

**COMMONWEALTH OF KENTUCKY FISCAL NOTE STATEMENT
LEGISLATIVE RESEARCH COMMISSION
2020 REGULAR SESSION**

MEASURE

2020 BR NUMBER 191

HOUSE BILL NUMBER 415 GA

TITLE AN ACT relating to alcoholic beverages and making an appropriation therefor.

SPONSOR Representative Adam Koenig

FISCAL SUMMARY

STATE FISCAL IMPACT: YES NO UNCERTAIN

OTHER FISCAL STATEMENT(S) THAT MAY APPLY: ACTUARIAL ANALYSIS
 LOCAL MANDATE CORRECTIONS IMPACT HEALTH BENEFIT MANDATE

APPROPRIATION UNIT(S) IMPACTED: Alcoholic Beverage Control

FUND(S) IMPACTED: GENERAL ROAD FEDERAL RESTRICTED _____

FISCAL ESTIMATES	2019-2020	2020-2021	2021-2022	ANNUAL IMPACT AT FULL IMPLEMENTATION
REVENUES		(Indeterminable)	(Indeterminable)	(Indeterminable)
EXPENDITURES		(Indeterminable)	(Indeterminable)	(Indeterminable)
NET EFFECT		(Indeterminable)	(Indeterminable)	(Indeterminable)

() indicates a decrease/negative

PURPOSE OF MEASURE: The purpose of this measure is to authorize direct shipper license holders to ship alcoholic beverages to legal age consumers. Direct shippers are required to collect applicable taxes and report quarterly to the Department of Revenue.

FISCAL EXPLANATION: Under Section 3 of HB 415/GA, a direct shipper licensee is required to charge and collect from the consumer all applicable taxes and to list each applicable tax separately on the consumer's invoice. The taxes paid by the direct shipper licensee are to be calculated based on the applicable taxes of the consumer's address based on the shipping label. All applicable taxes collected by the direct shipper licensee are to be remitted to the Department of Revenue, using current reporting and remittance requirements.

Section 3(1) specifies that the applicable taxes to be paid by the direct shipper licensee include any applicable sales tax, use tax, excise tax, wholesale tax equivalent at the rate set out in KRS 243.884, and any regulatory license fee or other assessments. Language within this section further states that if a wholesale price is not readily available, the direct shipper licensee shall calculate the wholesale cost to be seventy percent of the retail price of the alcoholic beverages.

The imposition and the ability to collect the taxes in Section 3(1) is not likely due to several reasons. First, the wholesale tax imposed under KRS 243.884 is based on the privilege of making “wholesale sales” or “sales at wholesale” and is imposed on “wholesalers”. These terms are defined in KRS 243.882. As defined in KRS 243.882, “wholesale sale” or “sale at wholesale” means a sale made for the purpose of resale in the regular course of business. In KRS 243.882, wholesaler is defined as a person required to be or who is a licensee authorized to do business pursuant to KRS 243.160 and 243.170.

In HB 415/GA, a direct shipper licensee is permitted to sell directly to a consumer, but the product is not to be resold. Also, a direct shipper licensee likely would not meet the definition of a wholesaler. Moreover, within this section, the language states that if a wholesale price is not readily available, the direct shipper licensee shall calculate the wholesale cost to be seventy percent of the retail price of the alcoholic beverages. Wholesale price and wholesale cost, may refer to the same thing, but are not defined within current statutes or within the bill. Under KRS 243.884, the wholesale tax is imposed on the gross receipts for any wholesaler or distributor. The term wholesale cost and wholesale price are not the same as gross receipts. For these reasons, it is unlikely that a direct shipper licensee will be subject to the tax imposed in Section 3(1).

Permitting out-of-state manufacturers to directly ship alcoholic beverages to a consumer into the state without imposing an equivalent tax, would lead to a tax differential for these products. This tax differential may be partially or completely offset because of the shipping cost for an out-of-state direct shipper licensee. Another limiting factor is the ability to track and enforce compliance for any tax collected. This ability may be limited for direct shipper licensees that are located out of state. Also, to the extent any tax differential exists, this may be an incentive for in-state manufacturers to establish a manufacturing location in an adjacent state and make direct consumer sales into Kentucky. These three factors could negatively impact the current base of Kentucky alcoholic tax receipts.

In FY 2019, the excise and wholesale tax collections on alcoholic beverages in Kentucky was \$146.8 million dollars. Based on the provisions in this bill, some current taxable sales in Kentucky may be displaced by sales from out-of-state direct shipper licensees and compliance issues may lead to an additional reduction to the current tax base. To the extent current taxable sales are displaced by out-of-state shipments, there would be a negative fiscal impact. However, the magnitude of this negative fiscal impact is indeterminable. Based on current collections, for every 1 percent of the current alcohol tax base that is lost, the impact on the General Fund would be \$1.47 million.

Alcoholic Beverage Control anticipates efforts directed towards compliance checks and investigation of complaints focused on direct shipping to cost approximately \$300,000 annually for the department.

The Department of Revenue will have indeterminable major expenses to audit the direct shipper licensees, majority of which will be located out-of-state.

DATA SOURCE(S): LRC Staff

PREPARER: Sara Rome NOTE NUMBER: 249 REVIEW: JAB DATE: 3/26/2020