VERMONT LEGISLATIVE
Joint Fiscal Office
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Fiscal Note
Date: May 6, 2022
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H.730: An act relating to alcoholic beverages and the Department of Liquor and Lottery:
As Passed by the House and Recommended by the Senate Committee on Finance

URL for bill:
https://legislature.vermont.gov/Documents/2022/WorkGroups/Senate%20Finance/Bills/H.730/Drafts,%20Amendments%20and%20Legal%20Documents/H.730~Tucker%20Anderson~As%20Recommended%20by%20the%20Senate%20Committee%20on%20Finance~5-6-2022.pdf

Bill Summary

This bill makes changes to Vermont's liquor laws. It creates a new Ready to Drink (RTD) beverage definition and makes it subject to a $1.10 cents per gallon tax. It also changes the taxation of cider, making those with less than 7% alcohol by volume subject to the malt beverage tax in FY2024. It also directs the Department of Liquor and Lottery (DLL) to study the market for RTD beverages and fortified wines and make recommendations on tax rates. Finally, it requires the Joint Fiscal Office to study privatization of liquor sales in the state and make recommendations.

It also makes several technical changes including:

- It clarifies the authority for criminal background checks by the Department of Liquor and Lottery.
- It eliminates a deputy commissioner position within the Department and consolidates those roles into a single Deputy Commissioner of Liquor and Lottery. Since the consolidation of the Departments of Liquor and Lottery, and extra deputy commissioner position was left open.
- It authorizes third-class licensees to purchase tickets for the Department's rare and unusual products raffle.
- It authorizes the Department to extend the expiration dates and stagger the issuance or renewal of permits, licenses, and certificates set to expire in the years 2022 and 2023.

Fiscal Impact

JFO estimates that this bill will increase overall State revenues on net by $80,000 in FY 2023 and decrease them by $10,000 in FY 2024. This fiscal impact will affect three different funds: the General Fund, the Enterprise Fund within the Department of Liquor and Lottery (DLL), and the Education Fund. See Table 1 for the estimated Fund specific impacts of the bill.

Table 1: Fiscal Impacts of H.730 (in millions of dollars)		
Fund	**FY2023**	**FY2024**
Overall	**$0.08**	**-$0.01**
General Fund	$0.00	-$0.16
Enterprise Fund	$0.06	$0.06
Education Fund	$0.02	$0.09

Details and Analysis

The fiscal impacts of this bill are due to the change in taxation of RTD beverages and alcoholic ciders.

RTD Beverages

RTD beverages typically a cocktail comprised of a mix of a spirit and another non-alcoholic beverage. Under current law, RTD beverages are considered spirits. As such, their sale is controlled by the Department of Liquor and Lottery and they are only permitted to be sold in 802Spirits outlets. These sales are subject to the 5% liquor tax, which goes to the General Fund, and the 6% sales tax, which goes to the Education Fund. The profit margin on these beverages (and all spirits sold by the Department), which is around 40-50%, flows to the Department's Enterprise Fund. Most or all this profit is directed to the General Fund each year via a direct application in the budget.

This bill would create a new definition for RTD beverages. RTD beverages would be defined as cocktails and would no longer be considered spirits. Specifically, the alcohol by volume (ABV) would need to be under 12% alcohol by volume (ABV) and the beverages would be required to come in containers under 24 fluid ounces.

Because they would no longer be a spirit, RTD beverages would no longer be subject to the 5% liquor tax. Instead, the bill would subject them to a new $1.10 cent per gallon tax that would go to the General Fund. They would also no longer be sold by the Department of Liquor and Lottery outlets. Instead, they would be permitted to be sold under a traditional retail and distribution model.

The revenue impacts of this proposal stem from four different areas:

<u>a) Liquor tax to per-gallon:</u> The proposal would shift the tax on RTD beverages from the 5% liquor tax on gross sales to a $1.10 cents per gallon tax. JFO expects this shift will have minimal impact on the General Fund in FY 2023 and increase revenues by nearly $20,000 in FY 2024. This increase in revenues is reflective of growth in sales over time.

<u>b) Change in Department of Liquor and Lottery profit:</u> Because RTD beverages would no longer be sold under a control model, DLL would no longer collect the profit on their sales. This profit accrues in the Department's Enterprise Fund. In each year's State budget, DLL typically sends a large portion of its profits to the General Fund via a direct application.

The removal of these products from the DLL's portfolio could result in less profit accruing to the Enterprise Fund, and therefore, reduce the amount of money directed to the General Fund in FY 2023 and future years. However, Section 36 of the bill requires a minimum direct application of $20.4 million in FY2023 and $21.2 million in FY2024.

Because of this minimum required direct application, JFO expects the changes to DLL's profits from the change in distribution model to have a revenue neutral impact on the General Fund relative to current law. The growth in the minimum direct applications set in Section 36 corresponds roughly to the growth in liquor revenues to the State in the January 2022 Consensus Revenue Forecast. In other words, the growth in the mandated direct application from FY2023 to FY2024 corresponds to the Consensus Revenue Forecast for the 5% liquor tax expect between those two fiscal years.

The impact on DLL's Enterprise Fund is likely also revenue neutral. Since the bill does not direct DLL to take specific action to make up for any potential lost profit, DLL could address this by stocking new types of spirits, selling higher margin products, or making price adjustments, among other options. Because DLL operates as an entity funded by its sales of liquor and not an annual appropriation, it is reasonable to assume DLL will take necessary actions to fulfill its direct application responsibility and fully fund its operating expenses without future appropriation support.

c) Sales tax revenues: Even though this proposal makes no changes to the sales and use tax, JFO expects the distribution model change in the bill will increase retail sales of RTDs, beyond the growth in the category that would occur absent a change in distribution model. Under the current control model, these products are available exclusively in DLL outlets, which is about 80 stores. If this bill was enacted, they could be available in several hundred stores. JFO believes expanding access will increase sales, and therefore, sales tax revenues. This increase in sales tax revenues is forecast to be $20,000 in FY 2023 and $90,000 in FY 2024. Revenues are expected to increase as the market grows as a result of more stores selling the product and the overall category growth.

d) Fee revenue: This bill creates a new certificate of approval fee for manufacturers and distributors of RTD beverages of $985 per year. JFO estimates this will raise $50,000 per year. This revenue is expected to accrue to the Enterprise Fund within the DLL.

Hard Cider

Under current law, hard cider beverages pay the 55 cent per gallon vinous beverage tax. Section 28 of the bill changes this to make hard ciders with less than 7% ABV subject to the 26.5 cent per gallon malt beverage tax. This change is made effective for FY 2024.

JFO estimates that this provision in the bill will reduce General Fund revenue by up to $175,000 in FY2024.

Appendix: Resources

- Data from the Department of Liquor and Lottery on cocktail sales.
- January 2022 Consensus Revenue Forecast: https://ljfo.vermont.gov/assets/Uploads/7d2ac79b4a/January-2022-Economic-Review-and-Revenue-Forecast-Update-Revised-January-15-2022.pdf
- "Economic Case Studies of Cider Apple Orchards in New York State." Gregory Peck and Whitney Knickerbocker. 2018. https://nyshs.org/wp-content/uploads/2019/03/Peck-Pages-5-10-from-NYFQ-BOOK-Fall-2018-8-29-18.pdf
- Vermont Department of Taxes