

CORRECTED

SESSION OF 2019

**CONFERENCE COMMITTEE REPORT BRIEF
SENATE BILL NO. 70**

As Agreed to April 3, 2019

Brief*

SB 70 would amend law concerning temporary permits to serve liquor for consumption on premises; amend law concerning common consumption areas; amend law related to the issuance of licenses by the Division of Alcoholic Beverage Control (ABC), Department of Revenue; create law related to delivery of alcoholic liquors within the state and required reporting of such deliveries; amend the Liquor Control Act to allow for producers of certain fermentative products to sell wine made at a farm winery; and designate the official Kansas red and white wine grapes.

Application for a Temporary Permit

The bill would require applications to be submitted electronically to the Director of Alcoholic Beverage Control (Director). The bill would require a non-refundable \$25.00 temporary permit application fee to be paid by a check or a credit card. The bill would remove the requirement for any check used to pay the permit fee to be from a bank located in Kansas.

*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>

The bill would require an application for a temporary permit to include a diagram showing the boundaries of the premises, entrances, and exits and the area where liquor would be served as part of the requirement to specify the premises covered by the temporary permit.

The bill would authorize the Director to reject an application for a temporary permit if:

- The applicant has been granted four permits in the current calendar year;
- The application was not filed with the Director at least 14 days prior to the event;
- The applicant, or any officer, director, partner, registered agent, trustee, manager, or owner of the applicant, has previously owned or operated any entity holding a temporary permit, club, drinking establishment, or caterer's license and had to surrender such permit or license and had been ordered to appear and show cause why the permit or license should not be revoked or suspended;
- The applicant has designated an area for an event that was the subject of the order to appear and show cause and it appears that the new application is an attempt to avoid remedial action taken by the Director; or
- The applicant has had a license or permit revoked under the Club and Drinking Establishment Act, or has been convicted of a violation of the Kansas Liquor Control Act, the Club and Drinking Establishment Act, the Kansas Cereal Malt Beverage Act, or laws related to liquor drink tax.

Rights and Responsibilities of Temporary Permit Holders

The bill would allow a temporary permit holder to charge an entrance fee for the premises or any portion of the premises.

Under the bill, a temporary permit holder would be permitted to serve liquor for consumption on licensed or unlicensed premises, or on premises that are otherwise subject to a separate temporary permit. The bill would remove the requirement for all proceeds from an event for which a temporary permit is issued to be used only for the purposes stated in the application.

Purchase and Transfer of Liquor

The bill would permit a temporary permit holder to purchase and possess liquor for resale three days prior to the first day of sale of such liquor. Temporary permit holders could purchase liquor only from a farm winery or a retailer with a federal wholesaler's permit. Temporary permit holders purchasing liquor from farm wineries or retailers would be required to keep the following records for one year after the date of purchase: date of purchase; name and address of retailer or farm winery; name and address of temporary permit holder appearing on temporary permit; brand, size, proof, and amount of all liquor purchased; and the subtotal of the cost and total cost, including enforcement tax, of all liquor purchased.

The bill would require all liquor purchased on any one day to be removed from the licensed premises of any retailer or farm winery within 48 hours. Temporary permit holders would be prohibited from warehousing any liquor on the licensed premises of any retailer or farm winery for more than 48 hours.

The bill would allow a distributor to deliver liquor to the permit premises, without permission from the Director, so

long as the liquor was purchased from a retailer who is a wholesaler under federal law. If a licensee sold liquor to a temporary permit holder and the distributor directly delivered the liquor to a temporary permit holder, but the licensee's normal operating hours prevent immediate payment to the distributor, the licensee may pay the retailer and the retailer may pay the distributor within 48 hours of the sale.

The bill would remove the requirement for written permission from the Director for a temporary permit holder to sell back to the retailer or farm winery from whom the liquor was purchased within three business days after the event. However, after four business days, written permission from the Director would still be required.

