

SESSION OF 2015

**CONFERENCE COMMITTEE REPORT BRIEF
HOUSE BILL NO. 2223**

As Agreed to May 26, 2015

Brief*

HB 2223, as amended, would make changes to several different areas of law concerning alcoholic liquor. The bill would address the following topics: infusing alcohol with flavors or other ingredients; citations issued for violations of the Liquor Control Act and the Club and Drinking Establishment Act; powdered alcohol; automated wine devices; eligibility to obtain a liquor license; consumption of alcohol at the State Capitol and on unlicensed premises; allowing distributors to provide samples; vineyard permits; notification requirements for catered events; the consumption of alcoholic liquor on public property at events catered by a licensed caterer; the location of liquor retailers, microbreweries, microdistilleries, and farm wineries; temporary permits for the Kansas State Fair; and farmers' market sales permits.

Infusing Alcohol with Flavors or Other Ingredients

The bill would allow drinking establishments to sell and serve alcoholic liquor infused with spices, herbs, fruits, vegetables, candy, or other substances intended for human consumption if no additional fermentation occurs during the process.

*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>

Generally, alcoholic liquor is to be dispensed only from original containers, but under the bill, a drinking establishment or its agent or employee would be able to dispense alcoholic liquor from a machine or container used to mix, chill, or infuse alcoholic liquor with additional liquids or solids. A drinking establishment or its agent or employee would not be able to refill any original container with any alcoholic liquor or any other substance. The bill would specify that the dispensing of alcohol from a machine pursuant to the provisions of the bill would not include self-dispensing by a customer.

The bill also would define the terms “infuse” and “dispense.” “Infuse” would mean to add flavor or scent to a liquid by steeping additional ingredients in the liquid. “Dispense” would mean to portion out servings of alcoholic liquor for consumption, including the pouring of drinks of alcoholic liquor and opening original containers of alcoholic liquor by the licensee or licensee’s employee for consumption by consumers, and shall not include any self-dispensing by a customer.

***Citations Issued for Violations of the Liquor Control Act
and the Club and Drinking Establishment Act***

The bill would specify when issuing a citation for a violation of the liquor laws, agents of the Department of Revenue, Division of Alcoholic Beverage Control (ABC) must deliver the citation issued to a person in charge of the licensed premises at the time of the alleged violation. Current law requires delivery of the citation to the person allegedly committing the violation. The bill would define “person in charge” as any individual or employee present on the licensed premises at the time of the alleged violation who is responsible for the operation of the licensed premises. If no designated individual or employee is a person in charge, then any employee present would be the person in charge.

The bill also would add law concerning the delivery of citations by local law enforcement officers other than agents of ABC. The new provisions would allow any local law enforcement officer observing a violation of the liquor laws to be able to submit a report of the violation to ABC for review after serving notice of the violation to a person in charge of the licensed premises. Notice would be required to:

- Be made at the time of the alleged violation;
- Be made in writing;
- Contain the name of the licensee;
- Contain the date and time of the alleged violation;
- Contain a description of the alleged violation; and
- Contain a statement indicating a report of the violation would be submitted to ABC for review.

The bill also would add language stating any citation not issued in accordance with the provisions laid out in the new and amended law would be void.

Powdered Alcohol

The bill would ban the sale and service of powdered alcohol. The Club and Drinking Establishment Act would be amended to prohibit clubs, drinking establishments, caterers, holders of temporary permits, and public venues from selling, offering to sell, or serving free of charge any form of powdered alcohol.

The bill also would define “powdered alcohol” as alcohol prepared in a powdered or crystal form for either direct use or for reconstruction in a nonalcoholic liquid.

Automated Wine Devices

The bill would allow public venues, clubs, and drinking establishments to offer customer self-service of wine from automated devices on licensed premises. Licensees would be required to monitor and have the ability to control the dispensing of wine from the automated devices. The Secretary of Revenue would be granted rule and regulation authority to implement this provision.

Eligibility to Obtain a Liquor License

The bill would add to the list of persons who cannot receive liquor licenses any persons who, after a hearing before the Director of ABC (Director), are found to have held an undisclosed beneficial interest in a liquor license obtained through fraud or false statement on the application for the license.

