

SESSION OF 2019

SUPPLEMENTAL NOTE ON SENATE BILL NO. 70

As Amended by Senate Committee of the Whole

Brief*

SB 70, as amended, would amend and consolidate laws concerning temporary permits to serve liquor for consumption on premises. The bill would codify several Kansas Alcoholic Beverage Control Division (ABC) rules and regulations into statute.

The bill would repeal KSA 2018 Supp. 41-347 and KSA 2018 Supp. 41-2645, but would retain most of the provisions of these statutes in new law. Changes and additions to the law concerning temporary permits are discussed below.

The bill would also amend laws concerning common consumption areas.

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.

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

*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>

would be served as part of the requirement to specify the premises covered by the temporary permit.

Under the bill, an application for a temporary permit could be rejected by the Director 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;
- 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 current 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 or 41-2601. The bill would also remove the definition for a special event.

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.

The bill would also make technical changes.

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

Background

The bill would add the contents of HB 2239 to SB 70.

SB 70

The bill was introduced in the Senate Committee on Federal and State Affairs by 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. 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.

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 (*Note:* The amendment incorporates an amendment adopted by the Senate Committee that was not included in the committee report.);
- 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.

According to the fiscal note prepared by the Division of the Budget on the bill, as introduced, the Department of Revenue indicates the bill would have a negligible fiscal effect on state revenues and expenditures. The League of Kansas Municipalities (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

The bill was introduced by the House Committee on Local Government (House Committee) 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.