Consumption of Liquor on a Public Street, Alley, Road, or Highway

The bill would permit liquor to be consumed on a public street, alley, road, or highway when:

- A temporary permit has been issued pursuant to the provisions of the bill or continuing law;
- A caterer's licensee has provided the required notification for a catered event; or
- A drinking establishment licensee has been authorized to extend its licensed premises.

Under the bill, consumption of liquor on public streets, alleys, roads, sidewalks, or highways would need to be approved by the local governing body where the consumption will occur through an ordinance or resolution. The bill would prohibit consuming liquor inside a vehicle while on a public street, alley, road, or highway at any time instead of at any special event or catered event.

Extended Premises

The bill would allow a drinking establishment licensee, public venue, hotel, hotel caterer, and drinking establishment caterer to extend its licensed premises.

The bill would allow the licensed premises covered by a temporary license to be extended into a city, county, or township street, alley, road, sidewalk, or highway if:

- Such street, alley, road, sidewalk, or highway is closed to motor vehicle traffic by the local governing body during any time that liquor is to be sold or consumed; and
- Such extension has been approved by the city, county, or township by ordinance or resolution that specifies the exact times during which liquor may be sold or consumed on a street, alley, road, sidewalk, or highway.

The bill would include the extended licensed premises of a drinking establishment as one of the boundaries from which liquor provided by the temporary permit holder could not be removed. The bill would remove a restriction on possessing or consuming liquor inside the premises licensed as a special event that was not sold or provided by the temporary permit holder.

Premises Boundaries

The bill would require the boundary of any premises covered by a temporary permit to be marked by a line of demarcation.

Dispensing and Removal of Liquor from Premises

The bill would allow only temporary permit holders who obtained the permit to sell liquor at a charitable auction or one or more limited-issue porcelain containers containing liquor to sell liquor for removal from or consumption off the licensed premises, except that liquor could be removed to a drinking establishment that has extended its premises into the event area.

The bill would require all liquor sold at an event covered by a temporary permit to be dispensed only from original containers. An individual would be permitted to carry an original container of liquor onto the event premises with the approval of the temporary permit holder and under the following conditions:

- The temporary permit holder could not store any containers of liquor on the event premises; and
- Each individual carrying such a container onto the premises would be required to remove such container when the individual exits the event premises.

The bill would repeal provisions related to charitable auctions and limited-issue decanter sales.

Samples

The bill would authorize temporary permit holders to provide samples of wine, beer, and spirits as follows, subject to the provisions of the Liquor Control Act and Club and Drinking Establishment Act:

- All wine, beer, and spirits sampled must come from the inventory of the temporary permit holder. A person other than the temporary permit holder, or a temporary permit holder's employee or agent, may

not dispense or participate in the dispensing of alcoholic beverages;

- A supplier's permit holder, or a supplier permit holder's agent or employee, may provide samples of wine, beer, and distilled spirits on the permit premises, and may open, touch, or pour liquor, make a presentation, or answer questions at sampling events. Any liquor sampled must be purchased from a retailer or temporary permit holder on whose premises the sampling event is held;
- No charge may be made for a sample serving;
- A person may be served more than one sample;
- Samples may not be given to minors;
- No samples may be removed from the permit premises; and
- The providing of samples to consumers would be exempt from the requirement to hold a Kansas Food Service Dealer license.

The bill would define "sample" in both the Liquor Control Act and the Club and Drinking Establishment Act as a serving of alcoholic liquor that contains not more than one-half ounce of distilled spirits, one ounce of wine, or two ounces of beer or cereal malt beverage. The bill would specify a sample of a mixed alcoholic beverage shall contain not more than ½ ounce of distilled spirits.

Keg Identification Numbers

The bill would exempt the retail sales of liquor to temporary permit holders from the Beer and Cereal Malt Beverage Keg Registration Act, which requires affixing a keg

identification number to a cereal malt beverage or beer container having a liquid capacity of four or more gallons.

