



SOUTH CAROLINA REVENUE AND FISCAL AFFAIRS OFFICE
STATEMENT OF ESTIMATED FISCAL IMPACT
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This fiscal impact statement is produced in compliance with the South Carolina Code of Laws and House and Senate rules. The focus of the analysis is on governmental expenditure and revenue impacts and may not provide a comprehensive summary of the legislation.

Bill Number:	H. 5066	Amended by House Judiciary on February 27, 2024
Author:	Elliot	
Subject:	Liquor Liability	
Requestor:	House Judiciary	
RFA Analyst(s):	Bryant	
Impact Date:	March 5, 2024	

Fiscal Impact Summary

This bill, as amended, provides that a captive insurance company may apply to the director of the Department of Insurance (DOI) for a license to provide insurance, including without limitation liquor liability insurance. The bill also provides that certain entities licensed or permitted to sell alcoholic beverages for on-premises consumption may qualify for a liquor liability risk mitigation program to lower the required liability insurance amount if all employees who are employed as an alcohol server or a manager on the permitted or licensed premises complete responsible alcohol server training and obtain an alcohol server certificate, or if other operating conditions are met. This bill, as amended, also provides for the establishment and implementation of an alcohol server training program.

The bill, as amended, authorizes the Department of Revenue (DOR), in collaboration with the Department of Alcohol and Other Drug Abuse Services (DAODAS) and the State Law Enforcement Division (SLED), to approve the alcohol server training programs offered by providers and provides guidance regarding the curricula. A provider must provide alcohol server training programs to all applicable individuals free of charge.

This bill, as amended, also requires the provider of a program authorized by DOR to pay a fee, in an amount to be determined by the department, not to exceed \$500 per year, to be deposited into the Responsible Alcohol Server Training Fund to assist with the costs associated with implementation and enforcement of the provisions of the bill. State agency providers are exempt from the fee.

Alcohol server certificates are valid for a period of five years from the date the certificate is issued. After the five-year period, a new or recertified alcohol server certificate must be obtained pursuant to the provisions of this bill. DOR is required to issue and renew alcohol server certificates for all qualifying applicants free of charge.

This bill, as amended, will have no expenditure impact on DOI. The department indicates that it will manage the provisions of the bill with existing appropriations.

DOR indicates the need to hire 7.0 additional FTEs (one supervisor and six staff) at a cost of \$650,000 per year beginning in FY 2024-25 for salary and fringe benefits to administer the

provisions of the bill, as amended. DOR also indicates that the department will need to make system changes and updates to implement and manage the alcohol server training program. The bill, as amended, provides that the Responsible Alcohol Server Training Fund will be used to assist with the costs associated with implementation and enforcement of the provisions of the bill. DOR will ask for a General Fund appropriation increase to cover any expenses not covered by the fund.

The expenditure impact of this bill, as amended, on DAODAS is pending, contingent upon a response.

This bill, as amended, will have no expenditure impact on SLED. The agency indicates that it will manage the provisions of the bill with existing appropriations.

This bill, as amended, may increase the caseload of the Administrative Law Court (ALC). ALC reports that due to a lack of historical data, the Court cannot adequately estimate the increase in the number of contested case hearings that may arise under the alcohol server training program. ALC further reports that the amount of the increase will depend on whether the provisions of the bill regarding contested case hearings apply only to applicants seeking to run an alcohol server training program who are denied approval by DOR, or to both providers and servers who participate in an approved training program. ALC anticipates that a minimal number of additional cases can be managed with existing appropriations. However, if the provisions of the bill apply to both providers and servers, ALC indicates that this bill will increase the Court's expenses by an amount up to \$537,000 in FY 2024-25. Of this amount, \$475,000 is for 3.0 FTEs to manage the increase in the Court's caseload. The remaining \$62,000 is for one-time equipment and furniture costs. ALC reports that additional office space may also be needed, which will result in an additional recurring cost for rent. However, this cost will depend upon the availability and location of the office space. ALC reports that the Court will request a General Fund appropriation increase to fund these expenses.

