LEGISLATIVE FISCAL ESTIMATE

SENATE, No. 3172

STATE OF NEW JERSEY

214th LEGISLATURE

DATED: DECEMBER 20, 2011

SUMMARY

Synopsis:	Permits direct shipping by wineries and creates out-of-State winery license.
Type of Impact:	Indeterminate Revenue Impact. Funds may be derived from various taxes and licensure fees.
Agencies Affected:	Department of Law and Public Safety; Division of Alcoholic Beverage Control; Department of Treasury; Division of Taxation.

Office of Legislative Services Estimate

Fiscal Impact	Year 1	Year 2	Year 3
State Cost	Indeterminate – See comments below		
State Revenue	Indeterminate – See comments below		

- The Office of Legislative Services (OLS) notes this bill has an indeterminate fiscal impact on the State since the revenue from various taxes and licensure fees, and potential enforcement costs, are unknown. It is unknown what revenue, if any, will be gained from: 1) taxes if additional bottles/cases of New Jersey wine are sold by licensed New Jersey wineries to out-of-State buyers; 2) the purchase of licenses by eligible out-of-State wineries; and 3) taxes from the out-of-State wine being shipped to individuals in New Jersey. Additionally, the failure of out-of-State, and possibly in-State, wineries to pay taxes is an additional factor to consider. It is unknown how many entities will be non-compliant.

- New Jersey wineries that produce not more than 250,000 gallons per year and farm wineries would be permitted to sell and ship their products to out-of-State consumers and sell directly to licensed retailers after paying a licensure fee based on their annual production. The number of salesrooms that could be operated by each licensee would also be increased to 18, from six, at a cost of $250 for each salesroom. These changes would increase selling options for eligible New Jersey wineries, which may result in an increase in State tax revenues and licensure fees.

- The bill creates an out-of-State winery license, at a cost of $938, which may be issued to wineries licensed in other states that produce no more than 250,000 gallons of wine per year. Similar to the provision for in-State wineries, a salesroom option would be provided, allowing for 19 salesrooms at a cost of $250 per salesroom. Allowing certain out-of-State wineries to sell and distribute products should generate an indeterminate increase in State tax revenues and licensing fees.

BILL DESCRIPTION

Senate Bill No. 3172 of 2011 makes various changes to the statutes governing the sale and distribution of products by New Jersey wineries and creates a new out-of-State winery license governing New Jersey sales by wineries licensed in other states.

Under the provisions of the bill, plenary wineries that produce not more than 250,000 gallons per year and farm wineries would be permitted to directly sell their products to licensed retailers after paying a fee set forth in the bill. Plenary wineries would pay a graduated fee ranging from $100 to $1,000 based on the winery's annual production; farm wineries would pay a fee of $100. All plenary and farm wineries would continue to be able to sell their products to licensed wholesalers.

The bill permits plenary wineries that produce not more than 250,000 gallons per year and farm wineries to sell products at retail at 18 sales rooms but eliminates the provision in current law that permits them to open joint sales rooms with other plenary wineries or farm wineries. Under current law, all plenary and farm wineries may operate six individual sales rooms and jointly operate 21 sales rooms.

Additionally, the bill permits plenary wineries that produce not more than 250,000 gallons per year and farm wineries to directly ship up to 12 cases of wine to any person over age 21 in New Jersey or any other state for personal consumption and not for resale. A case of wine may not exceed nine liters. The winery is required to retain the original invoices for any wine shipped for at least three years on the winery premises for inspection by the State.

Finally, the bill creates an out-of-State winery license which may be issued to wineries licensed in other states that produce not more than 250,000 gallons of wine per year. The licensee would be permitted to sell products to wholesalers and retailers and at retail in 19 salesrooms apart from the winery premises, for consumption on or off the premises, at a fee of $250 for each salesroom. The license holder also is permitted to ship up to 12 cases of wine per year to any person in this State over age 21 for personal consumption and not for resale. A case of wine may not exceed nine liters.

The bill sets the annual fee for the out-of-State winery license at $938, which is the same fee paid by plenary and farm wineries. The bill provides for the collection of all applicable taxes for sales made by the holders of out-of-State winery licenses.

