

SESSION OF 2015

SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2223

As Amended by Senate Committee on Federal
and State Affairs

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 Club and Drinking Establishment Act; eligibility to obtain a liquor license; and sampling of alcohol by retailers.

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.

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.

*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>

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 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.

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 treated as follows:

- Required to meet the licensure qualifications for co-partnerships applying for retailer's licenses;
- Under the Club and Drinking Establishment Act, required to meet the licensure qualifications for corporations under the Act; and
- Under the Cereal Malt Beverage Act, required to meet the licensure qualifications for corporations applying for licenses under that Act. Individuals owning, in the aggregate, 25 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 of ABC 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.

Sampling of Alcohol by Retailers

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.

Background

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 the 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 recommended by the House Federal and State Affairs Committee and 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 provided by the Division of the Budget for the original bill, 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. The fiscal note also contains information on expenditures related to notification required for caterers. The provisions dealing with caterers are no longer part of the bill, but have been included in 2015 HB 2331. 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 of ABC, 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.

According to the fiscal note prepared by the Division of the Budget, the Kansas Department of Revenue indicates the bill, 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 of ABC and a representative of the Kansas Association of Beverage Retailers provided testimony in support of the bill. The Director of ABC 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.

According to the fiscal note prepared by the Division of the Budget, the Kansas Department of Revenue has indicated the bill would have no fiscal effect on the agency.

HB 2125 – Eligibility to Obtain a Liquor License, LLCs

At the hearing of the House Committee on Federal and State Affairs, the Director of ABC provided testimony in support of the bill. He testified 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 of ABC 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.

According to the fiscal note prepared by the Division of the Budget on the original bill, the Kansas Department of Revenue has indicated the bill, as introduced, 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.

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