Employees and Services Contracted by Temporary Permit Holders

The bill would prohibit temporary permit holders from employing or using the services of any person:

- Who is under 18 years old to serve liquor;
- Who is under 21 years old to mix or dispense drinks containing liquor;
- Who is under 21 years old and not supervised by the temporary permit holder or an employee who is at least 21 years old;
- Who has been convicted of a felony or any crime involving a morals charge to dispense, mix, or serve liquor; or
- Who has been convicted within the previous two years of a violation of any intoxicating liquor law of Kansas, any other state, or the United States, to dispense, mix, or serve liquor.

Enforcement

The bill would place sections 1 through 5 under the enforcement of the Kansas Liquor Control Act and the Club and Drinking Establishment Act and the rules and regulations adopted under these acts. The bill would authorize the Secretary of Revenue to adopt rules and regulations for the administration and enforcement of sections 1 through 5.

The bill would establish the terms used in sections 1 through 5 would have the same meaning as such terms in

KSA 2018 Supp. 41-102 (the Kansas Liquor Control Act) or 41-2601 (the Club and Drinking Establishment Act). The bill would also remove the definition for a “special event” from a statute prohibiting consumption of alcoholic liquor in certain places.

Liability

The bill would provide, in areas covered by multiple temporary permits, each temporary permit holder selling liquor for consumption on the permit premises is liable for all violations of laws governing the sale and consumption of liquor.

The bill would include employees of temporary permit holders and any person contracting with temporary permit holders to provide services or food in connection with an event, as well as any person dispensing, mixing, or serving alcohol at an event as individuals the temporary permit holder would be responsible for if such an individual were to violate the Club and Drinking Establishment Act while on the permit premises.

Common Consumption Areas

The bill would allow licensees that have permission to participate in a common consumption area (CCA) to sell and serve liquor from one non-contiguous service area, in addition to their licensed premise, within the CCA and would require such licensee to prominently display a copy of its drinking establishment license and the approval of the CCA permit holder at the non-contiguous service area.

ABC License Terms

The bill would provide the term for licenses issued by ABC commence on the effective date specified on the

license. Current law provides the license term commences on the date the license is issued by the Director.

Additionally, the bill would make a conforming amendment to law relating to the license term of Class B clubs, drinking establishments, public venues, and caterer's licenses by providing that such licenses will be issued for two years commencing on the effective date specified on the license. Current law provides such licenses expire two years after issuance.

Delivery of Alcoholic Liquors

The bill would require every express company or other common carrier (carrier) that delivers alcoholic liquors from outside the state to consumers within the state to prepare a monthly report of known alcoholic liquors shipped by the carrier to be filed with the Director.

The bill would require such report to contain the following information:

- The name of the express company or other common carrier that delivered the liquors;
- The period of time covered by the report;
- The name and business address of the consignor of the liquors;
- The weight of the package delivered to each consignee;
- A unique tracking number; and
- The date of delivery.

The bill would require any carrier, upon request by the Director, to make any additional records supporting the report available to the Director. The bill would require such records

be kept and preserved for a period of two years unless destruction of the records is authorized in writing by the Director.

The bill would impose a penalty of not more than \$500 upon any carrier that willingly fails, neglects, or refuses to file any report required by the bill.

The bill would further provide each report would be an open record available for public inspection in accordance with the Kansas Open Records Act. The bill would prohibit the inclusion of the name and business address of the consignee of such alcoholic liquors in reports made available to the public. Under the bill, the provisions concerning the exclusion of certain information in reports made available to the public would expire on July 1, 2024, unless the Legislature reenacts such provisions.

Provisions regarding consignor and consignee are corrected in this report.