Additionally, the bill would establish requirements for limited liability companies (LLCs) applying for liquor licenses. Specifically, in addition to being required to submit copies of their articles of organization and operating agreements to the Director, LLCs applying for retailer's licenses would be required to:

- Meet the licensure qualifications for co-partnerships applying for retailer's licenses;
- Under the Club and Drinking Establishment Act, meet the licensure qualifications for corporations under the Act; and
- Under the Cereal Malt Beverage Act, meet the licensure qualifications for corporations applying for licenses under that Act. Individuals owning, in the aggregate, 25.0 percent or more of the ownership interest in the LLC would be required to meet the

qualifications for an individual applying for a license under that Act.

The bill also would specify the Director could suspend, involuntarily cancel, or revoke any license issued pursuant to the Liquor Control Act if, after notice and opportunity for a hearing, the Director determines the licensee did any of the following:

- Fraudulently obtained the license by providing false information on the license application or at a hearing related to the license;
- Violated any provision of the Liquor Control Act or related rules and regulations; or
- Became ineligible to obtain a license.

The bill would add language specifying proceedings involving the denial, suspension, involuntary cancellation, or revocation of any license, or any assessment of civil fines, would be governed by the provisions of the Kansas Administrative Procedure Act. The bill would specify the Secretary of Revenue would be able to designate the Director to be the presiding officer in any such hearing.

The bill also would remove the Hiram Price Dillon House from the list of exceptions to the general prohibition against consumption of alcohol on public property. The Dillon House is no longer public property.

Consumption of Alcohol at the State Capitol and on Unlicensed Premises

The bill would allow the consumption of alcoholic liquor on the premises of the State Capitol Building for official state functions that are nonpartisan in nature. Any such function would require the approval of the Legislative Coordinating

Council before the consumption of alcoholic liquor could commence.

The bill also would provide that patrons and guests of unlicensed businesses would be authorized to consume alcoholic liquor and cereal malt beverages on the premises of an unlicensed business property only if:

- The business, or any owner of the business, has not had a license that is issued under the Kansas Liquor Control Act or the Club and Drinking Establishment Act revoked for any reason;
- No charge of any sort is made by the business for the privilege of possession or consuming alcohol on the premises, or for mere entry onto the premises;
- Any alcoholic liquor:
 - Remains in the personal possession of the patron, and
 - Is not sold, offered for sale, or given away by the owner or employees of such business; and
- No possession or consumption of alcoholic liquor takes place between 12 a.m. and 9 a.m.

The bill would define “patron” to mean a natural person who is a customer or guest of an unlicensed business.

Allowing Distributors to Provide Samples

The bill would allow alcoholic beverage distributor licensees to provide samples of spirits, wine, and beer or cereal malt beverages to alcoholic beverage retailer licensees and their employees or other distributor licensees and their employees in the course of business or at industry seminars. The bill would specify that no licensee would be allowed to

sell alcoholic liquor for consumption on the premises and liquor provided as samples under the provisions of the bill would be subject to the liquor enforcement tax.

The service of samples would be authorized on the distributor licensee's premises or on the retailer licensee's premises, with the exception of those areas open to the public where alcoholic sales occur. Samples would be required to come out of the distributor licensee's inventory and the distributor would be required to pay retail sales enforcement taxes on such samples. No sample could be served to a minor and the sizes of the samples would be as defined in the Club and Drinking Establishment Act.

Vineyard Permits

The bill would allow any person engaged in business as a Kansas vineyard with more than 100 vines to apply for an annual vineyard permit.

The permit would authorize the following on the premises specified in the permit:

- The sale of wine in the original, unopened container;
- The serving of wine by the drink; and
- Conducting wine tastings in accordance with existing law.

Wine sold or served by a permit holder would have to be produced, in whole or in part, using grapes grown by the permit holder, and would have to be manufactured by a farm winery.

Any wine not consumed on the premises would have to be disposed of by the permit holder or securely resealed in a tamper-proof, transparent bag, sealed in a manner that

makes it visibly apparent if the bag subsequently is opened before being removed from the property.

A vineyard permit would cost \$100 and would be valid for one year. The Secretary of Revenue would be authorized to adopt rules and regulations necessary to implement the new permit.

Catered Events

The bill would allow the consumption of alcoholic liquor at catered events held on public property. Existing law generally prohibits the consumption of alcoholic liquor on public property, but makes an exception for special events (events approved by local government of a city, county, or township) when a temporary permit has been issued by the Director. The language of this exception would be amended to allow also the consumption of alcoholic liquor at catered events on public property where the caterer has provided the required notice.

