

SESSION OF 2018

**SECOND CONFERENCE COMMITTEE REPORT BRIEF  
HOUSE BILL NO. 2470**

As Agreed to April 6, 2018

**Brief\***

HB 2470 would allow microbreweries within the state of Kansas to contract with other microbreweries for production and packaging of beer and hard cider, create and amend law related to the sale of alcoholic candy and to the sale of domestic beer in refillable containers, allow licensed microbrewers in the State to produce beer containing up to 15.0 percent alcohol by weight, increase the length of time that certain businesses may serve or sell alcohol, and allow self-service beer from automated machines.

***Microbreweries Production and Packaging (HB 2470)***

The bill would allow microbreweries within the state of Kansas to contract with other microbreweries for production and packaging of beer and hard cider.

The contracting Kansas microbrewery would be held to all applicable state and federal laws concerning manufacturing, packaging, and labeling and would be responsible for payment of all state and federal taxes on the beer or hard cider.

Production of beer or hard cider would count toward production limits in continuing law for both of the microbreweries involved in such a contract. The bill would

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allow the beer or hard cider to be transferred to the microbrewery on whose behalf the beer or hard cider was produced, after production and packaging.

***Sale of Alcoholic Candy; Adulterated Foods (HB 2476)***

The bill would define “alcoholic candy” as follows:

- For purposes of manufacturing, “alcoholic candy” would be defined as any candy or other confectionery product with an alcohol content greater than 0.5 percent alcohol by volume; and
- For purposes of sale at retail locations, “alcoholic candy” would be defined as any candy or other confectionery product with an alcohol content greater than 1.0 percent alcohol by volume.

The term would be included in the definition of “alcoholic liquor.” Alcoholic candy would be subject to regulation by the Alcoholic Beverage Control Division (ABC) of the Kansas Department of Revenue (KDOR), and a retailer would be required to have a liquor license to sell such products.

In addition, the bill would amend law regarding adulterated food. Current law states confectionery containing more than 0.5 percent by volume of alcohol derived solely from the use of flavoring extracts is considered an adulterated food. The bill would exempt confectionery containing not more than 1.0 percent by volume of alcohol from the definition of adulterated food.

### ***Sale of Domestic Beer in Refillable Containers (HB 2476)***

The bill would amend the definition of “domestic beer” to allow licensed microbrewers in the State to produce beer containing up to 15.0 percent alcohol by weight. Current law prohibits microbrewers from producing beer with more than 10.0 percent alcohol by weight.

The bill would allow a microbrewery licensee to sell beer manufactured by the licensee in refillable and sealable containers to consumers for off-premises consumption. Such containers could not contain less than 32 fluid ounces or more than 64 fluid ounces of beer. Licensees would be required to affix labels to all containers sold, which would include the licensee’s name and the name and type of beer in such container.

[*Note:* Enacted 2017 House Sub. for SB 13 amended provisions of the Liquor Control Act and Cereal Malt Beverage Act. Certain provisions of the 2017 bill were delayed in implementation until April 1, 2019. References to such date are to reconcile the provisions of the 2017 and 2018 legislation.]

### ***Hours of Sale and Service for Alcohol (HB 2482)***

The bill would increase the length of time that certain businesses may serve or sell alcohol. Establishments licensed to serve alcohol would be allowed to sell drinks starting at 6:00 a.m. Under current law, establishments may not sell drinks between the hours of 2:00 a.m. and 9:00 a.m.

Farm wineries, microbreweries, and microdistilleries would be allowed to sell their respective alcoholic products in their original containers between 6:00 a.m. and 12:00 a.m. on any day. Current law limits the hours these establishments may sell alcohol on Sundays, between 12:00 p.m. and 6 p.m. for farm wineries and between 11:00 a.m. and 7:00 p.m. for microbreweries and microdistilleries.

The bill would define “day” to mean that period of time from 6:00 a.m. until 2:00 a.m. the following calendar day.

### ***Self-service Beer from Automated Devices (SB 433)***

The bill would allow licensed public venues, clubs, and drinking establishments to provide self-service beer to customers from automated devices in the same manner as is permitted for wine under current law, so long as the licensee monitors the dispensing of beer and can control such dispensing.

#### *Definitions*

The bill would define an “automated device” as any mechanized device capable of dispensing wine or beer directly to a customer in exchange for compensation that a licensee has received directly from a customer.

The bill would also define the term “day” to mean 6:00 a.m. until 2:00 a.m. the following calendar day.

#### *Notice*

A licensee would be required to provide written or electronic notice to the Director of ABC of a licensee’s intent to use an automated device at least 48 hours before the automated device is used on the licensed premises.

