

SESSION OF 2012

**CONFERENCE COMMITTEE REPORT BRIEF
SUBSTITUTE FOR HOUSE BILL NO. 2689**

As Agreed to May 3, 2012

Brief*

Sub. for HB 2689, as amended, contains the contents of eleven other bills in addition to the original contents of Sub. for HB 2689, as passed by the House, regarding railway cars and alcoholic beverages. These provisions would be retained in the bill.

Specifically, the bill would allow railway cars to be licensed as drinking establishments under the Club and Drinking Establishment Act. The bill would add a definition of railway car to include a locomotive-drawn conveyance used for the transportation of people that is confined to a fixed route, deriving at least 30 percent of its gross receipts from all sales of food and alcoholic beverages on the railway car in a 12-month period.

Taxation on alcoholic liquor for consumption on licensed railroad cars would conform to those taxes applied to other drinking establishments. Under the bill, 70 percent of the revenue collected from sale of liquor in railway cars would be divided equally among counties through which the railway car passes if the counties have approved the sale of liquor-by-the-drink.

Other provisions included in the conference committee report for the bill are outlined below.

*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>

Tasting samples. The bill would allow any person or entity who is licensed to sell alcoholic liquor in the original package at retail to conduct wine, beer, and distilled spirits tasting on a licensed premise or adjacent premises. (SB 269) Such activity would be monitored and regulated by the Director of the Division of Alcoholic Beverage Control and be subject to the provisions in the Liquor Control Act. The bill would prohibit any charge for sample servings, and a person could be served more than one sample. The bill also would prohibit any samples from being removed from the premises. Finally, the bill would exempt the provision of samples from the requirement of holding a Kansas food service dealer license.

Special event permit. The bill would allow a temporary permit for a special event for selling and serving alcoholic liquor for consumption at an unlicensed premise. (SB 274) The temporary permit would be valid at the Director of Alcoholic Beverage Control's discretion for the entire period of the special event, but not exceeding 30 days.

The bill also would allow a temporary permit holder to resell unused alcoholic beverages within three days after the end of the event to the licensee from whom the alcoholic beverages were purchased.

Repeal salesperson's permit. The bill would repeal KSA 41-333 to KSA 41-341, inclusive, that currently authorize issuance of a salesperson's permit for the sale of, or the taking or soliciting of orders for the sale of, alcoholic liquor or cereal malt beverages in the State of Kansas. (SB 275)

New microdistilleries. The bill would create a microdistillery license which would allow a licensee to manufacture and store not more than 50,000 gallons of spirits per year. (SB 277) A microdistillery would be defined as a facility which produces spirits from any source or substance licensed by the Director of Alcoholic Beverage Control. The licensee would be allowed to sell spirits manufactured by the microdistillery and serve free samples of spirits on the

licensed premises and at special events monitored and regulated by the Division of Alcoholic Beverage Control. In addition, the licensee would be able to sell spirits and other alcoholic liquor for consumption on the licensed premises if the microdistillery also is licensed as a club and drinking establishment.

The bill also would create a microdistillery packaging and warehouse facility license which would allow the microdistillery licensee to transfer manufactured spirits from the microdistillery's licensed premise to the licensed packing and warehouse facility, transfer spirits from the licensed packing and warehouse facility to the licensed microdistillery, and remove spirits from the licensed packing and warehouse facility for delivery to a licensed spirits wholesaler.

The microdistillery license fee would be \$500, and the microdistillery packaging and warehouse facility license fee would be \$200. Each licensee would have to post a bond of \$2,000.

The Division of Alcoholic Beverage Control would be allowed to issue to the Kansas State Fair or any *bona fide* group of distillers a permit to import small quantities of spirits to be used for educational and scientific tasting programs.

A microdistillery would be prohibited from hiring persons under 21 years old for certain duties and persons under 18 years old for the manufacture, sale, or serving of any alcoholic liquor. The licensee would be prohibited from hiring any person who had been convicted of a felony.

The bill would conform the provisions that apply to a microdistillery license as outlined in the bill to the same provisions that apply to a microbrewery license in current law.

Individual drinks, "happy hour." The bill would allow clubs, drinking establishments, caterers, or temporary permit holders to sell or serve beer or cereal malt beverage in a pitcher containing not more than 64 fluid ounces. (SB 288)

The bill would clarify that an *individual* drink would be defined as a beverage containing alcoholic liquor or cereal malt beverage served to a single individual, but which is not intended to be consumed by two or more people. An *individual* drink would be defined as a beverage containing not more than eight ounces of wine, thirty-two ounces of beer or cereal malt beverage, or four ounces of a single spirit.

The bill also would allow the sale of individual drinks at different prices throughout the day. The bill would delete the proportionate pricing requirement in current law as applied to an alcoholic drink or a cereal malt beverage. The bill would amend KSA 41-2722, which would conform the sale of cereal malt beverages to the revised provisions in the bill.

Public venue license. The bill would amend the Liquor Control Act and the Club and Drinking Establishment Act by creating a new class of license for a public venue. (SB 299) A public venue would be defined as an arena, stadium, hall or theater, used primarily for athletic or sporting events, live theater productions, and live concerts, containing not less than 4,000 permanent seats and not less than two private suites. The public venue licensee would be subject to taxes in the same manner as other licensees selling liquor by the drink under the Club and Drinking Establishment Act.

