

**COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION**

FISCAL NOTE

L.R. No.: 1128-12
Bill No.: Truly Agreed to and Finally Passed HCS for SS for SCS for SB 298
Subject: Alcohol; Business and Commerce; Licenses; Crimes and Punishment; Civil
Procedure; Courts; Kansas City; Entertainment.
Type: Original
Date: May 28, 2003

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2004	FY 2005	FY 2006
General Revenue	(\$39,000)	(\$36,500)	(\$36,500)
Total Estimated Net Effect on General Revenue Fund	(\$39,000)	(\$36,500)	(\$36,500)

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2004	FY 2005	FY 2006
None			
Total Estimated Net Effect on Other State Funds	\$0	\$0	\$0

Numbers within parentheses: () indicate costs or losses.
This fiscal note contains 10 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2004	FY 2005	FY 2006
None			
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2004	FY 2005	FY 2006
Local Government	\$23,750	\$28,500	\$28,500

FISCAL ANALYSIS

ASSUMPTION

Officials from the **Office of the State Courts Administrator, Office of the State Public Defender** and the **Department of Revenue** each assume this proposal would not fiscally impact their respective agencies

In response to a previous version of this proposal, officials from the **Office of Prosecution Services** assumed no fiscal impact from the proposal.

Officials from the **City of Kansas City** stated the legislation will not have a significant fiscal impact on the city.

In response to a previous version of this proposal, officials from the **Attorney General's Office** assumed that any costs arising from this proposal could be absorbed with existing resources.

In response to a similar proposal from this year, officials from the **Office of Secretary of State (SOS)** assumed there would be costs due to additional publishing duties related to the Division of Liquor Control's authority to promulgate rules, regulations, and forms. SOS estimated the division could require approximately 11 new pages of regulations in the Code of State

Regulations at a cost of \$27.00 per page, and 17 new pages in the Missouri Register at a cost of

ASSUMPTION (continued)

\$23.00 per page. Costs due to this proposal are estimated to be \$677, however, the actual fiscal impact would be dependent upon the actual rule-making authority and may be more or less.

Financial impact in subsequent fiscal years would depend entirely on the number, length, and frequency of the rules filed, amended, rescinded, or withdrawn. SOS did not anticipate the need for additional staff as a result of this proposal, however, the enactment of more than one similar proposal may, in the aggregate, necessitate additional staff.

Oversight assumes the SOS could absorb the costs of printing and distributing regulations related to this proposal. If multiple bills pass which require the printing and distribution of regulations at substantial costs, the SOS could request funding through the appropriation process. Any decisions to raise fees to defray costs would likely be made in subsequent fiscal years.

Officials from the **Department of Corrections (DOC)** state that they could not predict the number of new commitments which could result from the creation of the offense(s) outlined in the proposal. An increase in commitments would depend on the utilization of prosecutors and the actual sentences imposed by the courts. If additional persons were sentenced to the custody of the DOC due to the provisions of this legislation, the DOC would incur a corresponding increase in operational costs through supervision provided by the Board of Probation and Parole (FY '02 average of \$3.10 per offender, per day or an annual cost of \$1,132 per offender).

In summary, supervision by the DOC through probation or incarceration would result in some additional costs, but DOC officials assume that the impact would be \$0 or a minimal amount that could be absorbed within existing resources

Officials from the **Department of Public Safety - Liquor Control (DLS)** state this bill, among other things, requires a liquor retailer to attach a label to each keg that is sold for off premise consumption. The bill sets forth requirements for both the liquor retailer and the purchaser of the keg. Provisions of this law preempt all local laws regulating keg registration. The provisions of the law regarding keg registration become effective on July 1, 2004.

DLS states this proposal also creates a Sunday by Drink license for resort, convention trade, and enterprise zone areas in St. Louis and Kansas City. The bill outlines the qualifications and restrictions for the new license. This Sunday by Drink license will require annual gross receipts of \$150,000 and \$60,000 from nonalcoholic sales. The fee for this Sunday by Drink will be

\$600 annually.

ASSUMPTION (continued)

DLS assumes that three additional Agents (each at \$36,012 annually) will be needed throughout the state for the additional work load associated with issuing registration seals and determining compliance of keg registration, as well as additional Sunday hours of operation, and new Sunday license type under Section 2 of this act. The agents will be located in Kansas City, St. Louis and Jefferson City districts. Also, one additional clerk (at \$24,492 annually) will be needed to issue forms and registration seals.

DLS states the estimate of additional employees is based on the projected sales of keg beer and work load associated with this act. Keg sales for off premise consumption is estimated to be two percent of all beer sales or 2.7 million gallons annually. This 2.7 million gallons equates to an estimated 200,000 keg sales annually that will have to be monitored by DLS. Also, the Division is losing 29.3% of the FTE (22.35 FTE) in FY 2004 and any increase in workload must be funded and can not be absorbed with existing appropriations.

DLS estimates this part of the proposal will cost their agency roughly \$300,000 per year, starting in FY 2004, to implement.

