

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

Legislative Fiscal Note

BILL NUMBER: House Bill 892 (3rd Version)

SHORT TITLE: Regulate Sale of Malt Beverage Kegs

SPONSOR(S): Representative Alexander

	FISCAL IMPACT				
	Yes (X)	No ()	No Estimate Available ()		
	<u>FY 2005-06</u>	<u>FY 2006-07</u>	<u>FY 2007-08</u>	<u>FY 2008-09</u>	<u>FY 2009-10</u>
REVENUES:					
Dept. of Commerce (ABC Commission)	\$183,613	\$179,588	\$179,588	\$179,588	\$179,588
EXPENDITURES:					
Dept. of Commerce (ABC Commission)	\$183,613	\$179,588	\$179,588	\$179,588	\$179,588
Correction		No estimate	available		
Judicial		No estimate	available		
POSITIONS					
(cumulative):					
ABC Commission	1.0	1.0	1.0	1.0	1.0
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Commerce (ABC Commission); Administrative Office of the Courts; Department of Corrections					
EFFECTIVE DATE: December 1, 2005					

BILL SUMMARY: Current law does not require malt beverage kegs to be uniquely identifiable. House Bill 892 requires malt beverage retailers to attach a uniquely coded tag or adhesive label to all beer kegs sold and collect identifying information from the purchaser to be linked to each sale. After the return of the keg, the retail seller is required to remove the tag or label and return the keg to the wholesaler. The bill requires retailers to maintain a copy of the completed forms for keg sales for one year. Persons who remove or destroy the coded tag or adhesive label, or fail to return a tagged or labeled keg within thirty days will be guilty of a Class 1 misdemeanor and charged a \$50 fine.

The bill authorizes the Alcoholic Beverage Control (ABC) Commission to charge fees to the malt beverage retailer to cover cost of producing and distributing the required coded tag/adhesive label and the forms.

ASSUMPTIONS AND METHODOLOGY: The bill requires that all beer kegs be marked with a permanent identification number. Retailers will be required to attach to every keg sold, a uniquely numbered and coded tag provided by the ABC Commission. The retail seller shall require every purchaser of a keg to complete and sign a form, provided by the Commission, indicating among other information the purchaser's name, address, telephone number, date of birth, coded keg identification number, and the date the keg is to be returned.

New penalties are established for violations of the provisions of the bill. An unauthorized person who defaces or removes a coded tag, or possesses an untagged keg, and a retail purchaser who fails to return a keg within thirty days is guilty of a Class 1 misdemeanor with a minimum \$50.00 fine.

Department of Commerce – Alcoholic Beverage Control Commission

The bill requires the ABC Commission to issue forms and tags for beer kegs to retailers who sell malt beverages. The ABC Commission currently provides forms used for the purchase-transportation permits for other alcoholic beverages sold in the state and this bill would extend that responsibility to include malt beverage keg sales. The Commission would be allowed to charge a fee to recover the cost of the coded tags and required forms. The Commission's data indicates that there are currently 6,891 active "malt beverage off-premise" permittees who may sell kegs to the public. Data from the non-profit association Responsible Alcohol Sales and Service (RASS) was used to derive an estimate of the number of kegs of beer sold annually in the state, approximately 320,000, that would be subject to the requirements for coded tags and forms.

The Commission submitted an estimate of the funds needed to implement the requirements of the bill. The Commission estimated that the total cost for producing the keg tags would be \$1,280,000 (\$4/tag). The \$4 per unit cost assumed producing a custom-made metal tag for each keg. The Commission estimated the total cost of implementing the bill to be \$1,610,000 for the first year. Assuming 320,000 kegs sold per year the fee to recover the cost of implementation would be approximately \$5 per tag/keg sold.

The Fiscal Research Division considers the ABC Commission's cost estimate to be disproportionate to the added duties proposed by the bill. The State of Indiana implemented a similar keg registration measure in 2003, including a provision that the uniquely coded markers must be purchased from its Alcohol and Tobacco Commission "at the amount of the commission's cost for producing it." The Indiana commission charges permittees \$3.75 or \$5.75 for a book containing 50 markers, depending upon whether the book is picked up by or mailed to the permittee. Thus, Indiana's per unit cost to procure the keg marker is \$0.115 (\$5.75 / 50).

