

**CONFERENCE COMMITTEE REPORT BRIEF
SENATE SUBSTITUTE FOR HOUSE BILL NO. 2124**

As Agreed to April 2, 2024

Brief*

Senate Sub. for HB 2124 would amend law pertaining to microbreweries. Among other changes, the bill would permit microbreweries to self-distribute beer and hard cider up to certain limits, lower the number of barrels per year a microbrewery may manufacture and store, and require a study and report on licensed microbrewery compliance with state laws and rules and regulations regarding the collection and remittance of alcoholic liquor enforcement and gallonage taxes.

Study on Microbrewery Compliance

The bill would direct the Secretary of Revenue (Secretary) and the Director of the Department of Revenue's Division of Alcoholic Beverage Control (ABC) to each:

- Conduct a compliance study on licensed microbrewery compliance with state laws and rules and regulations regarding the collection and remittance of:
 - Alcoholic liquor enforcement taxes (Secretary);
 - Alcoholic liquor gallonage taxes (Director of ABC); and
- On or before January 15, 2025, prepare and submit a report to the Governor and the Legislature on the findings of such study, including any recommendations regarding collection and remittance, monitoring, and ensuring compliance with applicable laws and rules and regulations.

These provisions would expire on July 1, 2025.

*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/kIRD>

Microbrewery Licenses

Annual Barrel Limit

The bill would lower the number of barrels of beer per calendar year a microbrewery licensee could manufacture and store from 60,000 barrels to 30,000 barrels.

[*Note:* Continuing law provides that a microbrewery licensee may manufacture and store up to 100,000 gallons of hard cider during the calendar year.]

Self-Distribution

Under the bill, a microbrewery licensee would be allowed to sell beer and hard cider manufactured by such licensee to licensed beer and wine distributors, retailers, public venues, clubs, drinking establishments, caterers, and temporary permit holders. The bill would limit the total annual sales to:

- 1,000 barrels of beer; and
- 3,000 gallons of hard cider.

The bill would also allow a microbrewery licensee to sell beer and hard cider manufactured by the licensee both on the licensed premises and off the licensed premises at special events monitored and regulated by the ABC. [*Note:* This is similar to a provision currently applicable to farm wineries under KSA 41-308a.]

Ownership Interest

The bill would permit a microbrewery or an owner, officer, stockholder, or director of a microbrewery to have an interest in a licensed club, drinking establishment, or caterer, and the limit on total annual sales would not apply to the distribution of beer or hard cider by a microbrewery licensee to either:

- A drinking establishment or caterer licensed under the Club and Drinking Establishment Act in which such microbrewery licensee holds a 25 percent or greater ownership interest; or
- Another microbrewery licensee or a licensed microbrewery packaging and warehouse facility in which such microbrewery licensee holds a 25 percent or greater ownership interest.

Distributor Requirements

The bill would apply requirements for distributors under continuing law to microbreweries and would also require the Secretary to include microbreweries in certain rules and regulations applicable to manufacturers or distributors.

The bill would specify that a microbrewery would be prohibited from selling or attempting to sell any beer or hard cider within the state except to retailers licensed under the Kansas Liquor Control Act or the Kansas Cereal Malt Beverage Act or a licensee under the Club and Drinking Establishment Act. The bill would also require such sales be made within a geographic territory described in a notice filed with the Director of ABC.

The bill would permit a distributor or microbrewery to buy back or exchange any beer or cereal malt beverage (CMB) within 30 days of its expiration date at the original sales price.

Temporary Permits

The bill would allow a temporary permit holder to offer for sale, sell, and serve beer or hard cider that is:

- Manufactured by a microbrewery licensee; and
- Purchased or acquired from a microbrewery licensee for consumption on licensed or unlicensed premises, or other premises subject to a separate temporary permit that may be open to the public and subject to terms of such permit.

Drinking Establishments

The bill would allow drinking establishments to acquire and sell beer from a microbrewery licensed under the Kansas Liquor Control Act.

The bill would also allow a drinking establishment to acquire hard cider from a Kansas-licensed microbrewery that possesses a federal wholesaler's basic permit.

Technical and Conforming Amendments

The bill would remove provisions that expired on January 1, 2023, requiring a certain percentage of the products utilized in the manufacture of hard cider by a microbrewery to be grown in Kansas.

The bill would also make technical and conforming amendments throughout to implement the provisions of the bill.