Sale of Farm Wine by Producer Licensees

The bill would allow producers of certain fermentative products to sell wine made at a farm winery. The bill would require the farm wine to meet the minimum Kansas content requirements. A vineyard permit would be renamed a producer license, which would be available to producers of grapes, with not less than 100 vines; ripe fruit, or berries, not less than 1,000 pounds; or honey, not less than 100 pounds. Each producer licensee would be required to secure a \$500 bond under the Liquor Control Act, and they would be liable for payment of liquor drink and liquor enforcement taxes. A producer license would be valid for two years, and it would cost \$200. The bill would require licensees to maintain records and sales receipts, which could be inspected by the ABC, the Secretary of Revenue, or any law enforcement officer.

Under the bill, if a producer licensee is also licensed as a club or drinking establishment, the producer license would allow for the sale of domestic wine and other alcoholic liquor, as authorized by the Club and Drinking Establishment Act. If the producer licensee also has a cereal malt beverage license, the producer would be allowed to sell beer not exceeding 6.0 percent by volume, as authorized by the Kansas Cereal Malt Beverage Act. The bill would allow a producer licensee to prohibit a person from possessing alcoholic liquor or cereal malt beverage not purchased on the licensee's premises.

Official Red Wine and White Wine Grapes

The bill would designate the official Kansas red wine grape as chambourcin and the official Kansas white wine grape as vigneoles.

The bill would also make technical changes.

Effective Date

The bill would be in effect upon publication in the *Kansas Register*.

Conference Committee Action

The Conference Committee agreed to the House version of SB 70 with an amendment specifying beer could be consumed in public areas pursuant to the issuance of a temporary permit to a CMB retailer. It further agreed to add the contents of:

- SB 164, as recommended by the Senate Committee on Federal and State Affairs, regarding the effective date of ABC licenses;

- HB 2133, as amended by the Senate Committee on Federal and State Affairs with a technical change related to consignees, regarding delivery of alcoholic liquor;
- HB 2223, as amended by the Senate Committee on Federal and State Affairs, regarding sale of farm wine by producer licensees; and
- SB 53, as amended by the House Committee on Federal and State Affairs, regarding designation of the official red and white wine grapes.

Background

SB 70 (Temporary Permits and Common Consumption Areas)

SB 70 was introduced by the Senate Committee on Federal and State Affairs at the request of a representative for Country Stampede.

During the Senate Committee hearing, proponent testimony was provided by the Director; a representative of the Artisan Distillers of Kansas, Kansas Craft Brewers Association, Kansas Licensed Beverage Association, and the Kansas Viticulture & Farm Winery Association; a representative of Country Stampede; a representative of the Kansas Restaurant and Hospitality Association; and a representative of the Kansas Wine & Spirits Wholesalers Association (KWSWA). The proponents generally stated the bill would improve the process of issuing temporary permits, provide flexibility to temporary permit holders for organizing events, and provide an opportunity for Kansas products to be sampled and exposed to new consumers.

No neutral or opponent testimony was provided.

The Senate Committee amended the bill by removing the volume limitations from the definition of “sample” and removing the restrictions on the number of samples permitted per visit in the Club and Drinking Establishment Act. The Senate Committee also amended the bill to remove the requirement that any payment via check for a temporary permit be from a bank located in Kansas; specify temporary permit holders are responsible for paying the retailer, which must pay the distributor delivering liquor to a temporary permit holder; clarify a temporary permit holder may sell back liquor purchased from a retailer or farm winery; specify public venues, hotels, hotel caterers, and drinking establishment caterers are able to extend their license premises; and make technical changes. [Note: The Conference Committee retained these amendments.]

The Senate Committee of the Whole amended the bill in the following ways:

- Removed the requirement that checks used to pay the permit fee must be from a bank located in Kansas;
- Included the definition of “sample” in the Kansas Liquor Control Act and amended the definition in the Club and Drinking Establishment Act to conform to that in the Kansas Liquor Control Act;
- Changed the effective date from publication in the statute book to publication in the *Kansas Register*;
- Inserted the contents of HB 2239 as amended by the House Committee on Local Government, related to common consumption areas; and
- Made technical changes. [Note: The Conference Committee retained these amendments.]