The bill also would change the notice required to be given by caterers to ABC. Existing law, which requires a caterer to provide notice to ABC 10 days before any event and provide notice to the Chief of Police or Sheriff where the event occurs, would be changed to require electronic notification to ABC at least 48 hours before any event. The the electronic notice provided to ABC must include the time, location, and names of the contracting parties of the event. Caterers would be required to keep their records (agreements, receipts, lists of employees assigned to the events, and records of alcohol purchased) for three years. The bill also would specify that no notice to ABC would be required for weddings, funerals, events sponsored by religious institutions, or business-, industry-, or trade-sponsored meetings including, but not limited to, awards presentations and retirement celebrations.

***Locations of Liquor Retailers, Microbreweries,
Microdistilleries, and Farm Wineries***

The bill would allow cities to pass ordinances allowing liquor retailers, microbreweries, microdistilleries, and farm wineries to locate within 200 feet of any public or parochial school or college or church in a core commercial district. Current law allows those facilities to be within 200 feet of schools, colleges, or churches only if the retailer, microbrewery, microdistillery, or farm winery was already in a location and a school or church chose to establish itself within 200 feet of that facility.

Temporary Permits: State Fair

The bill would allow the Director, on or after July 1, 2016, to issue a sufficient number of temporary permits for the sale of wine in unopened containers and the sale of beer, wine, or both by the glass on the State Fairgrounds as specified in the temporary permit issued. Current law has been interpreted to allow the issuance of only one temporary permit for the Kansas State Fair. The bill would specify that nothing would be construed to limit the number of temporary permits issued by ABC for the State Fairgrounds, but the issuance of the permits must be consistent with the requirements of the State Fair Board.

Farmers' Market Sales Permits

The bill would allow a farm winery to sell wine at a farmers' market by applying for a sales permit and submitting a \$25 application fee. The application for the permit would be required to specify the locations of the farmers' markets at which wine would be sold. The location of any farmers' market not specified in the application would have to be provided to the Director before the licensee could sell wine there.

The bill would define “farmers’ market” as any common facility or area where producers or growers gather on a regular, recurring basis to sell fruits, vegetables, meats, and other farm products directly to consumers.

Conference Committee Action

The Conference Committee added portions of HB 2331, which also had been sent to the Conference Committee, to the existing contents of HB 2223. Provisions added by the Conference Committee related to: powdered alcohol, automated wine devices, the consumption of alcoholic liquor on public property at events catered by a licensed caterer, the consumption of alcoholic liquor on the premises of the state capitol; the consumption of alcoholic liquor at unlicensed businesses; vineyard permits; electronic notification of catered events; the location of liquor retailers, microbreweries, microdistilleries, and farm wineries in a core commercial district; authorizing additional temporary permits for the sale of wine in the original container and wine, beer, or both, on the State Fairgrounds; and creating farmers’ market sales permits to allow the sale of wine at multiple farmers’ market locations. Provisions related to advertising and sales by special order shipping licensees, and the creation of art studio permits (the contents of HB 2413) were not included by the Conference Committee.

Background

HB 2223

The Senate Federal and State Affairs Committee added the provisions of HB 2088, as amended by Senate Federal and State Affairs Committee action; HB 2089, as introduced; HB 2125, as amended by House Federal and State Affairs Committee; and HB 2191, as introduced, to the existing

contents of HB 2223, as amended by House Federal and State Affairs Committee.

HB 2223 – Infusing Alcohol with Flavors or Other Ingredients

The bill was introduced in the House Committee on Federal and State Affairs. At the hearing in the House Committee, representatives from the Kansas Licensed Beverage Association, Kansas Restaurant and Hospitality Association, and the Kansas Star Casino testified in support of the bill. A restaurant owner and caterer also testified in support of the bill. The ABC testified as a neutral conferee, offering an amendment to ensure the definition of “dispense” would not allow for self-dispensing machines.

The House Committee adopted ABC’s suggested amendment excluding self-dispensing from the definition of “dispense” and further amended the bill to strike language relating to catered events (originally Section 3 of the bill). This language was inserted into 2015 HB 2331 (as amended by the House Committee on Federal and State Affairs).

As noted above, the Senate Federal and State Affairs Committee added the provisions of HB 2088, as amended by Senate Federal and State Affairs Committee action; HB 2089, as introduced; HB 2125, as amended by House Federal and State Affairs Committee; and HB 2191, as introduced, to the existing contents of HB 2223, as amended by House Federal and State Affairs committee.

According to the fiscal note prepared by the Division of the Budget on HB 2223, as introduced, the Kansas Department of Revenue anticipates the bill would result in expenditures of \$18,150 for licensing equipment and updates to the liquor processing system. Any fiscal effect associated with the bill is not reflected in *The FY 2016 Governor’s Budget Report*.