Conference Committee Action

The Conference Committee agreed to retain all provisions of Senate Sub. for HB 2124 and add new provisions directing the Secretary and Director of ABC to study and report on licensed microbrewery compliance with state laws and rules and regulations regarding the collection and remittance of alcoholic liquor enforcement and gallonage taxes.

Background

Senate Sub. for HB 2124, as recommended by the Senate Committee on Federal and State Affairs, contained the provisions of SB 511. The Conference Committee retained the provisions of Senate Sub. for HB 2124 and added provisions directing the Secretary and Director of ABC to study and report on licensed microbrewery compliance with state laws and rules and regulations regarding the collection and remittance of alcoholic liquor enforcement and gallonage taxes.

[*Note:* As passed by the House, HB 2124 would have amended provisions in the Kansas Cereal Malt Beverage Act concerning on-premises sales of CMB to remove the 30 percent food sales requirement for Sunday sales. These provisions were added to 2023 House Sub. for SB 116.]

SB 511 (Microbreweries)

SB 511 was introduced by the Senate Committee on Federal and State Affairs at the request of a representative of the Kansas Craft Brewers Guild, Inc.

Senate Committee on Federal and State Affairs

In the Senate Committee hearing, **proponent** testimony was provided by representatives of Americans for Prosperity and three microbreweries. The conferees generally stated the bill would remove barriers for microbreweries to sell directly to retailers and help improve growth and sustainability for microbreweries, especially in rural communities. The conferees also noted that the provisions of the bill are modeled after provisions permitting farm wineries to sell directly to retailers, and 41 other states permit direct sales in some form.

Written-only proponent testimony was provided by representatives of Great Plains Biosciences Group, LLC; the Greater Topeka Chamber; Kansas Craft Brewers Guild, Inc.; Leavenworth-Lansing Chamber of Commerce; Republic County Economic Development; and 11 microbreweries.

Neutral testimony was provided by a representative of the ABC. The conferee discussed concerns that the bill would blur the lines of the three-tier system used to regulate alcohol and allow any microbrewery to self-distribute in Kansas because the U.S. Supreme Court has held that in-state and out-of-state licensees cannot be treated differently (*Granholm v. Heald*, 544 U.S. 406 (2005)). Further, the conferee stated one of the reasons that farm wineries were authorized to self-distribute was to promote agritourism because 60 percent of products utilized in the manufacture of the wine was required to be grown in Kansas. [*Note:* There is no requirement for Kansas products to be utilized in current law. The Kansas-grown products requirement expired on January 1, 2023.]

Opponent testimony was provided by representatives of the Kansas Association of Beverage Retailers and Kansas Beer Wholesalers Association. The conferees generally stated the bill would be a major departure from the three-tier system used to regulate alcohol, allow large brewers to control the market, and open the door to liquor laws being drafted by courts instead of the Legislature. The conferees also expressed concerns about microbreweries acting as distributors without having to comply with the same requirements as distributor licensees.

Written-only opponent testimony was provided by a representative of the Kansas Wine and Spirits Wholesalers Association.

The Senate Committee amended the bill to:

- Decrease the number of barrels of beer per calendar year a microbrewery licensee may manufacture and store from 60,000 barrels to 30,000 barrels [*Note:* The Conference Committee retained the amendment.];
- Limit a microbrewery's total annual sales of beer and hard cider to retailers, public venues, clubs, drinking establishments, caterers, and temporary permit holders to 1,000 barrels of beer and 3,000 gallons of hard cider [*Note:* The Conference Committee retained the amendment.];
- Provide exceptions to the limit on total annual sales for microbrewery licensees that hold a 25 percent or greater ownership interest in drinking establishments, caterers, licensed microbrewery packaging, and warehouse facilities, or other microbrewery licensees [*Note:* The Conference Committee retained the amendment.];
- Subject microbrewery licensees to requirements for distributors under continuing law [*Note:* The Conference Committee retained the amendment.];
- Permit distributors and microbreweries to buy back or exchange any beer or CMB within 30 days of its expiration date and at the original sales price [*Note:* The Conference Committee retained the amendment.]; and
- Make technical and conforming amendments [*Note:* The Conference Committee retained the amendment.].

Fiscal Information

According to the fiscal note prepared by the Division of the Budget on SB 511, as introduced, the Department of Revenue indicates that ABC and the Division of Taxation would use existing resources to update forms, publications, and handbooks.

Microbrewery; beer; cider; self-distribution; Division of Alcoholic Beverage Control; Secretary of Revenue; alcoholic liquor enforcement tax; gallonage tax

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