



State Fiscal Note for Bill Number: 2021-H-5324

Date of State Budget Office Approval: Thursday, April 15, 2021

Date Requested: Tuesday, February 23, 2021

Date Due: Friday, March 5, 2021

<i>Impact on Expenditures</i>		<i>Impact on Revenues</i>	
FY 2021	n/a	FY 2021	n/a
FY 2022	n/a	FY 2022	See below
FY 2023	n/a	FY 2023	See below

Explanation by State Budget Office: This bill would amend Rhode Island General Laws (R.I. Gen Laws) § 3-6-1 titled “Manufacturer’s license” in R.I. Gen. Laws Chapter 3-6 entitled “Manufacturing and Wholesale Licenses” to change the amount of malt beverages a manufacturer is allowed to sell at their breweries per visitor, per day for off-premises consumption. The bill specifies the amount that can be sold under these circumstances at 55 cans or bottles in 12 oz containers or 41 cans or bottles in 16 oz containers.

Under current law, manufacturers of malt beverages are limited to selling from their breweries per visitor, per day for off-premises consumption 24 cans or bottles whether the product is packaged in 12 oz containers or 16 oz containers. Beer sold in other size containers, such as 64 oz growlers, must follow comparable limits.

Under R.I. Gen Laws Chapter 3-10 entitled “Taxation of Beverages”, section 3-10-1(c) titled “Manufacturing tax rates – Exemption of religious uses” exempts the first 100,000 barrels of beer produced and distributed in the State in any calendar year from the excise tax on malt beverages imposed by R.I. Gen Laws § 3-10-1(a) titled “Manufacturing tax rates – Exemption of religious uses”, provided that the brewer has actively and directly owned, managed, and operated a brewery in the State for at least 12 consecutive months. Additionally, containers that hold malt beverages sold are subject to the \$0.04 per case tax on beverage containers that is specified in R.I. Gen. Laws Chapter 44-44 titled “Taxation of Beverage Containers, Hard-to-Dispose Material and Litter Control Participation Permittee.” Finally, all malt beverages sold at retail are subject to the state’s sales and use tax as indicated in R.I. Gen. Laws Chapter 44-18 titled “Sales and Use Taxes – Liability and Computation.”

Comments on Sources of Funds: All alcohol excise taxes, sales and use taxes, and beverage container taxes are general revenues.

The bill would have an impact on the local meals and beverage tax, as established in R.I. Gen. Laws Section 44-18-18.1 titled “Local meals and beverage tax.” Local 1% meals and beverage taxes are pass-through revenues.

Summary of Facts and Assumptions: The effective date of the bill is upon passage, but the Department of Revenue, Office of Revenue Analysis (ORA) assumed an implementation date of July 1, 2021. ORA recommends that the bill be redrafted to specify the exact effective date of the bill and its provisions.

After the first year of manufacturing in Rhode Island, breweries are exempt from

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paying the alcohol excise tax on the first 100,000 barrels (one barrel is equal to 31 gallons) produced. The Department of Revenue, Division of Taxation (Taxation) noted that there are currently no manufacturers close to that exemption limit, and they do not believe the proposed change would lead to such an increase in manufacturing that will cause production to exceed the exemption limit. Additionally, ORA assumed that any alcohol excise tax revenue increases from this bill would be de minimus from new breweries opened less than 12 months in any given fiscal year. Thus, ORA estimates no revenue impact from this bill for the alcohol excise tax for FY 2022 or FY 2023.

According to Taxation, any brewery that meets the definition of an “eating and drinking establishment” is, in general, required to charge the state 7% sales tax and the local 1% meals and beverage tax on all food and drink transactions, regardless of whether they are sold for consumption on-premises or off-premises. As defined in title 280 of the Rhode Island Code of Regulations § 20-70-4.5, “eating and/or drinking establishments” includes but is not limited to restaurants, bars, taverns, lounges, cafeterias, lunch counters, drive-ins, roadside ice cream and refreshments stands, fish and chip places, fried chicken places, pizzerias, food and drink concessions, or similar facilities in amusement parks, bowling alleys, clubs, caterers, drive-in theaters, industrial plants, race tracks, shore resorts or other locations, lunch carts, mobile canteens and other similar vehicles, and other like places of business which furnish or provide facilities for immediate consumption of food at tables, chairs or counters or from trays, plates, cups or other tableware or in parking facilities provided primarily for the use of patrons in consuming products purchased at the location. Thus, most beer sales to go are subject to the 7% sales and use tax and the local 1% meals and beverage tax, but there are some exceptions if breweries maintain separate registers, as set forth in 280-RICR-20-70-4.8.

