

SESSION OF 2012

**SUPPLEMENTAL NOTE ON SUBSTITUTE FOR HOUSE  
BILL NO. 2689**

As Amended by Senate Committee of the Whole

**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 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 of the bill are outlined below.

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\*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>

**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.(SB269) 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 limit the tastings portions to one-half ounce for distilled spirits, two ounces for wine, and two ounces for beer and malt beverages. 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.(SB274) 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 to exceed 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.(SB275)

**Revise hiring requirements.** The bill would remove requirements on hiring practices that previously necessitated background checks for employees working for licensees under the Club and Drinking Establishment Act.(SB276)

**New Microdistilleries.** The other provisions of 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.(SB277) A microdistillery would be defined as a facility which produces spirits from any source or substance licensed by the Director of Alcoholic Beverage Control (ABC). 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 licensed premises 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 has been convicted of a felony.

**Individual drinks, "happy hour."** Other provisions of 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.(SB288)

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.(SB299) 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. 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 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 less than \$200 on the public venue licensee. The bill would restrict the offering and serving of alcoholic liquor or cereal malt beverages at a public venue.

**Consumption in certain parks.** 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 Department of Wildlife, Parks and Tourism, except where prohibited by rules and regulations of the Department. (SB313) 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 premises. (SB358) 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 premises.

**Farm wineries.** Additional provisions of the bill would allow a farm winery licensee to sell wine manufactured by the licensee for consumption on the licensed premises provided the licensed premises is located in a county where the sale of alcoholic liquor is permitted in licensed drinking establishments. (SB390) 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.

The bill would be effective upon publication in the *Kansas Register*

**Percentage of products grown.** The bill would require not less than 20 percent of the products utilized in the manufacture of Kansas wine by a farm winery to be grown in Kansas.(SB379) 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 20 percent standard. The Director of Alcoholic Beverage Control (ABC) may waive the 20 percent requirement in years when insufficient Kansas grown product is available for a farm winery.

Finally, the bill also would modify the law regarding a corporation which holds a distributor's license, providing that at least one officer and one director of the corporation would have to meet both the citizenship and residence requirements for that corporation to receive a distributor's license.

## **Background**

Background information is taken from the Supplemental Notes for the twelve bills combined into a single bill by the Senate . The Senate Committee of the Whole also amended the bill regarding a corporation which holds a distributor's license, providing that at least one officer and one director of the corporation would have to meet both the citizenship and residence requirements for that corporation to receive a distributor's license. The background information is presented for each of the bills in the following paragraphs.

**Sub. for HB 2689.** Proponents in the House Committee on Federal and State Affairs for HB 2689 included Representative TerriLois Gregory, the owner of the Elkhorn Valley Railcar Company, and representatives of the Douglas County Commission, the Kansas Licensed Beverage Association, and the Kansas Wine and Spirits Wholesalers

Association. Numerous other written testimony was submitted favoring the proposed legislation.

The bill as introduced would have established a new railway car license for the sale and consumption of alcoholic liquor. The conferees indicated that the Midland Railway in Baldwin City would be the short line railroad that a Nebraska corporation, the Elkhorn Valley Railcar Company doing business as the Fremont Dinner Train, would like to operate if the company were able to serve beer, wine and mixed drinks. Current limitations in Kansas law would prohibit such sales unless liquor law modifications were made.

The House Committee adopted a substitute bill to amend the Club and Drinking Establishment Act rather than to establish a separate new class of license that would authorize operators to offer for sale, to sell and to serve alcoholic liquor for consumption on a railway car.

The Director of Alcoholic Beverage Control (ABC) at the Department of Revenue appeared as neutral and concurred with the simplified version for regulation under existing law as included in the substitute bill rather than establishment of a separate new class of license for railway cars.

The fiscal note for the bill as introduced indicated an increase of \$15,000 in one-time expenditures to update the computer system and publications for the Division of ABC 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 ABC Director suggested lower computer modification costs would result due to not creating a new class of license.

The Senate Committee on Federal and State Affairs amended eleven other bills passed by the Senate into Sub. for HB 2689, including:

**SB 269.** Proponents of the bill included representatives

from the Wine & Spirits Wholesalers Association, the Distilled Spirits Council of the United States, and the Wine Institute. Opponents included representatives from the Kansans for Addictions Prevention and the Women's Christian Temperance Union. Neutral testimony was provided by representatives of the Kansas Restaurant and Hospitality Association, Kansas Association of Beverage Retailers, Topsy's Wine and Spirits, and the ABC.

The Senate Committee on Federal and State Affairs amended the bill with clarifying language. The Senate Committee also added that sampling could be provided in adjacent premises under regulation by the ABC.

The fiscal note indicated there would be no fiscal effect from the enactment of the bill.

**SB 274.** Representatives from the City of Wichita and the Kansas Wine & Spirits Wholesalers Association testified in support of the bill.

Written testimony in support of the bill was submitted by a representative of the League of Kansas Municipalities. Neutral testimony was provided by a representative of the Kansas Department of Revenue.

The Senate Committee amended the bill by prohibiting the special event from exceeding a 30-day period. Also, the Committee amended the bill by allowing the temporary permit holder to resell unused alcoholic beverages to the licensee within three days after the end of the event.

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

**SB 275.** According to a representative of the Kansas Department of Revenue, the application and issuance of salespersons' permits is burdensome to the industry and the Department, and serves no compelling state interest.

Written testimony in support of the bill was submitted by representatives of the Kansas Wine & Spirits Wholesalers Association and Kansas Beer Wholesalers Association. No opponents testified on the bill.

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

**SB 276.** The Director of the ABC testified as a proponent of the original bill. Testifying in opposition to the original bill were representatives of the Kansas Restaurant and Hospitality Association, the Kansas Licensed Beverage Association, the Kansas Wine & Spirits Wholesalers Association, and the Kansas Beer Wholesalers Association.

