SENATE APPROPRIATIONS COMMITTEE FISCAL NOTE

BILL NO. House Bill 1154

PRINTER NO. 1844

AMOUNT

See Fiscal Impact

FUND

State Stores Fund

DATE INTRODUCED

April 12, 2021

PRIME SPONSOR

Representative Masser

DESCRIPTION

House Bill 1154 amends the Liquor Code to make the following changes:

Drinks for off-premise consumption
The legislation allows a person holding a restaurant or hotel liquor license to sell prepared beverages and mixed drinks for off-premise consumption where meals prepared for pickup or curbside pick-up are also available. It prohibits off-premise sales of prepared beverages and mixed drinks after 11:00 pm and by a licensee subject to a pending objection from the Liquor Control Board (LCB), a licensee whose license has been suspended under the licensee compliance program or a licensee that has an interior connection to a grocery store, convenience store or department store. It requires a licensee that sells prepared beverages and mixed drinks to begin utilizing a transaction scan device to verify the age of individuals that appear to be under 35 years of age. It requires the licensee to prominently post a warning sign that sales of prepared beverages and mixed drinks are considered open containers and may only be transported by the driver in the vehicle’s trunk or in some other area that is not occupied by the driver or passengers. It also requires a prepared beverage or mixed drink for off-premise consumption to be affixed with a label identifying that the product contains alcohol.

Sales to another licensee when closing
The legislation allows liquor and wine in the possession of a licensee when the licensed business closes permanently to be sold to another licensee. It requires the licensee to notify the Liquor Control Board (board) in writing of the name of the licensee and to identify the products sold to the licensee.

Temporary extension of premises
The legislation allows the board, upon receipt of a request from the licensee, to temporarily extend the licensed premises of a club, catering club, restaurant, retail dispenser, hotel, limited distillery, distiller, brewery, or limited winery to include any outside serving area that is immediately adjacent to the existing licensed areas or within 1,000 feet of the main licensed building. It requires the board to grant immediate operating authority to the applicant to use the outside area while the board processes the request. It provides for the operating authority to be terminated if a valid protest is received or the board determines that the proposed area does not meet the requirements of this act or regulations for the licensing of the area in question. It specifies that a filing fee is not required and that applicants may be required to provide relevant information to the board.

Catering permits

The legislation allows the board to authorize an unlimited number of off-premise catered functions to entities that qualify for off-premise catering permits. It specifies that an application fee is not required, that an application for a catering permit need not be submitted prior to March 1 of the calendar year and that the five-hour limit on catered functions does not apply.

Safekeeping

The legislation allows the board to provide an additional year of safekeeping for a club, catering club, restaurant, eating place retail dispenser, hotel, importing distributor, and distributor license that was in safekeeping during the proclamation of disaster emergency. It specifies that the license is not subject to a renewal, validation, or late fee that would be due during the additional year, except that the licensee must file a renewal or validation application that becomes due. It also specifies that the additional year of safekeeping starts on the date of a renewal or validation of the license that occurs after December 31, 2021.

Ready-to-drink cocktails

The legislation allows importers, importing distributors, distributors, restaurant licensees, and hotel licensees to sell ready-to-drink cocktails for off-premise consumption. A ready-to-drink cocktail is a beverage composed in part of spirits combined with other nonalcoholic ingredients that are premixed in original containers of more that 16 ounces consisting of at least 1.5%, but not greater than 12.5%, alcohol by volume. It specifies that importing distributors and distributors may sell unlimited quantities of ready-to-drink cocktails, and restaurant licensees and hotel licensees may not sell more than 192 fluid ounces in a single sale. It allows the board to continue to sell ready-to-drink cocktails but eliminates the 10% licensee discount for sales of ready-to-drink cocktails from the board.

The legislation establishes an initial application fee and renewal fees for licensees selling ready-to-drink-cocktails for off-premise consumption. The initial application fee for importers and importing distributors is $5,000, and the annual renewal fee is 3% of the licensee's gross sales of ready-to-drink cocktails. The initial application for a license with an interior connection to a grocery store, convenience store or department store is $2,500, and the annual renewal fee is 2% of the licensee's gross sales of ready-to-drink cocktails. The initial application for a restaurant licensee, hotel licensee, and distributor licensee is $1,000, and the annual renewal fee is 2% of the licensee's gross sales of ready-to-drink cocktails.

The legislation also provides for the taxation of ready-to-drink cocktails for off-premise consumption that are sold outside of the control system. On each sale of ready-to-drink cocktails, it imposes an 18% tax in lieu of the of the emergency state tax on the net price of all ready-to-drink cocktails sold and the 6% sales tax. For any second or subsequent sale, the seller may receive a credit for taxes already paid. This taxing mechanism is designed to ensure that the taxes are collected on the final retail price of the ready-to-drink cocktails. In addition, the 18% tax is to be included in the purchase price and may not be stated separately.

