

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 3423H.011
 Bill No.: HB 2332
 Subject: Alcohol; Department of Public Safety; Licenses - Liquor and Beer; Business and Commerce
 Type: Original
 Date: April 1, 2024

Bill Summary: This proposal modifies provisions relating to home producers of alcohol and allows direct shipments of distilled spirits to residents of this state.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2025	FY 2026	FY 2027
General Revenue*	\$0 to (Unknown)	\$0 to (Unknown)	\$0 to (Unknown)
Total Estimated Net Effect on General Revenue	\$0 to (Unknown)	\$0 to (Unknown)	\$0 to (Unknown)

* It is assumed the (Unknown) loss in excise taxes collected will not reach the \$250,000 threshold annually.

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2025	FY 2026	FY 2027
Alcohol and Tobacco Control	(\$2,498,128)	(\$2,106,204)	(\$2,142,921)
Missouri Wine and Grape	\$0 to (Unknown)	\$0 to (Unknown)	\$0 to (Unknown)
Total Estimated Net Effect on <u>Other</u> State Funds	Could exceed (\$2,498,128)	Could exceed (\$2,106,204)	Could exceed (\$2,142,921)

Numbers within parentheses: () indicate costs or losses.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2025	FY 2026	FY 2027
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2025	FY 2026	FY 2027
Alcohol and Tobacco Control	18 FTE	18 FTE	18 FTE
Total Estimated Net Effect on FTE	18 FTE	18 FTE	18 FTE

- Estimated Net Effect (expenditures or reduced revenues) expected to exceed \$250,000 in any of the three fiscal years after implementation of the act or at full implementation of the act.
- Estimated Net Effect (savings or increased revenues) expected to exceed \$250,000 in any of the three fiscal years after implementation of the act or at full implementation of the act.

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2025	FY 2026	FY 2027
Local Government	\$0	\$0	\$0

FISCAL ANALYSIS

ASSUMPTION

§311.055 and 311.185 – Home producers of alcohol and direct shipments of distilled spirits

Officials from the **Department of Public Safety – Division of Alcohol and Tobacco Control (ATC)** state:

Subsection 311.055.2 is revised to allow spirits and wine that are manufactured for personal use to be removed from the premises where produced and used in organized events, exhibitions, or competitions. While Missouri law already permits the production of spirits for personal use, it is in direct violation of federal law which prohibits manufacturing spirits at any place other than an Alcohol and Tobacco Tax and Trade Bureau (TTB)-qualified distilled spirits plant (26 U.S.C. 5042(a)(2) and 5053(e)). The revision in this subsection brings home-distillers out of their home and publicizes their existence (most likely without a federal permit). A violation can be considered a felony that is punishable by up to 5 years in prison, a fine of up to \$10,000, or both, for each offense. (<https://www.ttb.gov/distilled-spirits/penalties-for-illegal-distilling>)

Section 311.185 is revised to allow in-state and out of state manufacturers of intoxicating liquor to apply for a license that allows them to ship intoxicating liquor directly to Missouri consumers. Currently, there are 1,432 wine manufacturers who are licensed as wine direct shippers in Missouri. If spirit manufacturers are added, ATC anticipates that number to triple, especially since there is no license fee. That means the ATC will be processing an additional 2,900 new license applications and license renewal applications annually. ATC will need additional staff to be able to manage such an increase in license processing. Unfortunately, with no license fee there is no revenue source to support the resources needed to manage the current wine direct shipping licensing and enforcement, let alone the addition of direct shipping of spirits.

Subsection 311.185.1 permits direct shippers to ship two cases of spirits each month directly to a Missouri consumer. The language was used to mirror the allowable 2 cases of wine per month but given the vast difference in alcohol content between wine and spirits, 2 cases of spirits (4.75 gallons) each month could be problematic to public safety.