This bill, as amended, will increase Other Funds revenue (Responsible Alcohol Server Training Fund) of DOR by an amount ranging from \$3,000 to \$19,000 per year beginning in FY 2024-25 due to fees collected from approved alcohol server training program providers. The amount of this increase in Other Funds revenue will depend upon the number of providers approved by the department, as well as the number of providers that are exempt from paying the provider fee.

This bill, as amended, may also increase ALC Other Funds revenue due to an increase in filing fees collected in court. Currently, a request for a contested case hearing regarding an alcoholic beverage license violation must be accompanied by a non-refundable filing fee of \$150. If 1 percent of all certified servers file a request for a contested case hearing with the Court, this may result in up to 550 additional court filings, which will increase ALC Other Funds revenue by up to \$82,500. However, the amount of the increase will depend upon the number of requests for a contested case hearing filed with the Court. Due to a lack of historical data, the overall Other Funds revenue impact from filing fees for a contested case hearing is, therefore, undetermined.

Explanation of Fiscal Impact

Amended by House Judiciary on February 27, 2024

State Expenditure

This bill, as amended, provides that a captive insurance company may apply to the director of DOI for a license to provide insurance, including without limitation liquor liability insurance. The bill also provides that certain entities licensed or permitted to sell alcoholic beverages for on-premises consumption may qualify for a liquor liability risk mitigation program to lower the required liability insurance amount. An entity may qualify for the program if all employees who are employed as an alcohol server or a manager on the permitted or licensed premises complete responsible alcohol server training and obtain an alcohol server certificate. The business may also qualify for reduced liability insurance if certain operating conditions, such as stopping alcohol sales earlier, are met.

This bill, as amended, also provides for the establishment and implementation of an alcohol server training program. DOR, in collaboration with DAODAS and SLED, is authorized to approve alcohol server training programs offered by providers. A provider may appeal a denial pursuant to Section 61-2-260 and the South Carolina Administrative Procedures Act. The provider must provide alcohol server training programs to all applicable individuals free of charge, and the curricula of each program must include certain subjects as specified in the bill. Online training programs must also satisfy certain criteria. DOR, in collaboration with DAODAS and SLED, may suspend or revoke the authorization of a provider that the department determines has violated the provisions of the bill.

This bill, as amended, also requires the provider of a program authorized by DOR to pay a fee, in an amount to be determined by the department, not to exceed \$500 per year, to be deposited into the Responsible Alcohol Server Training Fund to assist with the costs associated with implementation and enforcement of the provisions of the bill. State agency providers are exempt from payment. Each year, DOR, with the assistance of SLED, must make a report of all income and expenditures made from the fund the previous year. A copy of the report must be given to the Governor, the Speaker of the House of Representatives, and the President of the Senate, posted on the websites of DOR and SLED, and recorded in the journals of each body of the General Assembly at the beginning of each legislative year.

This bill, as amended, requires DOR to issue an alcohol server certificate to each applicant who completes an approved program or a recertification program. Alcohol server certificates are valid for a period of five years from the date the certificate is issued. After the five-year period, a new or recertified alcohol server certificate must be obtained pursuant to the provisions of the bill. The bill also requires DOR to issue and renew alcohol server certificates for all qualifying applicants free of charge.

As a requirement for application or renewal of a permit or license for on-premises consumption, a permittee or licensee for on-premises consumption seeking to qualify for the liquor liability risk mitigation program must submit to DOR proof that the permittee or licensee, if applicable, and each manager and alcohol server employed by the permittee or licensee during the upcoming

or prior permit or license period have or have held valid alcohol server certificates at all times that alcoholic beverages were sold, served, or dispensed.

DOR and SLED are responsible for enforcing the provisions of this bill. DOR is also responsible for bringing administrative actions for violations of the provisions of the bill or related regulations, and those actions shall proceed according to the provisions of Section 61-2-260 and the South Carolina Administrative Procedures Act.

Department of Insurance. This bill, as amended, will have no expenditure impact on DOI. The department indicates that it will manage the provisions of the bill with existing appropriations.

