

SESSION OF 2021

**SUPPLEMENTAL NOTE ON SENATE SUBSTITUTE FOR
HOUSE BILL NO. 2138**

As Amended by Senate Committee of the Whole

Brief*

Senate Sub. for HB 2138 would make changes to the Kansas Liquor Control Act and Club and Drinking Establishment Act concerning suspending, canceling, or revoking certain liquor licenses; days and times of sale of liquor and cereal malt beverage (CMB); and refillable and sealable containers of liquor and CMB.

***Suspending, Canceling, or Revoking Certain Liquor
Licenses***

The bill would allow the Director of Alcoholic Beverage Control (ABC) to suspend, cancel, or revoke a license under the Kansas Liquor Control Act (KLCA) or the Club and Drinking Establishment Act (CDEA) for violation of a lawful order issued by the Director.

Under current law, the Director of ABC is authorized to suspend, cancel, or revoke a license for certain unlawful acts by a licensee. The bill would amend current law to expand the lists of unlawful conduct to include violations of lawful orders issued by the Director of ABC.

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

Days and Times of Sale of Liquor and CMB

The bill would amend statutes in the KLCA and the Cereal Malt Beverage Act (CMBA) to expand the time when retail sales of alcoholic liquor and CMB are allowed.

Under current law, a city or county may choose to allow sales of alcoholic liquor and CMB on Sundays, except on certain holidays, between noon and 8 p.m. The bill would allow sales on Sundays, except on those certain holidays listed in continuing law, between 10 a.m. and 8 p.m.

Producer's Licenses

The bill would require an application for a retailer's license be approved if the applicant has already been issued a producer's license for a vineyard pursuant to KSA 41-355, provided the applicant is not otherwise disqualified from holding the retailer's license under continuing law.

Refillable and Sealable Containers

The bill would amend statutes in the KLCA and CDEA to authorize alcoholic liquor retailers, class A and B clubs, and drinking establishments to sell refillable and sealable containers of beer and CMB for consumption off the licensed premises.

Under current law, alcoholic liquor retailers are restricted to selling alcoholic liquor only in the original unopened container, and class A and B clubs are not able to sell refillable and sealable containers of beer and CMB; only microbreweries are allowed to make such sales.

The bill would allow alcoholic liquor retailers and clubs to sell beer and CMB under the same conditions as microbreweries. The bill would require such refillable and sealable containers to hold between 32 and 64 fluid ounces

and have a label that clearly indicates the licensee's name and the type of alcoholic beverage in the container. Club and drinking establishment sales of beer and CMB in refillable and sealable containers would be prohibited after 11 p.m., and the bill would specify that such sales would be subject to the liquor drink tax.

Mixed Alcoholic Beverages in Pitchers

The bill would authorize a public venue, club, drinking establishment, caterer, or holder of a temporary permit to sell or serve mixed alcoholic beverages in a pitcher. Current law allows the sale or serving of only certain mixed drinks listed in statute or others specifically approved by the Director of ABC.

The bill would also define the following terms:

- “Mixed alcoholic beverage” to mean a beverage, such as a margarita or sangria, made of at least 25 percent non-alcoholic liquid or other edible substance and combined with alcoholic liquor; and
- “Pitcher” to mean any container capable of containing more than 32 fluid ounces but not more than 64 fluid ounces that is used to serve alcoholic liquor or CMB.

Background

The Senate Committee on Federal and State Affairs recommended adoption of a substitute bill, created by removing the contents of HB 2138, as introduced, and inserting the provisions of SB 255, as introduced; SB 256, as introduced; and SB 257. The Senate Committee also amended the provisions previously found in SB 257 to allow sales of refillable and sealable containers for off-premise consumption.

HB 2138, as introduced, would have amended the KLCA to allow a person whose spouse is employed as a law enforcement official to be eligible to receive a liquor license.

[*Note:* The contents of HB 2138, as introduced, were amended by the Senate Committee and included in HB 2137, as amended by the Senate Committee.]

Senate Committee of the Whole

The Senate Committee of the Whole amended the bill to authorize the sale of all mixed drinks in pitchers and add definitions for “mixed alcoholic beverage” and “pitcher.”

The Senate Committee of the Whole also amended the bill to restore the discretion of boards of county commissioners and governing bodies of cities to allow retail sales of alcoholic liquor and CMB on Memorial Day, Independence Day, and Labor Day, as in current law.