HB 2088 – Citations Issued for Violations of the Liquor Control Act and Club and Drinking Establishment Act

At the hearing in the House Committee on Federal and State Affairs, the Director, along with representatives of the Kansas Association of Chiefs of Police, the Kansas Sheriffs' Association, the Kansas Peace Officers Association, the Kansas Association of Beverage Retailers, and the Kansas Restaurant and Hospitality Association, provided testimony in support of the bill.

Testimony in opposition to the bill was provided by a representative of Kite's Bar, the establishment involved in the court case prompting the change in the law proposed by the bill.

Neutral testimony was presented by a representative of the Kansas Licensed Beverage Association, the Kansas Craft Brewers Association, the Kansas Viticulture and Farm Winery Association, and the Artisan Distillers of Kansas.

The House Committee of the Whole amended the bill to require the ABC to deliver a citation to a person in charge of the licensed premises rather than to the licensee's agent or employee and to prohibit the sale and service of powdered alcohol.

The Senate Committee on Federal and State Affairs adopted the language of HB 2088, as recommended by the House Federal and State Affairs Committee. The Senate Committee then adopted a technical amendment to make the text of the bill conform to the amendment related to citations issued for violations of liquor laws that was passed by the House Committee of the Whole. The Senate did not adopt the House Committee of the Whole Amendment related to the ban of powdered alcohol. The Senate Committee then included the amended contents of HB 2089 into HB 2223.

According to the fiscal note prepared by the Division of the Budget, the Kansas Department of Revenue indicates HB

2088, as introduced, would have no fiscal effect on state expenditures but could result in an increase in revenues from fines issued to liquor licensees, although the amount of the potential increase cannot be determined.

HB 2089 – Eligibility to Obtain a Liquor License, Hidden Owners

At the hearing in the House Committee on Federal and State Affairs, the Director and a representative of the Kansas Association of Beverage Retailers provided testimony in support of the bill. The Director testified ABC increasingly is encountering hidden ownership situations.

Neutral testimony was presented by a representative of the Kansas Licensed Beverage Association, the Kansas Craft Brewers Association, the Kansas Viticulture and Farm Winery Association, and the Artisan Distillers of Kansas.

No testimony in opposition to the bill was submitted.

The Senate Federal and State Affairs Committee amended the contents of HB 2089 and included the amended contents in HB 2223

According to the fiscal note prepared by the Division of the Budget, the Kansas Department of Revenue indicates HB 2089 would have no fiscal effect on the agency.

HB 2125 – Eligibility to Obtain a Liquor License, LLCs

At the hearing in the House Committee on Federal and State Affairs, the Director provided testimony in support of the bill, stating the bill would provide technical clarifications to codify ABC's current practices relating to the issuance of liquor licenses and administrative actions against liquor licensees for violations.

Neutral testimony was presented by a representative of the Kansas Licensed Beverage Association, the Kansas Craft Brewers Association, the Kansas Viticulture and Farm Winery Association, and the Artisan Distillers of Kansas.

No testimony in opposition to the bill was submitted.

The House Committee amended the bill by adding language specifying the Secretary of Revenue would be able to designate the Director to be the presiding officer in any proceeding involving denial of an application for, suspension of, involuntary cancellation of, or revocation of a license, or assessment of a civil fine under the Liquor Control Act.

The Senate Federal and State Affairs Committee added the contents of HB 2125 to the contents of HB 2223.

According to the fiscal note prepared by the Division of the Budget on HB 2125, as introduced, the Kansas Department of Revenue indicates the bill would have no fiscal effect on agency operations.

HB 2191 – Sampling of Alcohol by Retailers

The bill was introduced in the House Committee on Federal and State Affairs. At the hearing in the House Committee, representatives from the Kansas Wine & Spirits Wholesalers Association and the Kansas Beer Wholesalers Association testified in support of the bill. The conferees indicated the bill would be beneficial to alcoholic beverage retailers because it will allow sellers to be more educated about their products. No neutral or opposing testimony was provided to the Committee.

The Senate Federal and State Affairs Committee added the contents of HB 2191 to the contents of HB 2223.

According to the fiscal note prepared by the Division of the Budget, the Kansas Department of Revenue indicates HB 2191 would have no fiscal effect on agency operations.