Subsection 311.185.2 requires manufacturers who are licensed to ship directly to Missouri consumers to annually report their shipments and pay excise tax on those shipments. Annual reporting is problematic as it forces a reactionary discipline rather than proactive monitoring for compliance. Also, there have been a significant number of violations related to wine direct shipping, which is a growing issue across the nation. There are no checks and balances with Missouri's wine direct shipping. ATC relies on the shippers to report their shipments and pay the appropriate amount of excise tax. All other sales of intoxicating liquor in Missouri move through a 3-tier system with checks and balances. Within that 3-tier system all manufacturers must report their sales and all wholesalers must report their invoice receipts from the manufacturer. The ATC

reporting system catches any discrepancies, which its staff must then reconcile. Wine direct shippers report their shipments, but there is nothing to compare it to within ATC's reporting system. The alcohol carriers that ship the product to consumers are required to maintain records, but they aren't required to report to the division. Some will provide the records voluntarily, but there are no standardized requirements for recordkeeping, so the information is often lacking and very difficult and time consuming to reconcile with the wine direct shipper reports since the alcohol carriers don't report within the ATC on-line system. The division does not have the resources to manage and reconcile direct shipping reports. The reason ATC was able to review 2018 and 2019 reports was due to COVID. ATC's agents were pulled from the field early in 2020 when COVID hit, and the division utilized the time to have them reconcile the reports and determine violations. ATC doesn't have the resources to continue reviewing these reports. The division has utilized its one auditor to continue to review these reports, but this pulls that individual from their primary function, which is to audit manufacturers and wholesalers in Missouri for proper business practices. ATC would need a team to manage direct shipping of spirits along with direct shipping of wine. However, there is no license fee associated with the direct shipper license or alcohol carrier license to support the resources that are currently given and what is needed to manage it all.

Further straining the division's ability to effectively regulate direct to consumer shipping is the ATC's inability to fine direct shipping licensees. Section 311.680, not included in this bill, provides disciplinary action for violations of Chapter 311 (Missouri manufacturers excluded). The Administrative Hearing Commission (AHC) ruled ATC lacks authority to issue fines to wine direct shippers. *Bridgeview Vineyards, Inc. v. Supervisor of Alcohol and Tobacco Control, Mo. Admin. 22-2461* (Order dated June 23, 2022) This decision limits ATC to warning, probation, suspension or revocation as its only means of discipline which has led to an increased number of suspensions and subsequent AHC appeals. If spirits are added to direct shipping, the issue will continue to grow and AHC will be overwhelmed with appeals. A revision to section 311.680 could allow the division to assess fines for direct shipping violations in lieu of suspension, which would significantly reduce the number of appeals to the AHC as many of the complainants have requested a fine in lieu of suspension, which the division is not able to allow.

Additional staff needed by ATC:

Agents/Special Agents (8 FTE; \$56,000 annually) – Special Agents will be the key contact person for licensees to contact with questions and application problems. Agents will review all license applications, investigate violations, assist auditors in obtaining documentation from licensees, and enforce all statutes and regulations of the liquor control law. Two agents will be located in each of the four districts.

Senior Auditor (1 FTE; \$58,000 annually) – The Senior Auditor will supervise the audit team and review all alcohol beverage direct shipping violation reports. They will also request and review alcohol carrier reports for illegal shipments into Missouri. They will be located in the Jefferson City central office.

Administrative Support Professional (3 FTE Admin Support Professionals; \$41,000 each). Two (2) FTE will be working with the licensing and compliance section to process licenses, data entry, excise tax reporting and collection, track statistics, and facilitate the composition of the reports required by law; 1 Administrative Support Professional will be working with the administrative disciplinary section to schedule and manage all disciplinary conferences and actions. They will also assist with license processing and data entry. All Administrative Support Professionals will be located in the Jefferson City central office.

Auditor (4 FTE; \$55,000 annually) – The Auditors will be responsible for auditing licensee records to ascertain that the licensee is reporting accurately to the division and paying the proper excise taxes. One auditor will be located in each district office.