SB 255 (Authorizing Actions by the Director of ABC)

SB 255 was introduced by the Senate Committee on Federal and State Affairs at the request of Senator Alley on behalf of the Director of ABC.

[*Note:* Provisions of SB 255 are the same as those of 2020 SB 433, as introduced.]

Senate Committee on Federal and State Affairs

In the Senate Committee hearing on SB 255, the Director of ABC provided **proponent** testimony, indicating the intent of the bill is to clarify and improve the method of enforcing ABC administrative orders. The conferee stated the bill does not add a new violation, but clarifies existing law to the benefit of licensees and staff. A representative of the Kansas Association of Beverage Retailers provided written-

only proponent testimony, indicating the bill is important to licensees under ABC jurisdiction, and enforcement of the rules provides an even playing field for everyone.

No other testimony was provided.

Fiscal Information

According to the fiscal note provided by the Division of the Budget on SB 255, as introduced, the Kansas Department of Revenue (KDOR) indicates enactment of the bill would have no fiscal effect on the agency.

SB 256 (Expanding Sunday and Holiday Sales of Alcoholic Liquor)

SB 256 was introduced by the Senate Committee on Federal and State Affairs at the request of Senator Alley on behalf of the Kansas Association of Beverage Retailers.

Senate Committee on Federal and State Affairs

In the Senate Committee hearing on SB 256, representatives of Blackjack's Retail Liquor, Fuel True, the Kansas Association of Beverage Retailers, and the Kansas Association for Responsible Liquor Laws, Inc., provided **proponent** testimony. The conferees generally indicated the bill could have a positive economic impact. A representative of the League of Kansas Municipalities (LKM) provided written-only **proponent** testimony, stating the bill preserves options for local governments.

No other testimony was provided.

Fiscal Information

According to the fiscal note prepared by the Division of the Budget on SB 256, as introduced, KDOR indicates

enactment of the bill would require it to revise its retailers' handbook, which would have a negligible fiscal effect that could be absorbed within existing resources.

The Kansas Association of Counties indicates enactment of the bill could result in increased tax revenue for counties, but it is unclear if such increased revenue would be offset by enforcement costs. A fiscal effect cannot be estimated.

The LKM indicates the increased hours for sales on Sundays and during summer holidays could increase sales tax revenue for cities. However, the LKM notes that if a petition is submitted requiring an election to expand the hours of Sunday sales, cities would bear the cost of holding such an election. A fiscal effect cannot be determined, because the number of additional sales and potential elections cannot be estimated.

SB 257 (Authorizing Retailers, Clubs, and Drinking Establishments to Sell Certain Beer and CMB)

SB 257 was introduced by the Senate Committee on Federal and State Affairs at the request of Senator Alley on behalf of the Kansas Association of Beverage Retailers.

Senate Committee on Federal and State Affairs

In the Senate Committee hearing on SB 257, representatives of Davis Retail Liquor, the Kansas Association of Beverage Retailers, and the Kansas Restaurant and Hospitality Association provided **proponent** testimony. The conferees generally indicated the bill would be a benefit to retail liquor stores, customers, craft brewers, and small businesses.

The Director of ABC provided neutral testimony, recommending the bill be amended to address contradictory language in state statute.

No other testimony was provided.

[*Note:* The language of Senate Sub. for HB 2138 incorporates technical changes to SB 257 regarding statutory references.]

Fiscal Information

According to the fiscal note prepared by the Division of the Budget on SB 257, as introduced, KDOR indicates enactment of the bill would require it to revise its handbooks for class A and B clubs, drinking establishments, and retailers at a total cost of \$4,575 from the State General Fund for FY 2022. Of this amount, \$1,800 would be used to update publications and \$2,775 would be used to print and mail notices to approximately 2,500 taxpayers. KDOR notes enactment of the bill could result in a decrease in beer and CMB sales made by retailers. Any fiscal effect associated with SB 257 is not reflected in *The FY 2022 Governor's Budget Report*.

Kansas Liquor Control Act; Club and Drinking Establishment Act; Cereal Malt Beverage Act; cereal malt beverage; administrative orders; Sunday liquor sales; holiday liquor sales; alcoholic liquor; retail; liquor licensing; Kansas Liquor Control Act; Club and Drinking Establishment Act; Cereal Malt Beverage Act; cereal malt beverage; administrative orders; Sunday liquor sales; holiday liquor sales; alcoholic liquor; retail; liquor licensing