#### *Video Monitoring*

The bill would require any licensee offering self-service beer or wine from any automated device to provide constant video monitoring of the automated devices at all times the licensee is open to the public. The licensee would be required to maintain the recorded footage for at least 60 days and, if

requested, provide the footage to any agent of the Director of ABC or other authorized law enforcement agent.

### *Access Card*

Under the bill, compensation would be in the form of a prepaid access card containing a fixed monetary amount that can be directly exchanged for beer or wine from an automated device. The access cards could be sold, used, or reactivated only during the business day. The cards would be purchased from the licensee by a customer and a licensee could issue only one active card to a customer. An access card would be considered active if the access card contains monetary credit or has not yet been used to dispense 15 ounces of wine or 32 ounces of beer. The purchase of an access card would be subject to the liquor drink tax.

A customer would be required to show a valid driver's license, identification card, or other government-issued document that contains a photograph of the customer and indicates the customer is at least 21 years of age. The bill would require each access card to be programmed to require the customer show identification before the access card could be used for the first time during any business day or for any subsequent reactivation.

The bill would require that access cards become inactive at the end of each business day. The access card would also become inactive if it were used to dispense 15 ounces of wine or 32 ounces of beer. A customer would be able to reactivate the access card to allow an additional 15 ounces of wine or 32 ounces of beer by showing identification to the licensee or licensee's employee.

### *Service Hours*

Current law prohibits public venues, clubs, or drinking establishments from allowing the serving, mixing, or

consumption of alcohol on its premises between 2:00 a.m. and 9:00 a.m. The bill would amend the prohibited service period to last from 2:00 a.m. to 6:00 a.m.

#### *Other Provisions*

The bill would require the Secretary of Revenue to adopt rules and regulations to implement the provisions of the bill by January 1, 2019.

The bill would also state that all current laws and rules and regulations concerning the sale of alcohol to individuals under 21 years of age would apply to the sales transaction of the access card.

#### **Effective Date**

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

#### **Conference Committee Action**

The second Conference Committee agreed to the contents of HB 2470, as amended by the Senate Committee of the Whole, with the following changes:

- Remove the definition of “judge” from HB 2470, as amended by the Senate Committee of the Whole;
- Add the contents of HB 2476, as amended by the Senate Committee of the Whole, but amend the definition of “alcoholic candy” to include for purposes of manufacturing, candy or other confectionery products with an alcohol content greater than 0.5 percent alcohol by volume and for purposes of retail sales, candy or other

confectionery products with an alcohol content greater than 1.0 percent alcohol by volume;

- Amend the existing definition of “adulterated food” to exempt any confectionery with an alcohol volume of not more than 1.0 percent;
- Add the contents of HB 2482, as amended by Senate Committee on Commerce, but remove language regarding farm winery outlets and the ability for the outlets to sell individual drinks;
- Add the contents of SB 433, as amended by the House Committee of Federal and State Affairs; and
- Establish the effective date as upon publication in the *Kansas Register*.

## **Background**

The bill contains the agreed-to contents of HB 2470, as amended by the Senate Committee of the Whole; HB 2476, as amended by the Senate Committee of the Whole; HB 2482, as amended by the Senate Committee on Commerce; and SB 433, as amended by the House Committee. Background information on these bills follows below.

### ***HB 2470***

The bill was introduced by the House Committee on Federal and State Affairs at the request of a representative of the Kansas Craft Brewers Guild.

### ***House Action***

At the hearing in the House Committee on Federal and State Affairs, proponent testimony was presented by

Representative Averkamp, who stated that the bill was requested on behalf of one of his constituents. Representative Averkamp testified the bill would address the changing needs of microbrewers in Kansas.

Further proponent testimony was presented by a representative of the Kansas Craft Brewers Guild and a representative of Willcott Brewing Company. The proponents indicated the bill would allow microbrewers in Kansas to expand their production and would be mutually beneficial for contracting microbrewers. The proponents further indicated that counting the production of contracted beer and hard cider toward annual production limits would not cause most microbreweries to exceed allowed production.

Written proponent testimony was provided by the Norsemen Brewing Company. Written neutral testimony was provided by ABC. No other testimony was provided.

The House Committee amended the bill to allow for the transfer of both beer and hard cider manufactured by a licensee for a contracting microbrewery and to provide that both barrels of beer and hard cider produced pursuant to such contracts would be included as part of the production limits for both contracting licensees. [*Note:* The second Conference Committee retained this change.]

Calendar-year production limits in continuing law are 60,000 barrels of beer and 100,000 gallons of hard cider.

### *Senate Action*

The Senate Committee on Federal and State Affairs heard proponent testimony from Representative Averkamp and representatives of the Kansas Craft Brewers Guild and Willcott Brewing, who testified the bill would address the changing needs of microbrewers in Kansas.