Legal Counsel (Disciplinary) (1 FTE; \$85,000 annually) – The Legal Counsel will be responsible for interpreting the statutes and assisting with the promulgation of rules to regulate this revised section, as well as ongoing legal counsel regarding the administrative disciplinary process. They will be located in the Jefferson City central office.

Deputy Chief of Investigations (1 FTE; \$77,000 annually) – The Deputy Chief of Investigations will assist in the review of license applications, review violation reports and be involved in the administrative disciplinary process. They will be located in the Jefferson City central office.

Expense and Equipment would be necessary for staff to include basic office equipment, laptops, and telephone equipment. Agents will need law enforcement equipment to include firearms, ammunition, ballistic vest, vehicles, travel expenses, etc.

ATC is currently building an online licensing system for liquor licensing with an outside vendor. The division will have to incorporate the distillers direct shipping and reporting into the same system, which is not supported by ITSD. It is estimated that this addition will cost approximately \$40,000.

ATC will need rental space for 18 additional FTE including space for 9 FTE in Jefferson City; 3 FTE in Kansas City; 3 FTE in Springfield; and 3 FTE in St. Louis. In addition, ATC is requesting an additional \$100,000 for renovation costs not covered in the rental costs of \$205,950.

Finally, ATC does not anticipate an increase in excise tax revenue because consumers will likely shift some of their buying from in-state purchases to out of state purchases versus buying more intoxicating liquor. However, there is a possibility for a loss in excise tax revenue. The Division has discovered from reviewing the last few fiscal years that there are a vast number of violations from out-of-state wineries shipping into Missouri under the current wine direct shipping law. Some of the most common violations ATC repeatedly sees are failing to file the required annual report and shipping without a Missouri license. From the review of 2018 and 2019 wine direct shipping, ATC sent out 99 cease and desists for those violations that had exceeded the state statute of limitations, and there were 163 violation reports submitted, some containing multiple

violations. The violations of the wine direct shipper provisions are a constant issue because the division does not have adequate resources to manage this. ATC expects to see the same issues – at a greater scale - if spirits are added to direct shipping. If the shippers aren’t licensed they won’t report, which means they aren’t paying excise tax. Also, if they are licensed and aren’t reporting correctly or at all, they aren’t paying the proper excise tax.

Oversight contacted ATC officials regarding how much in excise taxes might be lost as a result of this proposal. ATC officials state they are unable to provide an estimate as there is no way for them to calculate the potential loss. ATC officials indicate any lost excise taxes would reduce General Revenue funds as it relates to excise taxes collected on sales of spirits and malt drinks. In addition, all excise taxes received for wine goes to the Missouri Wine and Grape Fund (0787) through the Missouri Department of Agriculture. Oversight notes officials from the Department of Revenue provided that the ATC collected \$36 million in liquor excise taxes in 2023.

Oversight has no information to the contrary. Therefore, Oversight will present costs as provided by ATC. In addition, Oversight will present a \$0 to (Unknown) revenue loss to General Revenue as well as a \$0 to (Unknown) revenue loss to the Missouri Wine and Grape Fund. Oversight assumes the loss to GR will not exceed \$250,000 annually.

Officials from the **Office of Administration - Budget and Planning (B&P)** state this proposal makes changes to the regulations on the production and distribution of certain types of liquor. To the extent this impacts related excises taxes, total state revenues may be impacted. The Division of Alcohol and Tobacco Control may have more specific info.

Officials from the **Department of Revenue (DOR)** state there is no fiscal impact to the DOR as the excise tax on alcohol is handled by the DPS-ATC. This proposal lowers the amount of liquor a person can make at home for personal consumption which is not taxable. The proposal also says liquor can be shipped but the shipper must remit the tax as if it is sold in the state.

Officials from the **Missouri Department of Agriculture** assume the proposal will have no fiscal impact on their organization. **Oversight** does not have any information to the contrary. Therefore, Oversight will reflect a zero impact in the fiscal note.