The licensee would be allowed to sell and serve alcoholic beverages in designated areas by individual drinks, unlimited drinks for a fixed price, unlimited drinks in inclusive packages, and liquor in the original container for consumption in private suites. A "designated area" would be defined as an area identified in the license application, that may include private suites, that has a controlled access, and that is separated from the general admission area by a barrier. The licensee also would be allowed to store alcohol in private suites. The fee for a public venue license would be set at \$5,000 for facilities with a maximum capacity of not more than 10,000 people; \$7,500 with a maximum capacity of not more than 25,000; and \$10,000 with a maximum capacity exceeding 25,000 people.

The bill also would allow a city or county to levy a biennial occupation or license tax of not more than \$1,000 on the public venue licensee. The bill would add restrictions for the offering and serving of alcoholic liquor or cereal malt beverages at a public venue in general admission areas.

Consumption in certain recreation areas. Additional provisions of the bill would allow a person to consume alcoholic liquor on the premises of any land or water owned or managed by the Kansas Department of Wildlife, Parks and Tourism, except where prohibited by rules and regulations of the Department. (SB 313) The effective date of this portion of the bill would be January 1, 2013.

Manufacturer samples. The bill would allow the holder of a manufacturer's license to offer free samples of alcoholic liquor manufactured by the licensee on the licensed premise. (SB 358) No samples could be served to a minor, and samples could not be removed from the licensed premise. The licensee would not be permitted to sell any alcoholic liquor for consumption on the premise.

Farm wineries. The bill would allow a farm winery licensee to sell wine manufactured by the licensee for consumption on the licensed premise, provided the licensed premise is located in a county where the sale of alcoholic liquor is permitted in licensed drinking establishments. (SB 390) The wine sold for consumption would not be considered liquor-by-the-drink and therefore would be exempt from the liquor-by-the-drink tax. The bill also would allow the sale of wine from a farm winery in the original, unopened container at special events monitored and regulated by the Division of Alcoholic Beverage Control.

This section of the bill would be effective upon publication in the *Kansas Register*.

Percentage of products grown. The bill would require not less than 30 percent of the products utilized in the manufacture of Kansas wine by a farm winery to be grown in

Kansas. (SB 379) The production requirement would be based on the annual production of wine by a farm winery and the availability of Kansas-grown products in sufficient quantity to meet the 30 percent standard. The Director of Alcoholic Beverage Control may waive the 30 percent requirement in years when insufficient Kansas-grown product is available for a farm winery.

Conference Committee Action

The House acceded to the Senate amendments and the Conference Committee further agreed to adding the additional bills listed above with the following changes:

- Strike the sampling size limitations for tastings to be conducted by liquor retailers;
- Define "designated areas" in public venues and set the local fee from the public venue licensee of not more than \$1,000;
- Reduce the percentage requirement for wine to be made from Kansas products from 60 to 30 percent;
- Do not adopt the repeal of the current prohibition of hiring certain employees with a criminal record; and
- Do not adopt the provision requiring only one officer and one director to meet citizenship and residence requirements for a distributor's license. Require a microdistillery license to conform to the provisions that apply to a microbrewery license in current law.

Background

Persons and associations who testified on the twelve bills are listed in the supplemental notes. The fiscal notes on the bills are as follows.

Sub. for HB 2689. The fiscal note for the bill as introduced (alcohol served in railway cars) indicated an increase of \$15,000 in one-time expenditures to update the computer system and publications for the Division of Alcoholic Beverage Control and an increase in new revenue of less than \$10,000 annually from the new taxes. No fiscal note was available for the substitute bill, but the Director of Alcoholic Beverage Control suggested lower computer modification costs would result due to not creating a new class of license.

Tasting Samples (SB 269). The fiscal note indicated there would be no fiscal effect from the enactment of the bill.

Special Events Permit (SB 274). According to the fiscal note, SB 274 would increase expenditures by \$4,800 in FY 2013.

Salesperson's Permits (SB 275). According to the Division of the Budget, SB 275 would decrease revenue to the State General Fund by \$9,000 in FY 2013.

Microdistilleries (SB 277). The fiscal note indicated enactment of SB 277, as introduced, would increase fee fund expenditures by \$14,460 in FY 2013 to update the computer processing system. The fiscal note estimated the revenue generated from the fees would be between \$200 and \$500.

"Happy Hour" (SB 288). The fiscal note estimates the costs associated with updating the computer processing system would be a total of \$4,800.

Public Venues (SB 299). The fiscal note estimates that the original bill would increase fee revenues by a minimum of \$80,000 every two years beginning in FY 2013. In addition, the fiscal note estimates the costs to update the computer processing system would increase expenditures from Department of Revenue fee funds in FY 2013 by \$5,040. There was no revised fiscal note at the time the amended bill was passed by the Senate Committee of the Whole, but

revenues would not increase as much in the original bill because license fees would decrease for two license classes.

Consumption in State Parks (SB 313). According to the fiscal note, enactment of the bill would have no fiscal effect on the Department of Wildlife, Parks and Tourism.

Manufacturer Samples (SB 358). According to the fiscal note, the enactment of the bill would have no fiscal effect on state revenues or expenditures.

Farm Wineries (SB 390). The fiscal note on the original bill indicated it could increase liquor tax revenues in FY 2013, but the amount would be negligible. The Department of Revenue estimates the bill would increase fee fund expenditures by \$4,800 in FY 2013.

Percentage of Products Grown (SB 379). According to the fiscal note on the original bill, there would be no fiscal effect from the enactment of the bill.

Alcohol, special events, microdistilleries, public venues, "happy hour", farm wineries.

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