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MEMORANDUM

To: House Committee on Federal and State Affairs

From: The Office of Revisor of Statutes

Date: 02/02/2023

Re: H.B. 2124; Allowing businesses to sell cereal malt beverage by the drink on Sundays without requiring that 30% of such businesses' gross receipts be derived from the sale of food.

In 1986, voters approved an amendment to the constitution of the state of Kansas that allowed counties to permit the sale of intoxicating liquor by the drink within their boundaries.¹ However, such sales would be subject to a 30% food sales requirement, meaning that 30% of the gross receipts from all sales of food and beverages on a premises must come from sales of food. The amendment went on to state that counties could then vote at any subsequent general election to allow the sale of intoxicating liquor by the individual drink without a 30% food sales requirement. As of January 6, 2021, 63 counties had retained a 30% food sales requirement; 39 counties had no food sales requirement; and 3 counties did not allow sales of liquor by the drink.²

In 1987, K.S.A. 41-2704 was amended to allow the Sunday sale of cereal malt beverage by the individual drink, but only within a premises that derived 30% of its gross receipts from the sale of food.³ Additionally, K.S.A. 41-2614 was amended to allow clubs and drinking establishments to sell alcoholic liquor by the drink from 9:00 am to 2:00 am on any day of the week.⁴ From that point, it became possible: (1) For a county to allow a drinking establishment to sell liquor by the drink, including on Sundays, without a 30% food requirement; and (2) For a premises to be subject to a 30% food sales requirement under K.S.A. 41-2704 if the premises sold CMB on Sundays.

¹ 1985 Kansas Laws Ch. 360, § 1; K.S.A. Const. Art. 15, § 10

² <https://www.ksrevenue.gov/pdf/abcwetdrymap.pdf>

³ 1987 Kansas Laws Ch. 182, § 100

⁴ 1987 Kansas Laws Ch. 183, § 2

Lastly, from 2017 to 2019, CMB laws were amended to allow entities that sell cereal malt beverage to also sell beer containing not more than 6% abv.⁵ In the course of making the required statutory edits, K.S.A. 41-2704 was amended to allow Sunday sales of cereal malt beverage and 6% beer sold by the drink, but still only within a premises that derived 30% of its gross receipts from the sale of food.

HB 2124 would amend K.S.A. 41-2704 to remove the 30% food sales requirement for Sunday sales of CMB and 6% beer by the drink. Keep in mind that if a county has not voted to remove its general 30% food sales requirement, and a premises sells beer or any other type of intoxicating liquor, it will be subject to the county's general 30% food sales requirement, as authorized by the state constitution.

H.B. 2124 would become effective upon publication in the Kansas register.

⁵ 2017 Kansas Laws Ch. 56, § 9 (delayed effective date of 2019)