At the hearing in the House Committee on Federal and State Affairs, the Director of ABC and representatives of the

Kansas Licensed Beverage Association, the KSWA, and the League of Kansas Municipalities (LKM) appeared in support of the bill. Written-only proponent testimony was submitted by Country Stampede and the City of Lenexa. No other testimony was provided.

The House Committee amended the bill to make a technical conforming change.

According to the fiscal note prepared by the Division of the Budget on SB 70, as introduced, the Department of Revenue indicates enactment of SB 70 would have a negligible fiscal effect on state revenues and expenditures. The LKM and the Kansas Association of Counties indicate the bill would maintain local control by requiring local government approval before allowing alcohol consumption to be extended into a city, county, or township street, alley, road, sidewalk, or highway on a temporary basis.

HB 2239 (Common Consumption Areas)

HB 2239 was introduced by the House Committee on Local Government at the request of Representative Long.

At the House Committee hearing, representatives of the City of Lenexa (Lenexa), the Kansas Licensed Beverage Association (KLBA), and the LKM testified in favor of the bill. The representatives of KLBA and Lenexa stated the bill is a targeted way to address issues regarding the selling of liquor for consumption in areas within a CCA, but away from the licensed premises of a vendor by letting the licensee establish a non-contiguous service area within a CCA. The LKM representative stated this would allow the CCA permit holder to determine where a satellite service area would be located, noting it would allow more accessible service at larger events.

Neutral testimony was provided by a representative of the ABC. The representative suggested cities and counties

check their resolutions or ordinances to ensure sales by these licensees are authorized in the permitted area. Additionally, the representative suggested the bill be amended to require certain approvals and licenses be displayed on the premises of the non-contiguous service area at all times and be made available for inspection upon request.

The House Committee amended the bill to require a licensee to display a copy of its drinking establishment license and approval from the CCA permit holder at its noncontiguous service area.

According to the fiscal note prepared by the Division of the Budget, enactment of HB 2239, as introduced, would have no fiscal effect on the ABC.

SB 164 (ABC License Terms)

SB 164 was introduced by the Senate Committee on Federal and State Affairs at the request of the Department of Revenue.

During the Senate Committee hearing, proponent testimony was provided by a representative of ABC, who indicated the bill would help eliminate potential confusion among licensees and would allow the agency to more accurately track license terms.

No other testimony was provided.

The Senate Committee recommended the bill be placed on the Consent Calendar.

According to the fiscal note prepared by the Division of Budget on SB 164, the Department of Revenue indicates enactment of SB 164 would have no fiscal effect.

HB 2133 (Delivery of Alcoholic Liquors)

HB 2133 was introduced by the House Committee on Taxation at the request of the Kansas Wine & Spirits Wholesalers Association.

In the House Committee on Federal and State Affairs hearing, proponent testimony was presented by the Director and a representative of the KWSWA. Written-only proponent testimony was provided by the Kansas Association of Beverage Retailers (KABR) and the Kansas Beer Wholesalers Association (KBWA). The proponents testified the intent of the bill was to enforce liquor gallonage taxes in the state and to provide information regarding the amount of alcoholic liquor shipped into the state directly to consumers.

No other testimony was provided.

The House Committee amended the bill to specify required reports would concern known alcoholic liquors shipped by the carrier and penalties would be assessed against carriers who willfully failed, neglected, or refused to file a report. The House Committee also amended the bill to remove references to railroad carriers. [*Note: The Conference Committee retained these amendments.*]

In the Senate Committee on Federal and State Affairs hearing, a representative of KABR, a representative of KWSWA, and the Director provided proponent testimony. The proponents testified the bill would help identify bad actors and bring them into compliance, which could increase the amount of taxes the State could collect on the shipments of alcoholic liquors.

