

SESSION OF 2010

**CONFERENCE COMMITTEE REPORT BRIEF
SENATE BILL NO. 452**

As Agreed to May 6, 2010

Brief*

SB 452, as amended, would prohibit any person less than 18 years of age who is arrested only for the violation of possessing, consuming, obtaining, purchasing, or attempting to purchase alcoholic liquor or cereal malt beverages, from being detained or placed in a jail. In addition, the person would be prohibited from being detained or placed in a juvenile detention facility for a period exceeding 24 hours, excluding Saturdays, Sundays, and legal holidays.

If only adjudicated for the violation of possessing, consuming, obtaining, purchasing, or attempting to purchase alcoholic liquor or cereal malt beverages, the bill would prohibit that person from being detained in jail, juvenile detention facility, sanction house, or juvenile correctional facility.

The bill would reduce residency requirements from four years to one year. The bill would delete part of the current statutory definition of "domestic fortified wine" by striking "without rectification."

The bill would change issuance of liquor licenses from a one-year term to biennially for licenses under the Liquor Control Act. Licenses under the Club and Drinking Establishment Act would be staggered, so that certain licenses would be issued biennially while others would be issued for one year until July 1, 2011, when all licenses would then be issued biennially. License fees would have to be paid biennially in accordance with the license renewal, but fees would not increase. The

*Conference committee report briefs are prepared by the Legislative Research Department and do not express legislative intent. No summary is prepared when the report is an agreement to disagree. Conference committee report briefs may be accessed on the Internet at <http://www.kslegislature.org/kldr>

Director of the Division of Alcoholic Beverage Control (ABC) could extend the term of a license for up to 30 days beyond its expiration date.

Under the bill, each applicant would be allowed to pay the full biennial fee or one-half of the fee. If the applicant chooses to pay one-half of the fee, then such applicant would have to pay the next one-half fee payment plus 10 percent which would be due one year from the date of issuance of the license. If the payment is not made by the due date, then the license would be automatically canceled. The Director may extend the payment date for up to 30 days beyond when the payment is due.

The bill would allow an applicant to pay by personal check, debit or credit card, or by electronic payment (current law allows payment by certified or cashier's check, U.S. money order, or cash). In addition, the bill would allow a refund of one-half the license fee if the applicant paid the amount in full and was prevented from operating under such license for the entire second year of the license term.

Under the bill, all license fees would be remitted to the State General Fund.

The bill would change the occupation or license tax levied by a city or township on a licensee from one year to biennial. The Director would be authorized to extend the license term date and for payment of the second half of the license fee by the licensee for 30 days. Also, the Director would be authorized to issue a biennial license to municipal corporations under the Club and Drinking Establishment Act. Municipal corporations would be defined as the governing body of any city or county.

The bill would prohibit the issuance of a club or drinking establishment license to any person who does not own the premises for which the license is sought or who does not have a written lease at the time the application was submitted except that an applicant seeking a license for a premise owned by a city or county, or a stadium, arena, convention center, theater, museum, amphitheater, or other similar premise may submit an

executed agreement to provide alcoholic beverage services at the premises listed in the application in lieu of a lease.

The bill would amend the Kansas Liquor Control Act by requiring a manufacturer or supplier of alcoholic beverages or cereal malt beverages, who is licensed in Kansas or another state, to acquire an annual packaging and warehousing facility permit.

Under the bill, the permit would allow:

- The transfer of alcoholic liquor or cereal malt beverage to the licensed premises of a packaging and warehouse facility for the purpose of packaging or storage, or both;
- The sale and transfer from a licensed premise of a packaging and warehouse facility to a licensed premise of a spirits, wine, beer distributor licensed in Kansas or to a Kansas supplier; and
- The transfer from the licensed premises of a packaging and warehouse facility to another state.

The bill would establish an annual fee of \$2,500 for the permit. Each brand and label of alcoholic liquor or cereal malt beverage that is intended for sale to a distributor in Kansas and is transported, packaged or stored in a licensed packaging and warehouse facility would have to be registered with the Director of Alcoholic Beverage Control.

Under the bill, the gallonage tax would be imposed on alcoholic liquor or cereal malt beverage imported into Kansas under the permit if the alcoholic liquor or cereal malt beverage is sold to a distributor for wholesale in Kansas. The distributor would be required to pay the tax.

The bill would amend the Kansas Liquor Act by allowing the spouse of an applicant for a retail liquor license to hold a farm winery license, a microbrewery license, or both, if the spouse does not hold a retail liquor license under the Act. The bill would allow a farm winery license also to hold a

microbrewery license and vice versa, but statutory provisions for each license would be kept separate. Also clarified that only a farm winery licensee could obtain a manufacturer's license. Current law prohibiting a microbrewery licensee from obtaining a manufacturer's license would remain in place.

Under current law, a liquor retailer is not allowed to have a beneficial interest in a manufacturer, distributor, farm winery, or microbrewery licensed under the Act. A beneficial interest, under current law, is defined to include a licensee's spouse, thereby precluding the spouse from having an interest in the above mentioned licenses.

Conference Committee Action

The Conference Committee acceded to the House version of SB 452 and then the Conference Committee amended SB 452 by adding SB 453, 454, and 532.

