

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

Legislative Fiscal Note

BILL NUMBER: House Bill 892 (First Edition)

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:					
Crime Control	\$152,113	\$148,088	\$148,088	\$148,088	\$148,088
EXPENDITURES:					
Crime Control	\$152,113	\$148,088	\$148,088	\$148,088	\$148,088
Correction		No estimate	available		
Judicial		No estimate	available		
POSITIONS					
(cumulative):					
Crime Control	1.0	1.0	1.0	1.0	1.0
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Crime Control and Public Safety, Division of Alcohol Law Enforcement; Judicial Branch; Correction					
EFFECTIVE DATE: December 1, 2005					

BILL SUMMARY: Adds new GS 18B-1010 as title indicates. Kegs sold to anyone other than a hotel, restaurant, or private club must be marked with coded tag (specifics of details required on tag are listed in the bill). Purchaser must complete form with identifying information and must return keg and tag to retailer. Specifies reporting requirements of retailers and wholesalers. Assesses \$50 security deposit on each keg sold, to be refunded, if keg and tag returned. Makes failure to return keg, removal of coded tag, or possession of keg without tag a Class 1 misdemeanor, punishable by minimum fine of \$50, imprisonment, or both, in the court's discretion. Specifies that permit may be revoked if permittee fails to comply with applicable keg registration provisions. Specifies that compliance with provision is defense to criminal proceeding or administrative or civil action for violation of new keg registration laws. Effective December 1, 2005, for offenses committed on or after that date.

Source: Bill Digest H.B. 892 (03/24/0200).

ASSUMPTIONS AND METHODOLOGY: the bill requires that all beer kegs be marked with a permanent identification number. Wholesalers would be required to attach to every keg supplied to a permittee (other than a hotel, restaurant, or private club), a uniquely numbered and coded tag provided by the Alcohol and Law Enforcement Division (ALE). The retail seller shall require every purchaser of a keg to complete and sign a form, provided by ALE, indicating among other information the purchaser's name, address, date of birth, the keg identification number, coded tag number, address and date where the keg is to be consumed. The retailer shall collect a \$50 deposit guaranteeing that the coded tag shall not be removed or defaced. The deposit will be refunded upon return of the keg with the un-defaced tag. If the tag is defaced or has been removed, the retailer shall keep the deposit. The retailer shall return the keg with the attached coded tag to the wholesaler, who shall remove the tag and maintain it with the records of the sale. The wholesaler shall return the coded tags semiannually to ALE for destruction. (*See Technical Considerations below*). Retailers shall report to ALE or a local law enforcement agency the failure to return a keg or the defacing or the removal of the coded tag.

New criminal penalties and fines are established for violations of the provisions of the bill. Any person who defaces or removes a coded tag, or who possesses an untagged keg shall be guilty of a Class 1 misdemeanor with a minimum \$50.00 fine. A person who either fails to return a keg or to provide the retail seller with a reason for the failure to return the keg within 30 days after purchase shall be guilty of a Class I misdemeanor with a minimum \$50.00 fine. A permittee who fails to obtain, record, maintain, or report the required information shall have its permit revoked by the ABC Commission.

Department of Crime Control and Public Safety, Alcohol Law Enforcement Division (ALE):

The bill allows ALE to charge a fee to recover the cost of the coded tags and required forms. ALE staff submitted an estimate of the resources needed to implement the requirements of the bill. The estimate includes adding nine (9) new ALE agents, one in each ALE district office, and one (1) support position. The first year cost to hire, train, and equip 9 new agents would be \$880,515. The recurring costs for the agent positions in the following years would be \$472,932. The ALE estimate did not include the costs of the support position, coded tags, or forms.

The Fiscal Research Division considers the ALE cost estimate to be excessive and disproportionate to the added duties and responsibilities proposed by the bill. The bill will add three new duties for ALE: 1) procure and issue coded tags; 2) procure and issue one new form; and 3) receive and destroy tags submitted by permittees. These duties can all be performed from a central location, using support-level personnel and do not require an additional sworn ALE agent position for each of the 9 district offices around the state.

North Carolina ABC Commission data indicate that there are currently 118 malt beverage wholesalers with an active permit and 6,891 active "malt beverage off-premise" permittees who may sell kegs. 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 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 \$.065. This per unit cost is increased by an additional \$.05 if the markers are mailed to permittees. Assuming North Carolina’s costs would be comparable to Indiana’s, Fiscal Research estimates that it would cost ALE about \$37,000 to procure and mail coded tags to the 118 malt beverage wholesaler permittees. Assuming that ALE would develop a two-page, duplicate retail form, it would cost an additional \$68,500 to procure and mail the forms to all of the retail permittees subject to this bill. An office assistant position can perform the added duties resulting from this bill. The first year cost of 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, ALE 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 ALE \$152,113 in FY 2005-06 with recurring costs of \$148,088 in the following years. Because the bill allows ALE 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 Crime Control and Public Safety, Alcohol Law Enforcement Division; NC Sentencing and Policy Advisory Commission; Administrative Office of the Courts; NC Alcohol Beverage Control Commission; Responsible Alcohol Sales and Service (RASS); Indiana Alcohol and Tobacco Commission website.

TECHNICAL CONSIDERATIONS: There are conflicting provisions in the bill regarding who is to maintain the coded tags after the purchaser has returned the keg to the seller. Section 1.(b)(1) specifies that the coded tag shall be removed from the keg upon the keg’s return to the malt beverage wholesaler and that the wholesaler must maintain the tag along with the records of the sale. Semiannually, the wholesaler shall return the coded tags to ALE for destruction. However, Section 1.(b)(3) states that the purchaser shall return the keg to the retail seller who shall remove the coded tag and retain it along with the signed form for a period of three years from the date of purchase.

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Denise Thomas

APPROVED BY: James D. Johnson, Director
Fiscal Research Division



DATE: May 16, 2005

Signed Copy Located in the NCGA Principal Clerk's Offices

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.