Assuming North Carolina's costs would be comparable to Indiana's, Fiscal Research estimates that it would cost the ABC Commission approximately \$37,000 (320,000 kegs x \$0.115) to procure and mail coded tags to malt beverage off-premise permittees. In addition, the Commission would incur estimated costs of \$100,000 (\$25,000 for production + \$75,000 shipping) to procure and mail

the required forms (via certified mail) to all of the retail permittees subject to this bill. A support staff position could perform the added duties resulting from this bill. The first year cost of an Office Assistant IV (PG 59) position is estimated at \$ 46,613. The recurring staff costs in subsequent years would be \$42, 588. Since all kegs sold on or after December 1, 2005 must have the coded tags, the Commission would need to hire staff and take action to issue the coded tags and forms at the beginning of fiscal year 2005-06.

Based upon the above assumptions, Fiscal Research estimates that the bill would cost the Commission approximately \$183,613 (\$37,000 "tags" + \$100,000 "forms" + \$46,613 "staff") in FY 2005-06 with recurring costs of \$179,588 (\$37,000 "tags"+ \$100,000 "forms" + \$42,588 "staff") in the following years. The total per unit cost would be approximately \$0.57 in FY 2005/2006 (\$183,613 / 320,000 kegs).

Because the bill allows the Commission to charge a fee to recoup its costs, there would be no impact on the General Fund appropriation.

Judicial Branch

The Administrative Office of the Courts (AOC) indicates that no substantial increase in workload is expected from this bill. Presently, a person who fails to return a keg could be charged with the offense of failure to return rental property (G.S. 14-167), a Class 2 misdemeanor under current law. Thus, some defendants currently charged with Class 2 misdemeanors would be charged with Class 1 misdemeanors under this new bill. AOC data for calendar year 2004 indicate a total of 1,798 defendants charged with this offense. Data are not available on how many of these offenses involved failure to return a keg.

This bill also creates a new Class 1 misdemeanor offense for a person who defaces or removes a required keg identification tag or who possesses an unregistered keg. AOC discussions with ALE personnel revealed that ALE currently uses existing identification markings on kegs to enforce laws dealing with underage consumption and distribution of alcohol. However, AOC has no way to estimate how this new bill would enhance ALE enforcement and if it would result in additional charges. AOC has no data available to estimate the number of keg sales that would violate the law or the number of new criminal charges that might occur as a result of this offense.

Defendants who would be charged under this new bill could currently be charged with some alcohol offense. To the extent that is true, the charges that might occur as a result of this bill would be brought in addition to related charges such as selling or giving malt beverages or unfortified wine to anyone less than 21 years old (G.S. 18B-302(a)(1), also a Class 1 misdemeanor). On the other hand, some and perhaps many of the charges created by this bill would be new, adding additional cases. As to the provisions of this bill that regulate commercial wholesalers and retailers, it may be that the vast majority will comply with the new law.

Department of Correction

Since the proposed bill creates new offenses, the Sentencing Commission does not have any historical data from which to estimate the impact of this bill on the prison population. It is not known how many offenders might be sentenced for the proposed offenses. In FY 2003/04, 19% of Class 1 misdemeanor convictions resulted in active sentences. The average estimated time served was 31.2 days. Offenders serving active sentences of 90 days or less are housed in county jails.

The Department of Correction reimburses county jails at the rate of \$18/day for offenders serving active sentences of 30 to 90 days. Convictions for this proposed offense would not be expected to have a significant impact on the prison population. The impact on local jail populations is not known.

For misdemeanor classes, offenders may be given non-active sentences – intermediate or community sanctions. Offenders given intermediate sanctions or the community sanction of supervised probation are supervised by the Division of Community Corrections (DCC), which also supervises offenders on community service. The estimated cost associated with an intermediate offender is \$10.94 per day¹ for the first six months and \$1.87 for each day thereafter. The estimated cost for a supervised community offender is \$1.87 per day.² Community corrections costs are projected to begin in FY 2006-07, due to the effective date of December 1 and the lag time between charge and conviction. For these reasons, it is not possible to determine the potential fiscal impact of the bill on the Department of Correction.

SOURCES OF DATA: Department of Commerce - ABC Commission; Administrative Office of the Courts; Responsible Alcohol Sales and Service (RASS); Indiana Alcohol and Tobacco Commission website.

TECHNICAL CONSIDERATIONS: None

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¹ This is the cost of intensive probation, the most common intermediate sanction.

² DCC also incurs costs of \$0.67 per day for each offender sentenced to community service; however, the total cost for community service cannot be determined.