The Conference Committee made the following further amendments:

- Require an applicant for a microbrewery or farm winery license to have been a resident of the State of Kansas for one year rather than four years in current law;
- Delete the term and definition of "broker" as an entity who is required an annual packaging and warehousing facility permit;
- Require persons holding a farm winery and microbrewery license to adhere to separate provisions that apply to these licenses.
- Clarified that only a farm winery licensee could obtain a manufacturer's license and restored to current law that a microbrewery license could not obtain a manufacturer's license.

Background

SB 452

The Commissioner of the Juvenile Justice Authority (JJA), testified as a proponent of the bill as introduced. The President of Kansans for Addiction Prevention submitted written testimony as an opponent to the bill.

The JJA Commissioner stated current law placing a youth in detention for possession or consumption of alcohol is a violation of the federal Juvenile Justice and Delinquency Prevention Act (JJDP). The JJDP states that status offenders (youths under 18 years of age who commit an offense that if committed by an adult would not be a violation of the law) should not be placed in secure detention. Under the JJDP, in order to receive federal Title II funding, states are required to maintain these protections for children.

The Senate Committee amended the bill to include “juvenile correctional facility” as a place where juveniles would be prohibited from being detained.

The Senate Committee of the Whole amended the bill to clarify that a juvenile could not be detained if that person was arrested or adjudicated only for a violation of possessing, consuming, obtaining, purchasing, or attempting to purchase alcoholic liquor or cereal malt beverages.

According to the fiscal note on the original bill, if SB 452 is not passed, the JJA stated it could lose a minimum of \$120,000 in federal funding. The Office of Judicial Administration indicates there would be no fiscal effect to the Judicial Branch resulting from the passage of the bill.

The House Committee of the Whole amendments inserted two sections pertaining to the Liquor Control Act, one regarding licensure of a microbrewery or a farm winery and another one regarding definitions. One amendment would delete the requirement for state residence four years prior to the application for license. A second amendment would strike the

phrase “without rectification” from the definition of “domestic fortified wine” in current law.

SB 453

A representative of the Division of Alcoholic Beverage Control and a lawyer representing Dean & Deluca testified as proponents of the bill. A representative of the Kansas Beer Wholesalers Association testified in opposition to the bill. A representative of Kansas Viticulture and Farm Winery Association testified as neutral on the bill.

The Senate Committee amended the bill to include “broker” as an entity requiring a packaging and warehouse facility permit. The Committee included a definition of “broker” as an amendment to the bill.

The Division of Budget’s fiscal note, on the bill as introduced, indicates that the Department of Revenue estimates that the passage of SB 453 would increase fee fund revenue by \$10,000 for FY 2011.

SB 454

Proponents on the original bill included representatives from the Division of Alcoholic Beverage Control, Kansas Association of Beverage Retailers, City of Salina, and Kansans for Addiction Prevention. Opponents of the original bill included representatives of the Kansas Restaurant & Hospitality Association, the Kansas Licensed Beverage Association, Hilton Wichita Airport, Hyatt Regency Wichita, and the Kansas Chamber. The original bill would have doubled the license fees.

The Committee amended the bill so as not to increase the fees for a biennial license; allowed the licensee to pay one-half the balance of the full fee; authorized the Director of ABC to allow a 30-day grace period for renewal of a license and payment of fees; allowed for a refund of application fees if the license is not used in the entire second year; allowed more

methods for payment of fees; and changed the occupation or license tax levied by cities and townships to biennially.

According to the Division of Budget, the original fiscal note would increase state revenue by \$2.1 million in FY 2011. Of that total, the State General Fund is estimated to increase by \$1,650,000 in FY 2011 while the other State Fees Fund within the Department of Social and Rehabilitation Services is estimated to increase by \$450,000 in FY 2011. The fiscal note from the Division of Alcoholic Beverage Control estimated the increased revenue for FY 2012 would be \$2.0 million.

The Senate Committee amendments to the bill would result in a revised fiscal note. The bill, as amended, would require the licensee to pay the full amount for a biennial license in the first year of renewal unless the licensee chooses to pay one half the fees in the first year and one-half of the fees in the second year. If the licensee chooses to pay the full amount, an additional maximum \$2.0 million could be generated for the State General Fund over a two year period, FY 2011 and FY 2012. Approximately \$0.5 of the increased revenue would be received in FY 2011 and \$1.5 million in FY 2012. This would not take into account the 10 percent surcharge if licensees chose to pay one-half the first year and one-half the second year. Any licensee paying one-half the new biennial fee in FY 2012 would reduce the estimated revenue amount by one-half for each type of license. Any licensee paying one-half the new biennial fee in FY 2011 would reduce the fiscal year's estimated revenue, but then would accrue in FY 2012 when the second half was paid along with the 10 percent surcharge.

SB 532

A representative of Lukas Liquor Super Stores and the Kansas Viticulture and Farm Winery Association testified as proponents of the bill. No opponents testified. A representative of the Division of Alcoholic Beverage Control testified as neutral.

The Senate Committee amended the bill to allow a spouse to hold a microbrewery license, allow a farm winery license to

also hold a microbrewery license and vice versa, and the Committee made a technical amendments.

According to the Division of Budget, enactment of the original bill would have no fiscal effect.

Liquor Control Act