SENATE APPROPRIATIONS COMMITTEE FISCAL NOTE

FISCAL IMPACT:

To the extent the legislation allows for additional sales of spirits by the board to licensees as a result of sales of prepared beverages and mixed drinks for off-premise consumption, the Commonwealth will realize additional revenue in the State Stores Fund.

The board has indicated that the provisions allowing liquor and wine in the possession of a licensee to be sold to another licensee when the licensed business closes permanently will have a de minimis impact on the State Store Fund as most licensees have limited inventory on hand, especially sealed bottles.

The board has indicated the provisions allowing a licensee to temporarily extend their licensed premises to a noncontiguous location can be accomplished by utilizing existing administrative processes at minimal expense which can be accommodated within the board's existing operating budget.

The provisions which waive the $500 application fee for off-premise catering permits are estimated to result in a reduction of revenue to the State Sores Fund of $254,500 assuming the same number (509) of applications are made as in the prior year.

The provisions which waive the extension of safekeeping fees are estimated to result in a reduction of revenue to the State Stores Fund of $2,445,000. This assumes the same number of extensions as were sought in 2019.

The provisions contained in the legislation providing for the sale of ready-to-drink cocktails for off-premise consumption by licensees, coupled with the increasing demand of ready-to-drink cocktails, will result in the expansion of sales and additional revenue accruing to the General Fund from taxes. Assuming the board's 5-year projection of sales for ready-to-drink cocktails grows by 100%, the Commonwealth will see an increase in tax revenue accruing to the General Fund of $29.4 million over the next 5 years.

	Current PLCB 5-Year Projection			HB 1154 Expansion		
Year	**Sales**	**18 % JFT**	**6% Sales Tax**	**Sales**	**18 % JFT**	**6% Sales Tax**
FY 2021-22	$15,889,838	$ 2,860,171	$ 1,125,000	$31,779,675	$5,720,342	$2,250,001
FY 2022-23	$19,862,297	$ 3,575,213	$ 1,406,251	$39,724,594	$7,150,427	$2,812,501
FY 2023-24	$23,834,756	$ 4,290,256	$ 1,687,501	$47,669,513	$8,580,512	$3,375,001
FY 2024-25	$27,409,970	$ 4,933,795	$ 1,940,626	$54,819,939	$9,867,589	$3,881,252
FY 2025-26	$30,150,967	$ 5,427,174	$ 2,134,688	$60,301,933	$10,854,348	$4,269,377
Totals	$117,147,827	$21,086,609	$ 8,294,066	$234,295,654	$42,173,218	$16,588,132

The provisions contained in the legislation requiring licensees to pay an initial application fee and annual renewal fees based on gross sales (3% for importers and importing distributors and 2% for restaurant licensees, hotel licensees and distributors) will generate additional revenue to be deposited in the State Stores Fund. Assuming that 50% of the 12,405 eligible licensees apply and make an initial application to sell ready-to-drink cocktails, the legislation is estimated to generate $9.4 million.

If it is assumed that all new sales resulting from the provisions contained in the legislation are sold through the licensees and importers and that importing distributors act as the wholesaler and discount the product at the same level as the board (10%) discounts to licensees, the annual renewal fees are estimated to generate an additional $6.9 million over the next 5 years.

Year	Importer and Importing Distributor Gross Sales	3% Gross Sales Renewal Fee	Restaurant, Hotel and Distributor Gross Sales	2% Gross Sales Renewal Fee
FY 2021-22	$ 17,887,508	$ 536,625	$ 19,875,009	$ 397,500
FY 2022-23	$ 22,359,385	$ 670,782	$ 24,843,761	$ 496,875
FY 2023-24	$ 26,831,262	$ 804,938	$ 29,812,513	$ 596,250
FY 2024-25	$ 30,855,951	$ 925,679	$ 34,284,390	$ 685,688
FY 2025-26	$ 33,941,546	$ 1,018,246	$ 37,712,829	$ 754,257
Totals	$ 131,875,652	$ 3,956,270	$ 146,528,502	$ 2,930,570

Further, based on a net present value calculation comparing the current ready-to-drink product line ($21 million) to the revenues collected through (1) the initial application fee, (2) annual renewal fee arrangement and (3) additional taxes as a result of increased sales volume, which amount to $45.7 million over the next 5 years, House Bill 1154 represents a fair compensation to the Commonwealth for the privilege of allowing licensees to sell ready-to-drink-cocktails.