the point of sale to consumers, which means that the tax will be included as part of the retail price and remitted to the Department of Revenue.

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Provides that either a wholesale permit holder, a wine or liquor expanded permit holder, or a wine or liquor enhanced permit holder will be considered a State Liquor Store for the purpose of collecting and remitting State sales tax under Article II of the Tax Reform Code of 1971 ("TRC") depending upon whether sales are made for consumption on or off the premises of the licensee or enhanced permit holder. According to provisions contained in the TRC, wine or liquor sold by State Liquor Stores is considered a retail sale to the end-consumer, and as such, the 6% State sales tax is collected and remitted by the State Liquor Stores. As a result, House Bill 466 ensures that the 6% State sales tax will be applied to sales in the same manner in which it is under current law.

A wine or liquor enhanced permit holder selling wine or liquor for consumption off the premises is required to obtain a sales tax permit from the Department of Revenue.

Provides that the Department of Revenue shall audit retailers to determine whether wholesale permit holders, licensees, or wine or liquor enhanced permit holders are properly remitting the State sales tax for products sold for consumption both on and off the premises.

Pennsylvania Liquor Store Closure

Provides for the Liquor Control Board to consider the following when making a determination to close a liquor store: (1) the availability and accessibility of liquor to the public through the private retail market; (2) the pricing of liquor in the area; (3) the profitability of the store; and, (4) the proximity to the two closest enhanced permit holders. Provides that if one of the two closest distributors or importing distributors is selling wine and liquor, or there is an unlicensed entity selling wine and liquor within the same proximity of the two closest distributors or importing distributors selling wine and liquor, then the board is required to close the store in 60 days. Provides for the board to dispose of the liquor remaining in inventory and non-liquor inventory, property and fixtures. Provides for the proceeds from the sale of non-liquor inventory to be deposited into the State Stores Fund. Provides for the board to reimburse the store lessor for any outstanding renovation costs that were incurred for the term of the current lease as of the effective date of the act.

Educational Assistance

Provides for employees displaced as a result of retail and wholesale divestiture with an additional 4 years of grant eligibility under the Pennsylvania Higher Education Assistance Agency's state grant program.

Liquid Fuels

Prohibits the board from licensing an area where liquid fuels or oil is sold. Provides that a licensee may not have an interior connection with a location that sells liquid fuels or oil unless it first receives permission from the board regardless of whether the licensee or another party is selling the liquid fuels or oil.

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Licenses in Safekeeping

Reduces the initial term for a license to remain in safekeeping from three (3) to two (2) years. Provides for the safekeeping fee to increase in the first year after the initial 2-year term of safekeeping from \$5,000 to \$10,000 for a license in counties of the 1st through 4th the class and from \$2,500 to \$5,000 for a license in counties of the 5th through 8th class. Provides for the license fee to double over the amount charged in the previous year each subsequent year the license is held in safekeeping.

FISCAL IMPACT:

For the 2015-16 fiscal year the enactment of House Bill 466 will result in a net fiscal impact to the Commonwealth of \$220,151,041. Specifically, the General Fund will see an increase in revenue of \$359,140,781 and the State Stores Fund will see a loss of revenue of \$138,989,740 due to the following:

- A total of \$101,850,000 in revenues from fees related to the initial purchase of wine and liquor enhanced permits and wine and liquor expanded permits. This assumes 60% (757) of the distributors and importing distributors will purchase wine enhanced and liquor enhanced permits and 60% (6,740) of restaurants and hotels will purchase wine and liquor expanded permits.
- A total of \$257,290,781 in revenues from fees related to the initial purchase of wholesale permits and recurring wholesale permit renewal fees. This includes \$199,837,500 from initial wholesale permit fees based on the cost of goods sold to the board and an additional \$57,453,281 in the quarterly renewal fees collected in April based on the wholesale permit holders' gross receipts.
- It is estimated the board will experience a loss in revenue of \$192,187,500 resulting from a shift in purchases away from the State Store System to wholesale permit holders. This assumes 25% of the products in the second 6 months of the fiscal year will be sold by the new wine and liquor enhanced and expanded permit holders and that the board's profit margin will decrease by 50% as a result.
- It is assumed the board will begin to reduce its wholesale and retail footprint by reducing operating costs by \$78,197,740 (16%).
- It is assumed there will be transition costs of \$25,000,000 related to unemployment compensation, pension benefits, leave payouts; retiree healthcare and store lease renovation reimbursements as the wholesale and retail operations of the board cease.
- Provides for the imposition of taxes on wine and spirits in the same manner as currently provided.