ORA assumed that the proposed increase in beer that can be sold to each person each day at breweries would not change the net amount of locally brewed beer consumed by Rhode Island residents at home. It is possible that Rhode Island residents might shift some of their local beer purchases for at-home consumption from package stores to the breweries. Due to the markup on the price of beer sold by the brewery to distributors and the subsequent markup on the sales price by retail establishments, the sales tax collected on the sale of locally produced beer to Rhode Island residents for consumption at home will likely decrease. ORA was unable to find data on the amount of locally produced beer that is purchased by Rhode Island residents at breweries or package stores and this decrease is not included in the estimate.

The proposed increase in the allowable amount of beer that can be sold by breweries is estimated to have a positive revenue impact on the sales and use tax for sales made at Rhode Island breweries to tourists. In a 2017 article by Beverage Daily, it was reported that, in the United States, an estimated 10 million people visit craft breweries each year. The Brewers Association reported that a 2016 study found that the average number of breweries that were visited while traveling in the United States was 2.1 breweries in a 12-month period. ORA multiplied the 2.1 figure by the number of estimated people who visit craft breweries to estimate the number of craft brewery visits in the United States made by tourists of 21,000,000 (i.e., 10,000,000 * 2.1). To scale this to Rhode Island, ORA calculated the percentage of the U.S. craft

brewery production attributable to Rhode Island, where U.S. production is reported by the Brewers Association and Rhode Island production is reported by Taxation. In 2019, 73,439 barrels of craft beer were produced in Rhode Island and 26,086,145 barrels were produced in the United States. Thus, 0.2815% of the craft beer produced in the United States was manufactured by breweries in Rhode Island in 2019. ORA assumed this percentage was similar in 2017 and applied the 0.2815% to the estimated 21,000,000 craft brewery visits in the United States by tourists to yield an estimated 59,120 tourists who visited breweries in Rhode Island in 2017.

While beer can be purchased to go in various container sizes, ORA used 16 oz cans for this estimate as, based on information obtained from Rhode Island brewery websites, that is the most common container size sold by Rhode Island breweries. ORA assumed a maximum 50% of tourists who visit breweries in Rhode Island purchase a case of beer (24 16-oz cans), the limit per person per day under current law, and would purchase at the proposed limit of 41 16-oz cans, or 29,560 tourists. This represents an additional 17 cans per customer at that size. Also based on data obtained from the Rhode Island brewery websites for beer sold to go, ORA estimates the average price per ounce in the State to be \$0.27. The gross spending on these additional cans is estimated to be \$2,170,895 (i.e., $29,560 * 17 \text{ cans} * 16 \text{ oz per can} * \0.27). Thus, the additional sales tax on beer sold at breweries in Rhode Island to tourists would have been \$151,963 in 2017 (i.e., $\$2,170,895 * 0.07$).

To grow this estimate to FY 2022, ORA used the forecast provided by IHS for personal consumption expenditures for food and beverages purchased for off-premise consumption. The growth rate from 2017 to 2022 is 20.3127% and from FY 2022 to FY 2023 is 2.0428%. Applying these growth rates yields estimated sales and use tax revenues from the implementation of this bill of \$182,830 for FY 2022 (i.e., $\$151,963 * 1.203127$) and \$186,565 for FY 2023 (i.e., $\$182,830 * 1.020428$).