DLS also assumes that Section 2 of this act will result in 25 Sunday by the Drink licenses issued at \$600 per license, or \$15,000 annually. FY 2004 will be $10/12 \times \$15,000$, or \$12,500. DLS states that Section 311.220, RSMo, allows cities to charge 150% of the state license fees and counties to charge 100% of state license fees. Therefore, it is estimated that Section 2 of this section will generate the following annual revenues for cities and counties;

	Cities	Counties
St. Louis (15 Sunday by Drink licenses) (\$600 x 15 x 150%)	\$13,500	\$0
Kansas City (10 Sunday by Drink licenses) (\$600 x 10 x 150%) & (\$600 x 10 x 100%)	<u>\$9,000</u>	<u>\$6,000</u>
TOTAL	<u><u>\$22,500</u></u>	<u><u>\$6,000</u></u>

Oversight assumes this proposal requires liquor retailers who sell beer, wine or intoxicating liquor by the keg to keep records of keg sales and registrations and make them open to inspection by DLS. Because DLS is not required to maintain these records, Oversight assumes

existing staff could be used to monitor compliance with keg registration. Oversight has utilized the Division of Liquor Control's estimate for the cost of printing the label and recycle tag that

ASSUMPTION (continued)

they must provide as specified in the proposal. Oversight has also utilized DLS' estimate for revenue from additional liquor licenses.

<u>FISCAL IMPACT - State Government</u>	FY 2004 (10 Mo.)	FY 2005	FY 2006
GENERAL REVENUE			
<u>Income</u> - Liquor license fees (Section 2)	\$12,500	\$15,000	\$15,000
<u>Cost</u> - Division of Liquor Control Printing of label and recycle tags for kegs	<u>(\$51,500)</u>	<u>(\$51,500)</u>	<u>(\$53,045)</u>
ESTIMATED NET EFFECT TO THE GENERAL REVENUE FUND	<u>(\$39,000)</u>	<u>(\$36,500)</u>	<u>(\$36,500)</u>
 <u>FISCAL IMPACT - Local Government</u>	 FY 2004 (10 Mo.)	 FY 2005	 FY 2006
CITIES AND COUNTIES			
<u>Revenue</u> - Liquor license fees (Section 2)	<u>\$23,750</u>	<u>\$28,500</u>	<u>\$28,500</u>
ESTIMATED NET EFFECT TO CITIES AND COUNTIES	<u>\$23,750</u>	<u>\$28,500</u>	<u>\$28,500</u>

FISCAL IMPACT - Small Business

Small businesses that sell or serve liquor could be fiscally impacted as a result of this proposal.

DESCRIPTION

This proposal removes a provision of the liquor control law which has been found unconstitutional as a violation of the Establishment Clause of the First Amendment to the U.S. Constitution and as an improper delegation of sovereign power to a church, in "Larkin v. Grendel's Den", 459 U.S. 116. The proposal no longer allows a Board of Directors of a school or the managing Board of a church to grant a waiver for the sale of intoxicating liquor within one hundred feet of their respective school, church, or other building regularly used as a place of religious worship. The proposal allows the governing body of any city, town or village by ordinance to prohibit the sale of intoxicating liquor within three hundred feet of a school, church, or other building regularly used as a place of religious worship.

The proposal changes the time of opening from 11:00 a.m. to 9:00 a.m. for the sale of packaged liquor at retail and the sale of liquor on Sundays in restaurant bars, amusement places, and places of entertainment. The proposal also changes the time on Sundays in which intoxicating liquor by the drink may begin being sold from 11:00 a.m. to that of 8:00 a.m. on property in Jackson County that is primarily used for professional sporting events. Further, the proposal changes the time on Sundays in which intoxicating liquor by the drink at retail for consumption on the premises of any restaurant bar or in an establishment having at least forty rooms for the overnight accommodation of transient guests may begin being sold from 11:00 a.m. to that of 9:00 a.m.

The proposal prohibits the holder of a microbrewer's license, his agents, or affiliates from possessing more than ten licenses to sell intoxicating liquor by the drink at retail for consumption on such premises. Further, the proposal exempts microbrewer's who hold a license to sell intoxicating liquor by the drink at retail for consumption on the premises to sell their product that was produced on-site without complying with Section 311.280, RSMo. However, all other intoxicating liquor sold by the drink at retail for consumption on the microbrewer's premises must be obtained in compliance with Section 311.280, RSMo.

To obtain a permit to sell malt liquor in excess of three and two-tenths percent and below that of five percent by weight, in the original package, not for resale, a fee of fifty dollars rather than fifteen is now required. Any person licensed to sell malt liquor containing alcohol in excess of three and two-tenths percent by weight and not in excess of five percent by weight under Section

311.200(2) RSMo, may also sell malt liquor at retail between the hours of 9:00 a.m. and midnight on Sunday.

DESCRIPTION (continued)

A fee of fifty dollars shall be required of all licensees who may sale of malt liquor and light wines containing not in excess of fourteen percent of alcohol by weight made exclusively from grapes, berries and other fruits and vegetables, at retail by the drink for consumption on the premises where sold.