<u>FISCAL IMPACT – State Government</u>	FY 2025 (10 Mo.)	FY 2026	FY 2027
GENERAL REVENUE FUND			
<u>Loss – Reduction in excise taxes collected on certain types of alcohol (§§311.055 and 311.185) p. 6-7</u>	\$0 to (Unknown)	\$0 to (Unknown)	\$0 to (Unknown)

<u>FISCAL IMPACT – State Government</u>	FY 2025 (10 Mo.)	FY 2026	FY 2027
ESTIMATED NET EFFECT ON THE GENERAL REVENUE FUND	<u>\$0 to (Unknown)</u>	<u>\$0 to (Unknown)</u>	<u>\$0 to (Unknown)</u>
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ALCOHOL AND TOBACCO CONTROL FUND (0544)			
<u>Costs – DPS-ATC (§§311.055 and 311.185) p.3-7</u>			
Personal service	(\$842,500)	(\$1,031,220)	(\$1,051,844)
Fringe benefits	(\$551,838)	(\$670,043)	(\$678,037)
Equipment and expense	(\$875,498)	(\$296,872)	(\$302,810)
Software development	(\$40,000)	\$0	\$0
Rental space and renovation	(\$188,292)	(\$108,069)	(\$110,230)
Total Costs – DPS-ATC	(\$2,498,128)	(\$2,106,204)	(\$2,142,921)
FTE Change – DPS-ATC	18 FTE	18 FTE	18 FTE
ESTIMATED NET EFFECT ON THE ALCOHOL AND TOBACCO CONTROL FUND	<u>(\$2,498,128)</u>	<u>(\$2,106,204)</u>	<u>(\$2,142,921)</u>
Estimated Net FTE Change on the Alcohol and Tobacco Control Fund	18 FTE	18 FTE	18 FTE
MISSOURI WINE AND GRAPE FUND (0787)			
<u>Loss – Reduction in excise taxes collected on certain types of alcohol (§§311.055 and 311.185) p. 6-7</u>	\$0 to (Unknown)	\$0 to (Unknown)	\$0 to (Unknown)
ESTIMATED NET EFFECT ON THE MISSOURI WINE AND GRAPE FUND	<u>\$0 to (Unknown)</u>	<u>\$0 to (Unknown)</u>	<u>\$0 to (Unknown)</u>

<u>FISCAL IMPACT – Local Government</u>	FY 2025 (10 Mo.)	FY 2026	FY 2027
	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>

FISCAL IMPACT – Small Business

This bill could potentially have an impact on small intoxicating liquor businesses.

FISCAL DESCRIPTION

This bill repeals beer brewed for personal or family use and adds intoxicating liquor produced for personal or family use.

This bill decreases the aggregate amount of intoxicating liquor manufactured per household from 200 gallons to 100 gallons per calendar year if there is one or more persons over 21 in such household.

Intoxicating liquor produced may be removed from the premises where produced for personal or family use, including use at wine maker, or distiller contests. Any intoxicating liquor produced as specified in this bill used at an organized event where an admission fee is paid for entry, at which intoxicating liquor is available without a separate charge, is not a sale of intoxicating liquor, provided the person who produced the intoxicating liquor receives none of the proceeds from the admission fee and all consumption is conducted as specified in the bill.

Currently, licensed wine manufacturers may apply for a "wine direct shipper license" from the Supervisor of Alcohol and Tobacco Control, within the Department of Public Safety. Such license allows a wine manufacturer to ship up to two cases of wine per month directly to a Missouri resident who is at least 21 years of age for personal use. The license may be renewed annually.

The bill extends these same provisions of law to distilled spirit manufactures.

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

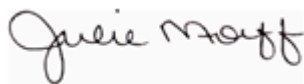
SOURCES OF INFORMATION

Office of Administration - Budget and Planning

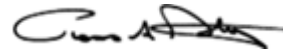
Department of Revenue

Department of Public Safety – Alcohol and Tobacco Control

Missouri Department of Agriculture



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