Department of Revenue. DOR indicates the need to hire 7.0 additional FTEs (one supervisor and six staff) at a cost of \$650,000 per year beginning in FY 2024-25 for salary and fringe benefits to administer the provisions of the bill, as amended. DOR also indicates that the department will need to make system changes and updates to implement and manage the alcohol server training program. The bill, as amended, provides that the Responsible Alcohol Server Training Fund will be used to assist with the costs associated with implementation and enforcement of the provisions of the bill. DOR will ask for a General Fund appropriation increase to cover any expenses not covered by the fund.

Department of Alcohol and Other Drug Abuse Services. The expenditure impact of this bill, as amended, on DAODAS is pending, contingent upon a response.

State Law Enforcement Division. This bill, as amended, will have no expenditure impact on SLED. The agency indicates that it will manage the provisions of the bill with existing appropriations.

Administrative Law Court. Requests for contested case hearings arising under the alcohol server training program will be filed with the ALC. ALC reports that this bill, as amended, may increase the caseload of the Court. However, due to a lack of historical data, the Court cannot adequately estimate the increase in the number of contested case hearings that may arise under the program. ALC further reports that the amount of the increase will depend on whether the provisions of the bill regarded contested case hearings apply only to applicants seeking to run an alcohol server training program who are denied approval by DOR, or to both providers and servers who participate in an approved training program. ALC estimates that up to 55,000 servers in South Carolina may require certification. If the provisions of the bill regarding contested case hearings apply to both providers and servers, ALC reports that if 1 percent of all certified servers file a request for a contested case hearing with the Court, this may result in up to 550 additional court filings, more than doubling the current contested case caseload.

ALC anticipates that a minimal number of additional cases can be managed with existing appropriations. However, if the provisions of the bill apply to both providers and servers, ALC indicates that this bill will increase the Court's expenses by an amount up to \$537,000 in FY 2024-25. Of this amount, \$475,000 is for 3.0 FTEs to manage the increase in the Court's caseload. The remaining \$62,000 is for one-time equipment and furniture costs. ALC reports that

additional office space may also be needed, which will result in an additional recurring cost for rent. However, this cost will depend upon the availability and location of the office space. ALC reports that the Court will request a General Fund appropriation increase to fund these expenses.

State Revenue

This bill, as amended, allows DOR to charge providers of alcohol server training programs an annual fee not to exceed \$500. We assume that DOR will charge the full \$500 fee for all providers except state agencies, which are exempt from the provider fee. Based upon information published by DOR, there are currently seven approved providers for alcohol server training programs, with only one provider, DAODAS, being a state agency. In addition, DAODAS developed an alcohol server education curriculum know as PREP, which is delivered through county providers. It is unclear whether the county providers will be subject to the provider fee. DAODAS previously indicated that the PREP curriculum is delivered through thirty-two county providers. If the thirty-two county providers are exempt from paying the \$500 provider fee, this section of the bill will increase Other Funds revenue by \$3,000 annually beginning in FY 2024-25 for the six private sector providers. If the thirty-two county providers, in addition to the six private sector program providers, are required to pay the \$500 provider fee, this section of the bill will increase Other Funds revenue by \$19,000 annually beginning in FY 2024-25.

This bill, as amended, may also increase ALC Other Funds revenue due to an increase in filing fees collected in court. Currently, a request for a contested case hearing regarding an alcoholic beverage license violation must be accompanied by a non-refundable filing fee of \$150. If 1 percent of all certified servers file a request for a contested case hearing with the Court, this may result in up to 550 additional court filings, which will increase ALC Other Funds revenue by up to \$82,500. However, the amount of the increase will depend upon the number of requests for a contested case hearing filed with the Court. Due to a lack of historical data, the overall Other Funds revenue impact from filing fees for a contested case hearing is, therefore, undetermined.

Local Expenditure

NA

Local Revenue

N/A

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 be 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.

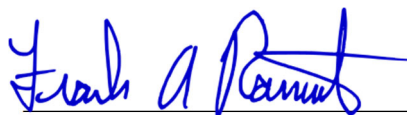
This bill may also impact Other Funds (Insurance Reserve Fund) of SFAA, depending on the interest rate specified for the loan. SFAA reports that if the interest rate is close to the annual rate of return on the IRF asset portfolio, there should be no fiscal impact.

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