*HB 2331 – Consumption of Alcohol at Catered Events;
Required Notice for Caterers*

At the hearing on HB 2331 in the House Federal and State Affairs Committee, representatives from the Beverage Association, Kansas Craft Brewers Association, Kansas Viticulture and Farm Winery Association, Artisan Distillers of Kansas, and Kansas Restaurant and Hospitality Association appeared in support of the bill. The proponents testified the bill would allow caterers to host events on public property without the need for an additional permit, and indicated the change was good public policy because using trained caterers to serve alcohol on public property supported a well-regulated alcohol industry. There was no neutral or opponent testimony on the bill.

The House Committee amended the bill by adding the contents of Section 3 of 2015 HB 2223 (requiring caterers to provide electronic notice of events to ABC) and then further amended the bill by adding language requiring that caterers provide ABC with notice at least 48 hours in advance of any event.

The House Committee of the Whole amended the bill by adding the following provisions: authorizing any unlicensed business to allow the possession and consumption of alcoholic liquor or cereal malt beverage by patrons of such business on private property owned or leased by such business; authorizing cities to pass ordinances allowing liquor retailers, microbreweries, microdistilleries, and farm wineries to locate within 200 feet of any public or parochial school or college or church in a core commercial district; and authorizing the Director to issue more than one temporary permit for the sale of wine or beer, or both, on the State Fairgrounds.

The Senate Committee on Federal and State Affairs amended the bill by modifying provisions related to timing requirements for the notification caterers must provide to ABC and the issuance of temporary permits for the sale of beer and wine at the Kansas State Fair. The Committee also added provisions to the bill related to farmers' market sales permits (the contents of SB 217), advertising and sales by special order shipping licensees, and art studio permits (the contents of HB 2413). Finally, the Committee struck language added by the House Committee of the Whole that would have created a new exception to the Club and Drinking Establishment Act concerning the possession and consumption of alcoholic liquor.

The Senate Committee of the Whole amended the bill by adding the following provisions: authorizing any unlicensed business to allow the possession and consumption of alcoholic liquor or cereal malt beverage by patrons of such business on private property owned or leased by such business; allowing clubs, drinking establishments, caterers, and temporary permit holders and their employees and agents to offer customer self-service of wine from automated devices on licensed premises so long as the licensee monitors and has the ability to control the dispensing of such wine from the automated devices; and allowing the consumption of alcohol on the premises of the State Capitol Building or its surrounding premises during an official state function approved by the Legislative Coordinating Council.

According to the fiscal note prepared by the Division of the Budget on HB 2331, as introduced, the Department of Revenue indicates the bill would have no fiscal effect on state revenues or expenditures.

SB 217 - Farmers' Market Permits

SB 217 had a hearing in the Senate Committee on Federal and State Affairs, but the Senate Committee did not take action on the bill.

At the hearing in the Senate Committee, representatives from the Kansas Department of Agriculture and the Kansas Viticulture and Farm Winery Association appeared as proponents of the bill. They testified that the bill would open farmers' markets to more farm wineries, which would be a positive economic benefit for both the registered farmers' markets and the farm wineries in the state.

There was no neutral or opponent testimony on the bill.

According to the fiscal note prepared by the Division of the Budget on SB 217, as introduced, the Department of Revenue estimates the bill would increase expenditures by \$60,000 in FY 2016 to modify existing computer processing systems to allow for one permit for multiple locations. The Department cannot determine what, if any, revenues would result from the \$25 fee included in this bill. Any fiscal effect associated with the bill is not reflected in *The FY 2016 Governor's Budget Report*.

HB 2208 – Prohibiting Powdered Alcohol

At the hearing in the House Committee on Federal and State Affairs, the Director, as well as representatives from the Kansas Wine and Spirits Wholesalers Association, and the Kansas Licensed Beverage Association appeared in support of the bill. The proponents testified there were questions about the safety of powdered alcohol, particularly about the intensity of the alcohol created by its use and the potential for use by underage drinkers. The proponents also noted several other states had passed bills banning the sale of powdered alcohol, and federal approval for powdered alcohol had been revoked in 2014. Written testimony in support of the bill was submitted by the Women's Christian Temperance Union.

There was no neutral or opponent testimony on the bill.

According to the fiscal note prepared by the Division of the Budget, the Kansas Department of Revenue indicates HB 2208 would have no fiscal effect on the agency.

alcoholic liquor; infusing alcohol; citations for violations of liquor laws; liquor license eligibility; alcohol sampling; alcohol consumption; location of certain licensees; temporary permits; farmers' market sales permits; vineyard permits; alcohol on capitol premises; alcohol on unlicensed premises; powdered alcohol

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