SOUTH CAROLINA REVENUE AND FISCAL AFFAIRS OFFICE
STATEMENT OF ESTIMATED FISCAL IMPACT
(803)734-3780 ▪ RFA.SC.GOV/IMPACTS

Bill Number:	H. 5066 Introduced on February 8, 2024
Author:	Elliot
Subject:	Liquor Liability
Requestor:	House Judiciary
RFA Analyst(s):	Bryant
Impact Date:	February 26, 2024

Fiscal Impact Summary

This bill establishes a program within the Department of Insurance (DOI) to aid businesses in purchasing liquor liability insurance. DOI may contract with a private insurance company to serve as administrator of the program. The program will be governed by a board, which will consult with the director of DOI and the administrator of the fund to develop a plan of operation for the program. The expenses of the program are funded by the newly created Fair Access to Insurance Requirements Fund (fund)[1].

The bill specifies that the assets of the fund must be maintained at an actuarially sound level based upon the fund's deposits and withdrawals. There is no information available currently to determine the revenues, expenses, or an actuarially sound funding level. Further, the bill does not specify who performs the actuarial analysis or determines if the fund balance is insufficient. If a determination is made that the fund balance is insufficient, the State Treasurer's Office (STO) must notify the Department of Revenue (DOR), and beginning with the first day of the next month, all revenue collected from the excise tax imposed on alcoholic liquor by the drink for on-premises consumption pursuant to Section 12-33-245 must be credited to the fund until the first day of the next month after STO notifies DOR that the assets of the fund are sufficient. For FY 2024-25, the excise tax imposed on alcoholic liquor by the drink is estimated to be $53,871,000 in total.

The director of DOI must conduct an annual audit of the administrator. Every five years, the director must conduct an examination into the financial condition and affairs of the administrator and file a report with the board, the Governor, and the General Assembly, the expenses of which must be paid by the administrator. The Office of the State Auditor (OSA) is required to audit or cause the fund to be audited each year.

The bill also authorizes the Insurance Reserve Fund (IRF) of the State Fiscal Accountability Authority (SFAA) to lend funds to DOI to be deposited into the fund to administer the program on a one-time basis. The loan must be repaid from the fund in an agreed upon term with interest

[1] The Fair Access to Insurance Requirements Fund is also referenced as the Affordable Liquor Liability Fund in the bill. Based on the bill summary and context, we have assumed these are the same fund for the purposes of this impact. If this assumption is incorrect, the impact would be affected.

at a specified rate. If the loan is not repaid within the prescribed time, the payment must be made from the General Fund.

This bill will have an undetermined impact on Other Funds (Fair Access to Insurance Requirements Fund) of DOI. DOI anticipates no impact on its operation as all expenses of the program will be managed by the fund. The department anticipates that any per diem, mileage, and subsistence expenses due to participation on the board will be borne by fund as well. The total potential expenses will depend on the number and timing of meetings held by the board. The department indicates that it will manage any additional requirements with existing appropriations.

This bill will have no expenditure impact on STO, DOR, or SFAA. The agencies indicate that they will manage the provisions of the bill with existing appropriations.

OSA reports that if it contracts with an outside firm to conduct an audit of the Fair Access to Insurance Requirements Fund, it will cost approximately $25,000. However, the agency indicates that it intends to utilize existing resources and staff within the State Audit Division to complete the audit. Therefore, this bill will have no expenditure impact on OSA.

If the program does not operate on an actuarially sound basis, then there will be an impact to the General Fund. First, this bill may reduce General Fund revenue by an amount up to $47,945,000 in FY 2024-25 for 89 percent of the revenue generated by the alcoholic liquor by the drink excise tax that may be re-allocated to the fund. Further, the bill may result in a transfer of an undetermined amount of revenue from the General Fund to the IRF, depending on the amount of the one-time loan from the IRF to the fund and whether the loan is repaid within the prescribed time.

This bill may also impact Other Funds (Insurance Reserve Fund) of SFAA, depending on the interest rate specified for the loan to the fund. SFAA reports that if the interest rate is close to the annual rate of return on the IRF asset portfolio, there should be no fiscal impact.

This bill may reduce funding to local governments by an amount up to $5,926,000 in FY 2024-25 for 11 percent of the revenue generated by the alcoholic liquor by the drink excise tax that will be re-allocated to the fund. The amount will depend on whether the balance of the fund is determined to be insufficient.

Explanation of Fiscal Impact

Introduced on February 8, 2024
State Expenditure
This bill establishes a program within DOI to aid businesses in purchasing liquor liability insurance, whereby expenses of the program are funded by the newly created Fair Access to Insurance Requirements Fund. This fund will be separate from the General Fund and all other funds. The fund may be used to administer the program, maintain reserve balances, and repay any start-up loan. DOI may contract with a private insurance company to administer the fund.

The program will be governed by a board, which will consult with the director of DOI and the administrator of the fund to develop a plan of operation for the program. The board will be comprised of the following members:

- a member appointed by the Governor to represent the public;
- a member appointed by the Governor to represent the private insurance sector;
- a member appointed by the Governor to represent businesses that purchase liquor liability insurance;
- the President of the Senate or his designee;
- the Speaker of the House or his designee;
- the chairman of the Senate Judiciary committee or his designee;
- the chairman of the House Judiciary committee or his designee;
- the Director of DOI or his designee;
- the Chief of SLED or his designee.

The plan of operation developed by the board must include certain provisions and must specify the manner in which monies will be deposited or withdrawn from the fund and the manner and timeliness in which monies in the fund may be invested. Any rate increase on policy holders must be approved by the director before taking effect.