The Senate Committee removed the original amendment in the bill that would have required a background check.

The fiscal note on the original bill was negligible, and ABC indicated that any costs could be absorbed within existing resources. The fiscal note for the amended bill was not available to the Senate Committee.

**SB 277.** Proponents included the Mayor of Lenexa, an individual, and representatives from the Artisan Distillers of Kansas and the Kansas Restaurant and Hospitality Association. Neutral testimony was submitted by the Director of the ABC.

The Senate Committee amended the bill by allowing samples to be served free of charge at special events monitored and regulated by the ABC, modified the definition of "microdistillery," and added clarifying language to the definition of retailer.

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.

**SB 288.** Proponents of the bill included representatives from the ABC and the Kansas Restaurant and Hospitality Association. Opponents included a representative from the Kansas Licensed Beverage Association.

The Senate Committee amended the bill to clarify the definition of *individual* drink and conform the statute dealing with the sale of cereal malt beverages to the revisions for the sale of alcoholic beverages in specific sizes and by the individual drink, and different prices during the day.

The fiscal note estimates the costs associated with updating the computer processing system would be a total of \$4,800.

**SB 299.** Proponents for the bill included the Director of Alcoholic Beverage Control, and representatives of the Kansas Restaurant and Hospitality Association and the League of Kansas Municipalities.

A representative from the Kansas Licensed Beverage Association testified as an opponent. Neutral testimony was provided by a representative of the Kansas Association of Beverage Retailers.

The Senate Committee of the Whole amended the bill to make public venue licenses subject to the same taxes as other licensees selling liquor by the drink. In addition, the Senate Committee of the Whole also reduced two classes of license fees from \$10,000 to \$7,500 and from \$20,000 to \$10,000.

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 by the Department of Revenue from the 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.

**SB 313.** A representative of the Department of Wildlife, Parks and Tourism testified as a proponent for the bill. No opponents testified.

According to the fiscal note, enactment of the bill would have no fiscal effect on the Department of Wildlife, Parks and Tourism.

**SB 358.** Proponents of the bill included representatives from the Artisan Distillers of Kansas and the Dark Horse Distillery. Also, one individual and the Mayor of Lenexa testified as proponents. Neutral testimony was presented by the Director of ABC.

The Senate Committee amended the bill to delete restrictions on the sample sizes and the limitation on the number of samples an individual can be served.

According to the fiscal note, the enactment of the bill would have no fiscal effect on state revenues or expenditures.

**SB 390.** Proponents of the bill included Senator Allen Schmidt, the Assistant Secretary of Agriculture, and representatives from the Grace Hill Winery, Kansas Grape Growers and Winemakers Association, and the City of DeSoto. Written testimony in support of the bill was submitted by the Wyldewood Cellars Winery and an individual.

Opponents of the bill included representatives of the Kansas Viticulture and Farm Winery Association, the Wild Hare Vineyard and Winery, the Golden Road Estate Vineyard, the Davenport Orchard, Vineyard & Winery, and the Crooked Post Vineyard. Written testimony in opposition of the bill was submitted by representatives of the Holy-Field Vineyard and Winery, the Stone Pillar Vineyard and Winery, the Edge Vineyards, the Kugler's Vineyard, the Honey Creek Vineyard, the Bluejacket Crossing Vineyard & Winery, the Kansas City Star, the Free State Vineyards, the Cobblestone Vineyard, RS Mason Enterprises, Inc., and two individuals.

The Senate Committee on Federal and State Affairs amended the bill to reinstate the current 60 percent requirement for products utilized in the manufacture of wine by a farm winery. The Committee also amended the bill stating that wine sold for consumption would not be considered liquor-by-the-drink.

The Senate Committee of the Whole amended the bill to make it effective upon publication in the *Kansas Register*. Also added were the provisions of SB 390 and SB 379. New modifying language regarding citizenship and residence requirements for a distributor's license also was added.

The fiscal note on the original bill SB 390 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.

**SB 379.** Representative Bob Bethell and Senator Allen Schmidt testified as proponents of the original bill which would have removed the current requirement that a farm winery utilize at least 60 percent of Kansas products in the manufacture of domestic table wine and domestic fortified wine. The bill would also have removed the federal requirement that each label of domestic wine and domestic fortified wine include a statement that declares the majority of the products utilized in the manufacture of the wine was

grown in Kansas. Other proponents included representatives of the Eagle Creek Vineyards, the Grace Hill Winery, the Kansas Grape Growers & Winemakers Association, and the Rosewood Winery. Written proponents' testimony were submitted by several other individuals.

Opponents to the original bill included representatives from the Kansas Viticulture & Farm Winery Association; the Wild Hare Vineyards & Winery; the Golden Road Estate & Winery; the Davenport Orchards; Vineyard and Winery; the Crooked Post Vineyard; the Kansas Wine & Spirits Wholesalers Association; the Kansas Viticulture & Farm Winery Association; and the Holy-Field Vineyard and Winery. A number of other opponents to the bill submitted written testimony.

The Senate Committee amended the bill by reducing the Kansas products utilized in the manufacture of wine from 60 percent to 20 percent and made the production requirement apply to an annual production, subject to intervention by the Director of ABC if insufficient Kansas products are available in any given year and the farm winery requests a waiver.

According to the fiscal note on the original bill, there would be no fiscal effect from the enactment of the bill.

The Senate Committee of the Whole added the contents of SB 390 and SB 379, both as passed by the Senate. In addition, the Senate Committee of the Whole added a modification for the requirement for a distributor's license to include both citizenship and residence requirements for at least one officer and one director of the corporation in order to hold a license.