This bill would increase beverage container tax revenues to the extent that breweries increase their production for canning or bottling. Based on a 16 oz can size as before, ORA calculated gross sales from the increase in the number of cans sold per tourist. To do so, ORA divided the sales and use tax estimate noted above for FY 2022 by the state 7% sales and use tax rate to yield estimated gross sales of \$2,611,861 in FY 2022 (i.e., $\$182,830 / \0.07). Dividing this figure by the average estimated cost per ounce of \$0.27 and the 16 oz per can yields an estimated additional number of 16 oz cans of 604,598 (i.e., $\$2,611,861 / \$0.27 / 16$). Taking this figure and dividing by 24, the number of cans per case, and multiplying by the beverage container tax of \$0.04 per case yields an estimated FY 2022 revenue gain for the beverage container tax of \$1,008 (i.e., $604,598 / 24 * \$0.04$). Using the same methodology for FY 2023, estimated gross sales from the additional 17 cans sold per tourist are \$2,665,215 (i.e., $\$186,565 / \0.07). The estimated additional number of 16 oz cans is 616,948 (i.e., $\$2,665,215 / \$0.27 / 16$), which yields a FY 2023 revenue gain of \$1,028 for the beverage container tax (i.e., $616,948 / 24 * \$0.04$). It should be noted that this figure could be higher or lower depending on the amount of beer sold in 12 oz cans/bottles, 20 oz bombers, 32 oz howlers/crowlers, or 64 oz growlers rather than the 16 oz can used for this estimate.

As noted above, this bill would also impact the revenues for the local 1% meals and

beverage tax to the extent that the beer sold to go is sold by the eating and/or drinking establishment at the brewery and not at a register separate from that of the eating and/or drinking establishment. Taxation provided data on the total sales and use tax paid by breweries and brewpubs identified by ORA in FY 2019 and FY 2020, as well as the total local 1% meals and beverage taxes paid for the same periods. Total sales and use taxes paid were \$1,299,533 in FY 2019 and \$1,242,322 in FY 2020. In addition to beer sold on draft or to go, regardless of whether it was sold inside or outside of the eating and/or drinking establishment area, total sales and use tax includes the sales and use tax paid on food and merchandise. ORA was unable to determine the portion of the total sales and use tax paid for merchandise or food. Total meals and beverage taxes paid were \$149,005 and \$136,018 in FY 2019 and FY 2020, respectively.

Scaling the local 1% meals and beverage taxes paid to the state 7% sales and use tax yields \$1,043,035 sales and use taxes paid from the eating and/or drinking establishment portions of ORA-identified breweries and brewpubs in Rhode Island in FY 2019 (i.e., \$149,005 * 7). The comparable figure for FY 2020 is \$952,126 (i.e., \$136,018 * 7). These figures represent an average 78.4516% of total sales and use taxes paid by the breweries and brewpubs during FY 2019 and FY 2020 (i.e., $(\$1,043,035 / \$1,299,533 + \$952,126 / \$1,242,322) / 2$). ORA applied the 78.4516% to the FY 2022 and FY 2023 estimates of additional sales and use taxes generated by this bill yielding estimated sales and use taxes generated by eating and/or drinking establishments in breweries of \$143,433 in FY 2022 (i.e., $\$182,830 * 0.784516$) and \$146,363 in FY 2023 (i.e., $\$186,565 * 0.784516$). Scaling these figures to the local 1% rate obtains an estimated revenue gain of \$20,490 in pass-through meals and beverage taxes in FY 2022 (i.e., $\$143,433 / 7$) and \$20,909 in pass-through meals and beverage taxes in FY 2023 (i.e., $\$146,363 / 7$).

The Governor's FY 2022 Recommended Budget projects a closing surplus of \$265,441,847 in FY 2021 and \$4,425,716 in FY 2022. Passage of this bill would have no impact on the FY 2021 closing surplus, but it would increase the FY 2022 closing surplus and decrease the FY 2023 projected budget deficit of \$374.4 million.

*Summary of Fiscal
Impact:*

FY 2021: Not applicable due to the assumed implementation date of the bill.

FY 2022: A total general revenue gain of \$183,838 is forecast, composed of a revenue gain of \$182,830 from sales and use taxes and \$1,008 from beverage container tax. A pass-through revenue gain of \$20,490 in local meals and beverage taxes is also forecast.

FY 2023: A total general revenue gain of \$187,593 is forecast, composed of a revenue gain of \$186,565 from sales and use taxes and \$1,028 from beverage container tax. A pass-through revenue gain of \$20,909 in local meals and beverage taxes is also forecast.

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