

March 11, 2016

The Honorable Mark Hutton, Chairperson
House Committee on Commerce, Labor and Economic Development
Statehouse, Room 521-E
Topeka, Kansas 66612

Dear Representative Hutton:

SUBJECT: Fiscal Note for HB 2718 by House Committee on Taxation

In accordance with KSA 75-3715a, the following fiscal note concerning HB 2718 is respectfully submitted to your committee.

HB 2718 would amend the Liquor Control Act by putting in a procedure that would allow off-premise cereal malt beverage (CMB) retailers to apply for a newly created beer license that would allow the sale of beer at convenience and grocery stores. CMB manufacturers would be required to notify the Department of Revenue at least 30 days prior to ceasing the manufacture of any brand registered in Kansas. Once the actual or estimated amount of CMB gallonage tax for the brand has or will decline by at least 25.0 percent, the Department of Revenue would be required to notify the Governor, who would declare that CMB is no longer available in an economically viable quantity. After the Governor's declaration, an off-premise CMB retailer could apply for a newly created beer license.

The bill would set the minimum age requirement for employees of a beer license to at least 18 years old and would require an employee who is under the age of 21 to be supervised by the licensee or an employee of the licensee who is at least 21 years of age. The Director of Division of Alcoholic Beverage Control (ABC) of the Department of Revenue would be authorized to issue a beer license with a biannual license fee set at \$500. The bill would create the Local Cereal Malt Beverage Sales Tax Fund, which would be used for liquor enforcement purposes, and would require 3.0 percent of liquor enforcement taxes to be deposited in this fund with quarterly distributions to each city and county which levied a local sales tax. The amount distributed would be determined based on a weighted population average. The Department of Revenue would have the authority to adopt rules and regulations to implement the new beer license.

Passage of HB 2718 would have an indeterminate fiscal effect on state and local tax revenues. It is unknown if the actual or estimated amount of CMB gallonage tax would decline by at least 25.0 percent to trigger the Governor's declaration that off-premise CMB retailers

could apply for the newly created beer license. If a beer license would become available, it could result in a decrease in CMB gallonage tax receipts, decrease in CMB stamp fees, decrease in state and local sales tax receipts, increase in beer gallonage tax receipts, increase in liquor enforcement tax receipts, increase in drinking establishment license fees, and new fee revenue from the newly created beer license. If the beer license would become available, it is assumed that the decrease in CMB gallonage tax would be offset by the increase in beer gallonage tax.

CMB licenses are issued by cities and counties for both on-premise consumption (i.e. taverns and restaurants) and off-premise consumption (i.e. grocery stores and convenience stores) and are subject to state and local sales tax. The state does not charge a fee for a CMB license; however, each CMB license holder must pay a \$25 CMB stamp fee. Currently there are 1,954 off-premise CMB and 1,485 on-premise CMB licenses issued, which generates a total of \$85,975. If CMB no longer existed, the \$85,975 in CMB stamp fee revenue would be eliminated.

Currently, the Department indicates the sale of cereal malt beverages generates approximately \$7.5 million in state sales tax and approximately \$1.9 million in local sales tax. The Department indicates if businesses switch from selling cereal malt beverages to beer, sales tax revenue would decrease and liquor enforcement tax revenue would increase. Since the bill would provide 3.0 percent of liquor enforcement tax remittances credited to the Local Cereal Malt Beverage Sales Tax Fund, distributions to cities and counties would increase to help recoup the loss of local sales tax. If the bill were to take effect at the beginning of FY 2017, it is estimated that approximately \$2.2 million in liquor enforcement tax revenue would be transferred to cities and counties and overall liquor enforcement tax revenue would increase by approximately 4.6 percent.

If CMB no longer existed, the 1,485 on-premise CMB licensees would be forced to convert to a drinking establishment license or cease alcohol sales. Assuming that 50.0 percent of the current on-premise CMB retailers applied for a drinking establishment license, a total of approximately \$1.5 million in revenue would be generated from license and registration fees. Each biannual drinking establishment license is \$2,000 and the registration fee for a new license is \$50. Assuming that each current off-premise CMB license was replaced with a beer license, the biannual \$500 license fee and \$50 registration fee would generate approximately \$1.1 million in revenue.

The Department of Revenue indicates the bill would require \$2,240,000 from the State General Fund in FY 2017 for administrative costs to implement the bill, including changes to ABC forms and publications, and modifications to the Department's licensing computer system. The bill would require 25.00 new FTE positions to issue the new beer license and enforce liquor laws. The required programming for this bill by itself would be performed by existing staff of the Department of Revenue. However, if the combined effect of implementing this bill and other enacted legislation exceeds the Department's programming resources, or if the time for implementing the changes is too short, expenditures for outside contract programmer services beyond the Department's current budget may be required.

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The Kansas Department of Transportation (KDOT) indicates that the bill has the potential to reduce state revenues to the State Highway Fund from the reduction or elimination of CMB that are currently subject to state and local sales taxes. KDOT indicates that when the state receives lower State Highway Fund dollars it may be required to make corresponding reductions to planned expenditures for projects funded under the comprehensive transportation plan, known as T-WORKS.

The Kansas Association of Counties and the League of Kansas Municipalities indicate that the bill would provide a new source of revenues for local governments by distributing 3.0 percent of liquor enforcement taxes from the Local Cereal Malt Beverage Sales Tax Fund. However, the transfers from the Local Cereal Malt Beverage Sales Tax Fund would be restricted to the enforcement of the Liquor Control Act at the local level. The bill has the potential to reduce local sales tax collections that are used in part to finance local governments from the reduction or elimination of sales of CMB. However, the Kansas Association of Counties and the League of Kansas Municipalities do not have data to provide a precise estimate of the amount of transfers that local governments would receive from the Local Cereal Malt Beverage Sales Tax Fund or the amount of decreased local sales tax revenues from the enactment of the bill. Any fiscal effect associated with HB 2718 is not reflected in *The FY 2017 Governor's Budget Report*.

Sincerely,

A handwritten signature in black ink, appearing to read "Shawn Sullivan", with a horizontal line extending to the right.

Shawn Sullivan,
Director of the Budget

cc: Jack Smith, Department of Revenue
Larry Baer, League of Municipalities
Melissa Wangemann, Association of Counties
Ben Cleeves, Transportation