The proposal, in Section 311.260, divides the current statutory language into a more understandable form and adds an exemption to the limit of three liquor licenses pursuant to Section 311.260, RSMo, for establishments having at least forty rooms for the overnight accommodation of transient guests.

The proposal adds a new Subsection to Section 311.280, RSMo, which prohibits a licensed retailer from selling liquor or nonintoxicating beer with an alcohol content below five percent by weight to a customer in an original carton, if the carton has been mutilated, torn apart, or cut apart. Additionally the retailer may not repackage said substance in a misleading manner or if required labeling would be omitted or obscured.

The proposal combines the subsections of Section 311.290, RSMo, which addresses the prohibition of the sale, gift, or other disposal of intoxicating liquor between the hours of 1:30 a.m. and 6:00 a.m. by a license holder on or about the owners premises.

The proposal allows a license holder for the sale of intoxicating liquor to make such sales between the hours of 9:00 a.m. and midnight on sundays upon receipt of a special licenses for such purpose.

The proposal modifies Section 311.325 RSMo, resulting in language that states a manufacturer-sealed container describing the intoxicating liquor therein need not be opened or tested to verify said liquid is contained therein for purposes of Chapter 311, RSMo. An alleged violator may challenge that the contents of the container are not an nonintoxicating liquor, but the burden of proof is on the alleged violator.

The proposal clarifies that Section 311.328 RSMo, applies only to a valid or unexpired operator's or chauffeur's license. The proposal also expands the requirement of presentation of identification for the purpose of purchasing alcohol and the like to residents of all states rather than only five as in current law.

The proposal removes subsection 2 of Section 311.360, RSMo, which addresses the sale of malt liquor that is manufactured at a facility other than that of the individual who's name appears on the label.

DESCRIPTION (continued)

The proposal repeals provisions of current law that allow savings and loan association and credit unions to sell intoxicating liquor they have repossessed as collateral.

The proposal restricts the sale of nonintoxicating beer to establishments that have a license for the sale of intoxicating liquor.

The proposal, in Section 311.630, RSMo, allows peace officers designated under the Director of Alcohol and Tobacco Control to make arrests and searches and seizures related to violations of intoxicating liquor and nonintoxicating beer pursuant to Chapters 311 and 312, RSMo. Further, such individuals may make arrests, searches and seizures related to violations of Section 407.924 to 407.934, RSMo, which relate to tobacco products. The proposal removes the stated training requirements for such peace officers and in lieu of such requirements, requires that the individual be appointed, qualified under Section 311.620, RSMo, and hold a valid peace officer license under Chapter 590, RSMo.

The proposal, under Section 312.410, RSMo, modifies current language and prevents a license holder from selling, giving or permitting consumption of any nonintoxicating beer between the hours of one-thirty a.m., and six a.m. upon or about the license holders premises.

The establishment of the Division of Liquor Control can not be found in statute thus, a new section is created which establishes such Division and revises its name to that of the Division of Alcohol and Tobacco Control.

Additionally, to reflect the name change of the Division of Liquor Control and the Supervisor of Liquor Control to that of the Division of Alcohol and Tobacco Control and Supervisor of Alcohol and Tobacco Control, this proposal makes the stated name change in every location where the term "liquor control" is found in the act. For all other locations within statute where the Division of Liquor Control or Supervisor of Liquor Control is referred, a provision of the

new section states that such terms shall mean the Division of Alcohol and Tobacco Control and the Supervisor Alcohol and Tobacco Control.

No person less than nineteen years of age shall be permitted to dance in an adult cabaret. Any individual less than nineteen who dances in an adult cabaret or allows such person to dance is guilty of a Class A misdemeanor.

The proposal requires a liquor retailer to attach a label to each keg that is sold for off-premise consumption. The purchaser of the keg is required to present positive identification, and the retailer must keep records regarding the identification of the keg and purchaser. The purchaser

DESCRIPTION (continued)

must also sign a statement acknowledging that the misuse of the keg or its contents may result in civil liability, criminal prosecution, or both. The retailer must keep the registration records for three months. The retailer may not refund a keg deposit unless the label is attached to the keg when returned. The provisions of law regarding keg registration become effective on July 1, 2004.

Certain establishment who qualifies for a intoxicating liquor license within St. Louis City or Kansas City and such establishment is located within a resort area, convention trade area or enterprise zone may apply for a Sunday by the drink license for the hours between 9:00 a.m. and midnight.

This legislation is not federally mandated, would not duplicate any other program and would not require additional capital improvements or rental space.

SOURCES OF INFORMATION

Department of Public Safety - Liquor Control
Office of the Attorney General
Office of the State Courts Administrator
Office of Prosecution Services
Office of the State Public Defender
City of Kansas City
Department of Revenue
Department of Corrections
Office of the Secretary of State

RAS:LR:OD (12/02)

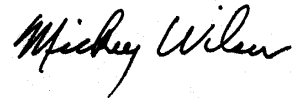
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NOT RESPONDING: City of St. Louis, Jackson County, St. Louis County.

A handwritten signature in black ink that reads "Mickey Wilson". The signature is written in a cursive, flowing style.

MICKEY WILSON, CPA

DIRECTOR

MAY 28, 2003