The bill specifies that the assets of the fund must be maintained at an actuarially sound level based upon the fund's deposits and withdrawals. There is no information available currently to determine the revenues, expenses, or an actuarially sound funding level. Further, the bill does not specify who performs the actuarial analysis or determines if the fund balance is insufficient. If a determination is made that the fund balance is insufficient, STO must notify DOR and beginning with the first day of the next month, all revenue collected from the excise tax imposed on alcoholic liquor by the drink must be credited to the fund until the assets of the fund are sufficient.

The bill also requires the administrator of the fund to file an annual financial statement with the board and DOI detailing its transactions, financial condition, operations, and affairs during the previous calendar year. The board may also require the administrator to file quarterly financial statements with DOI each year. The director of DOI will use this information to conduct an annual audit of the administrator. Every five years, the director must conduct an examination into the financial condition and affairs of the administrator and file a report with the board, the Governor, and the General Assembly, the expenses of which must be paid by the administrator. OSA is required to audit or cause the fund to be audited each year.

The bill also authorizes the IRF of SFAA to lend funds to DOI to be deposited into the fund to administer the program on a one-time basis. The loan must be repaid from the fund. If the loan from the IRF is not repaid within the prescribed time, the payment must be made from the General Fund.

Department of Insurance. This bill establishes a board that will consult with the director of DOI and the administrator of the fund to develop a plan of operation for the liquor liability fund program. The board will be comprised of three members appointed by the Governor, the President of the Senate, the Speaker of the House, the chairman of the Senate Judiciary, the chairman of the House Judiciary committee, and the Chief of SLED, or their designees. Pursuant to Proviso 117.19 of the FY 2023-24 Appropriations Act, each member of the board who is not a sitting House or Senate member or a full-time officer or employee of the State of South Carolina will receive per diem of $50 per day. A board member who is also a sitting House or Senate member will receive per diem of $50 per day if the committee meets on a non-session day. Proviso 117.20 of the FY 2023-24 Appropriations Act sets mileage reimbursement rates applicable to state committees equal to the standard business mileage rate as established by the Internal Revenue Service of 67 cents per mile. Subsistence is to be no more than $35 per day for travel within the State of South Carolina, and $42 per day for board members not employed by the State of South Carolina. Subsistence increases to $231.73 on non-session days for an appointed member who is also a sitting House or Senate member.

This bill will have an undetermined impact on Other Funds (Fair Access to Insurance Requirements Fund) of DOI. DOI anticipates no impact on its operations as all expenses of the program will be managed by the fund. However, the expenses of the program are undetermined at this time.

State Treasurer's Office. STO indicates that this bill requires the agency to perform duties that will be conducted within the normal course of business and can be managed with existing resources. Therefore, this bill will have result in no expenditure impact for STO.

Department of Revenue. This bill will have no expenditure impact on DOR. The department indicates that any costs to implement the provisions of the bill will be minimal and can be managed with existing appropriations.

Office of the State Auditor. OSA reports that if it contracts with an outside firm to conduct an audit of the fund, it will cost approximately $25,000. However, the agency indicates that it intends to utilize existing resources and staff within the State Audit Division to complete the audit. Therefore, this bill will have no expenditure impact on OSA.

State Fiscal Accountability Authority. This bill will have no expenditure impact on SFAA. The agency indicates that the bill authorizes a one-time loan of funds from the IRF to the fund with interest, which can be managed with existing staff and resources.

State Revenue

This bill specifies that if the Fair Access to Insurance Requirements Fund balance is determined to be insufficient, all revenue collected from the excise tax imposed on alcoholic liquor by the drink for on-premises consumption must be credited to the fund until the assets of the fund are sufficient. For FY 2024-25, this revenue is estimated to be $53,871,000 in total. Currently, 11 percent of the revenue generated by the alcoholic liquor by the drink excise tax must allocated to counties on a per capita basis, with the remaining proceeds deposited in the General Fund. Therefore, the bill may reduce General Fund revenue by an amount up to $47,945,000 in FY 2024-25 for 89 percent of the revenue generated by the alcoholic liquor by the drink excise tax that may be re-allocated to the fund. The amount will depend on whether the balance of the fund is determined to be insufficient at any time.

This bill also authorizes the IRF to lend funds to DOI to be deposited into the fund to administer the program on a one-time basis. The loan must be repaid from the fund in an agreed upon term with interest at a specified rate. The bill specifies that if the loan payment to the IRF is not made within the prescribed time, the payment must be made from the General Fund. This provision of the bill may result in a transfer of an undetermined amount of revenue from the General Fund to the IRF, depending upon the amount of the loan and whether it is repaid within the prescribed time.

This bill may also impact Other Funds (Insurance Reserve Fund) of SFAA, depending on the interest rate specified for the loan. SFAA reports that if the interest rate is close to the annual rate of return on the IRF asset portfolio, there should be no fiscal impact.

Local Expenditure
N/A

Local Revenue
This bill specifies that if the Fair Access to Insurance Requirements Fund balance is determined to be insufficient, all revenue collected from the excise tax imposed on alcoholic liquor by the drink must be credited to the fund until the assets of the fund are sufficient. Currently, 11 percent of the revenue generated by the alcoholic liquor by the drink excise tax is allocated to counties on a per capita basis to be used for educational purposes relating to the use of alcoholic liquors and the rehabilitation of alcoholics and drug addicts. The bill may reduce funding to local governments by an amount up to $5,926,000 in FY 2024-25 for 11 percent of the revenue generated by the alcoholic liquor by the drink excise tax that may be re-allocated to the fund. The amount will depend on whether the balance of the fund is determined to be insufficient.

Frank A. Rainwater, Executive Director