The bill clarifies that the holders of the new out-of-State winery license, like all other license holders, are subject to the tax clearance and licensing provisions of the "State Uniform Tax Procedure Law."

FISCAL ANALYSIS

EXECUTIVE BRANCH

Division of Taxation, Department of Treasury

None provided.

The Division of Alcoholic Beverage Control, Department of Law and Public Safety

In reviewing similar legislation (Senate Bill No. 2782 of 2011) the Division of Alcoholic Beverage Control (ABC) unofficially indicated that the bill may affect the cost of compliance enforcement, revenue collection oversight, and general enforcement.

The capability to enforce compliance with the bill's mandates for out-of-State wineries would require a significant expansion of investigator staffing and operating costs (travel, background checks, etc.). Additionally, enforcing the verification and payment of license fees and sales taxes concerning out-of State direct shipments would require new audit and investigative resources.

The division has determined that they cannot provide an estimate of the number of out-of-State wineries which would submit applications. It is unclear to ABC if the added license revenue generated based on a set fee structure could support increased administrative costs. ABC concluded that there is no adequate basis for estimating a cost impact at this juncture.

OFFICE OF LEGISLATIVE SERVICES

The OLS notes this bill has an indeterminate fiscal impact on the State since the revenue from various taxes and licensure fees, and potential enforcement costs, are unknown. It is unknown what revenue, if any, will be gained from: 1) taxes if additional bottles/cases of New Jersey wine are sold by licensed New Jersey wineries to out-of-State buyers; 2) the purchase of licenses by eligible out-of-State wineries; and 3) taxes from the out-of-State wine being shipped to individuals in New Jersey. Additionally, the failure of out-of-State, and possibly in-State, wineries to pay taxes is an additional factor to consider. It is unknown how many entities will be non-compliant.

New Jersey wineries that produce not more than 250,000 gallons per year and farm wineries would be permitted to ship and sell their products out-of-State and sell directly to licensed retailers after paying a licensure fee based on their annual production. The number of salesrooms that could be operated by each licensee would also be increased to 18, from six, at a cost of $250 for each salesroom. These changes would increase selling options for eligible State wineries, which may result in an increase in tax revenues and licensure fees. The Division of Alcoholic Beverage Control (ABC) notes that there are 39 licensed wineries and 14 additional pending, or temporary, winery licenses currently in the State.

The bill also establishes an out-of-State winery license, at a cost of $938, which may be issued to wineries licensed in other states that produce no more than 250,000 gallons of wine per year. Similar to the provision for the New Jersey wineries, a salesroom option would be provided, allowing for 19 salesrooms at a cost of $250 per salesroom. Allowing certain out-of-State wineries to sell and distribute products should generate an indeterminate increase in State tax revenues and licensing fees.

Although there may be an increased cost to ABC for administration and enforcement of New Jersey and out-of-State tax collection, fees authorized in the bill may offset those expenditures. Furthermore, the Division of Taxation, in the Department of the Treasury, conducts field audits out-of-State and could, if necessary, conduct audits of the licensed out-of-State wineries to ensure compliance with New Jersey’s taxation requirements. According to a 2010 summary, the out-of-State field audit branch is responsible for performing field audits for all New Jersey taxes on all taxpayers whose accounting records are maintained outside of the State.

The Wine Institute, a public policy advocacy association of California wineries, notes that currently 40 states, including Connecticut, Florida, New York, Maine, and California, allow direct shipping of wine. A majority of those states require a winery to hold a state issued license. In Maryland, legislation authorizing direct shipping of wine became effective July 1, 2011. New Jersey’s neighboring states Delaware and Pennsylvania prohibit direct shipping.

The Wine Institute further notes that similar legislation (Senate Bill No. 2782 of 2011) would exclude at least 90 percent of U.S. wine producers from direct sales to New Jersey buyers because the bill only applies to wineries that produce not more than 250,000 gallons per year and farm wineries. The 250,000 gallons per year in the graduated fee structure is based on the Internal Revenue Code's definition of a small producer of wine.

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This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).