Written-only proponent testimony was provided by a representative of the KBWA.

No other testimony was provided.

The Senate Committee amended the bill by prohibiting the inclusion of the name and business address of the

consignor of such alcoholic liquors in reports made available to the public and establishing such prohibition would expire on July 1, 2024, unless the Legislature reenacts such provisions. [Note: The Conference Committee retained these amendments.]

According to the fiscal note prepared by the Division of the Budget on HB 2133, as introduced, the Division of ABC indicates enactment of HB 2133 would result in additional expenditures of \$24,000 of State General Fund moneys in FY 2020 for information technology services to build a public-facing data entry portal where shipping carriers could report required data.

In addition, ABC indicates enactment of HB 2133 could result in increased collection of gallonage taxes, but ABC is unable to estimate the amount of such increase. Any fiscal effect associated with enactment of HB 2133 is not reflected in *The FY 2020 Governor's Budget Report*.

HB 2223 (Sale of Farm Winery by Producer Licensees)

HB 2223 was introduced by the House Committee on Commerce, Labor and Economic Development at the request of Representative Corbet on behalf of a grower of fruits and berries.

At the House Committee hearing, a representative from the Kansas Viticulture and Farm Winery Association and several owners of orchards and apiaries spoke in favor of the bill, explaining the legislation would encourage agritourism.

The Director provided neutral testimony, suggesting several amendments. No opponent testimony was provided.

The House Committee amended the bill to:

- Change reference from producer permit to producer license, and increasing:

- The period of license validity from one year to two years; and
- The license fee from \$100 to \$200;
- Reconcile the bill with provisions of continuing law, including the payment of taxes; and
- Allow for producer licensees to prohibit the possession of certain alcoholic liquors and cereal malt beverages from their premises. [*Note:* The Conference Committee retained these amendments.]

In the Senate Committee on Federal and State Affairs hearing, proponent testimony was provided by the Kansas Farm Winery & Viticulture Association and representatives of a berry farm and a representative of a vineyard permittee. Neutral testimony was provided by the Director of ABC. No other testimony was provided.

The Senate Committee adopted a technical amendment to the bill.

According to the fiscal note provided by the Division of the Budget on HB 2223, as introduced, the Department of Revenue estimates enactment of HB 2223 would increase revenues to all funds by \$10,000 and increase expenditures by \$7,750 in FY 2020. Any fiscal effect associated with enactment of HB 2223 is not reflected in *The FY 2020 Governor's Budget Report*.

SB 53 (Official Red and White Wine Grapes)

SB 53 was introduced by the Senate Committee on Federal and State Affairs at the request of Senators Holland, Alley, Baumgardner, Braun, Francisco, Haley, Lynn, McGinn, and Ware.

During the Senate Committee hearing, representatives of the Kansas Grape Growers and Winemakers Association and the Kansas Viticulture & Farm Winery Association testified in support of the bill. Proponents testified both grape varieties have long been grown in Kansas and are still being grown across the state.

Written-only proponent testimony was provided by the Kansas Department of Wildlife, Parks and Tourism.

The Senate Committee recommended the bill be placed on the Consent Calendar.

During the hearing in the House Committee on Federal and State Affairs, representatives of the Kansas Viticulture & Farm Winery Association and the Kansas Grape Growers and Winemakers Association testified in support of the bill.

Written-only proponent testimony was provided by the Kansas Department of Wildlife, Parks and Tourism.

No other testimony was provided.

The House Committee amended SB 53 to be effective upon publication in the *Kansas Register*.

According to the fiscal note prepared by the Division of the Budget on SB 53, as introduced, the Department of Agriculture and the Secretary of State indicate enactment of SB 53 would have no fiscal effect on either agency.

alcoholic liquor; alcoholic liquor license; Club and Drinking Establishment Act; common carrier; Kansas Liquor Control Act; temporary permits, samples; vineyard permit; wine; wine grapes

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