

SESSION OF 2009

**CONFERENCE COMMITTEE REPORT BRIEF
SENATE BILL NO. 212**

As Agreed to April 1, 2009

Brief*

SB 212 would amend the Liquor Control Act and the Club and Drinking Establishment Act.

The bill would permit in-state and out-of-state wineries to directly ship wine to consumers in the State of Kansas upon obtaining a special order shipping license and payment of a \$50 fee to the Department of Revenue. Under the bill, the purchaser would be required to pay the purchase price, the liquor enforcement tax, and all shipping costs. The liquor enforcement tax would have to be paid on the purchase price and not the shipping costs. The bill would require the permit holder to collect the gallonage taxes and enforcement tax.

The bill would repeal KSA 2008 Supp 41-348 and 41-349 which authorize the shipment of wine by in-state and out-of-state wineries.

The bill would prohibit a holder of a special order shipping license from shipping more than 12 cases of wine to any consumer or address per calendar year. The holder of the license would be required to have the purchaser affirm that such purchaser is 21 years of age or older. The permit holder would have to verify the age of the purchaser by the physical examination of an approved government-issued form of identification or by utilizing an Internet-based age and identification service that is authorized by the Director of the

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Division of Alcoholic Beverage Control (ABC) or the Director's designee.

In addition, the bill would require every shipment of wine to be clearly marked "Alcoholic Beverages, Signature Required." The carrier delivering the wine would be responsible for obtaining a signature of a person who was at least 21 years of age or older.

The bill would allow a wine licensee to sell wine produced and bottled by a wine licensee at a bona fide farmer's market located at a site approved by the Director of the Division of Alcoholic Beverage Control. The licensee would be required to have an annual bona fide farmer's market sales permit. The licensee would be restricted to selling wine one day per week in the original unopened container.

Under the bill, "bona fide farmer's market" would mean any location of a farmer's market that is subject to inspection by the Department of Agriculture. The bill would authorize the Secretary of Revenue to adopt rules and regulations to implement the provisions of the Act.

The bill would allow licensed farm wineries to hold a manufacturer's license provided that no alcoholic liquor or cereal malt beverage manufactured by such licensee would be sold at such licensee's premise or at any such licensee's winery outlet.

The bill would allow a winery outlet licensee to manufacture and store domestic table wine and domestic fortified wine such that the aggregate quantity of wine produced, including all winery outlets, does not exceed 100,000 gallons per year.

The bill would require an applicant for a special shipping order license to file a joint and several bond in the amount of \$750.

The bill would allow a drinking establishment to store wine on the premise which had been sold to a customer for future consumption. The bill would require the wine to be stored in its unopened condition and would prohibit the wine being removed from the licensed premises in its unopened condition.

The bill would allow the consumption of alcoholic liquor at a special event held on public streets, alleys, roads, sidewalks, or highways closed to motor vehicle traffic when a temporary liquor permit has been issued for such event. Under current law, temporary permits are issued by the Director of the Division of Alcoholic Beverage Control and these permits would be issued for the special events authorized by the bill.

The bill would define “special event “ as a picnic, bazaar, festival or other similar community gathering which has been approved by ordinance or resolution of a city, county or township where the event is being held.

Under the bill, the boundaries of such special event would have to be clearly marked by signs, a posted map, or other means which identifies the area in which alcoholic liquor may be consumed.

The bill would allow drinking establishments that are adjacent to, or within the licensed premises of a special event, to request that the drinking establishment’s licensed premises be extended to and made part of the licensed premises of the special event.

The bill would hold each licensee selling alcoholic liquor for consumption on the premises of a special event to be liable for violating the laws governing the sale and consumption of alcoholic liquors.

The bill would prohibit a person from:

- Removing any alcoholic liquor from inside the boundaries of the special event area; and

- Possessing or consuming alcoholic liquor inside the special event area that was not sold by the licensee holding the temporary permit.

The bill would amend the Club and Drinking Establishment Act by allowing the governing body of any city or county to request, at any time, the Director of the Division of Alcoholic Beverage Control (ABC) to hold a hearing to determine if a club or drinking establishment license should be revoked or suspended.

Current law allows a city or county to request a hearing on licensure at the time of initial licensing and yearly thereafter at the time of renewal.

Under the bill, the governing body would have to provide reasonable cause to the Director of ABC to determine if a hearing is necessary based upon factors to be included in rules and regulations issued by the Secretary of the Department of Revenue. The Director of ABC may refuse the governing body's request if reasonable cause is not provided and may refuse to grant a renewal or may revoke or suspend a license based upon the evidence.

The bill would have a severability provision whereby if any provision of the Kansas Liquor Control Act is found to be unconstitutional, it would be repealed and the remaining provisions would still have effect and be construed to limit commerce in alcoholic liquor and enhance strict regulatory control by the state.

Conference Committee Action

The Conference Committee amended the provisions of HB 2180, as amended, and SB 247 into SB 212, as amended. It then further amended SB 212.

HB 2180, as amended, would allow a drinking establishment to store wine on the premise which had been sold to a customer for future consumption. In addition, HB 2180 would authorize local units of government to approve special events to be held in public locations at which alcoholic liquor could be consumed (provisions of SB 213).

SB 247 would allow a governing body of any city or county to request at any time the Director of the Division of Alcoholic Beverage Control to hold a hearing to determine if a club or drinking establishment license should be revoked or suspended.

The Conference Committee further amended SB 212 by:

- Creating a severability clause for the Liquor Control Act; and
- Clarifying that a person holding a farm winery license also may be issued a manufacturer's license provided that no alcoholic liquor or cereal malt beverage manufactured by such licensee shall be sold by such farm winery licensee at its licensed premises.

Background

The fiscal note on the provisions of the original SB 212 as amended indicate that the estimated costs to the Department of Revenue would be \$13,500. In addition, the provisions of SB 247 that were amended into SB 212 would increase expenditures to the Department of Revenue in FY 2010 by \$7,200.

liquor control act' club and drinking establishment act