Neutral testimony was provided by the Director of ABC. No other testimony was provided.

The Senate Committee of the Whole amended the bill to define “judge” as a person who receives an invitation to an event conducted by the host when the invitation has been made available to the general public and allow the Director of ABC to adopt reasonable rules and regulations regarding contests and competitions. [*Note:* The second Conference Committee did not retain this change.] The Senate Committee of the Whole also amended the bill to change the effective date from publication in the statute book to publication in the Kansas Register and make technical corrections. [*Note:* The second Conference Committee retained this change.]

#### *Fiscal Note*

According to the fiscal note prepared by the Division of the Budget on HB 2470, as introduced, KDOR estimates any fiscal effect associated with the enactment of the bill would be negligible and could be absorbed within existing resources. An updated fiscal note was not available at the time the Senate Committee of the Whole took action on the bill.

#### **HB 2476**

HB 2476, as amended, includes provisions of HB 2476 and HB 2475.

#### *HB 2476*

The bill was introduced by the House Committee on Federal and State Affairs at the request of ABC.

*House Action.* In the House Committee hearing, the Director of ABC testified in favor of the bill. The proponent

stated the bill was requested due to concerns by licensees, because current law allows for the sale only of alcoholic beverages. No other testimony was provided.

The House Committee amended the bill by inserting the contents of HB 2475, relating to the sale of beer by licensed microbrewers in refillable and sealable containers to consumers for off-premises consumption. The House Committee further amended those contents to change the definition of “domestic beer.” [Note: The second Conference Committee retained the changes, with technical amendments added by the Senate.]

*Senate Action.* In the Senate Committee on State and Federal Affairs hearing, the Director of ABC and a representative from the Kansas Craft Brewers Guild provided proponent testimony. No other testimony was provided.

The Senate Committee of the Whole amended the bill to increase the alcohol content allowed in alcoholic candy from 0.5 percent to 1.0 percent, to make the corresponding change in current law concerning adulterated food, and to make additional technical changes. [Note: The second Conference Committee did not retain the changes to alcohol content.]

*Fiscal Note.* According to the fiscal note prepared by the Division of the Budget on HB 2476, as introduced, KDOR stated enactment of the bill could increase liquor excise taxes, but the amount could not be estimated. KDOR further stated there would be no administrative impact. An updated fiscal note was not available at the time the Senate Committee of the Whole took action on the bill.

#### *HB 2475*

The bill was introduced by the House Committee on Federal and State Affairs at the request of ABC.

In the House Committee hearing, the Director of ABC and a representative of the Kansas Craft Brewers Guild testified in favor of the bill. Proponents indicated the bill would codify current practices by Kansas microbreweries that sell and fill or refill containers with beer manufactured by the microbrewery.

Written proponent testimony was provided by the Kansas Restaurant and Hospitality Association. No other testimony was provided.

According to the fiscal note prepared by the Division of the Budget on HB 2475, as introduced, KDOR stated enactment of the bill would have no fiscal effect.

### ***HB 2482***

The House Committee on Commerce, Labor and Economic Development introduced the bill at the request of Representative Williams.

#### *House Action*

During the hearing before the House Committee on Commerce, Labor and Economic Development, Representative Williams provided testimony (written only), along with representatives of various alcoholic beverage and trade associations and business firms, in support of the bill. Proponents said the bill would benefit persons who eat out earlier during the day, especially workers who have completed a late night shift. Extended hours would appeal to viewers of live, internationally broadcast sporting events.

A representative of ABC provided written-only neutral testimony, stating ABC would not view the bill as having any impact on public health or safety.

There was no opponent testimony.

### *Senate Action*

During the hearing before the Senate Committee on Commerce, representatives of various alcoholic beverage and trade associations and business firms spoke in favor of the bill. Proponents said the bill would benefit persons who eat out earlier during the day, especially workers who have completed a late night shift. Extended hours would appeal to viewers of live, internationally broadcast sporting events. Proponents representing farm wineries suggested the bill be amended to make the hours of sale for wineries uniform with those of licensed establishments.

A representative of ABC provided written-only neutral testimony, stating the agency would not view the bill as having any impact on public health or safety.

There was no opponent testimony.

The Senate Committee amended the bill to:

- Increase the number of hours in which farm wineries, microbreweries, and microdistilleries would be allowed to sell their respective alcoholic products [*Note:* The second Conference Committee retained the changes.]; and
- Allow farm winery outlets to sell individual drinks. [*Note:* The second Conference Committee did not retain the changes.]

### *Fiscal Note*

According to the fiscal note prepared by the Division of the Budget, in consultation with KDOR, the Kansas Association of Counties (KAC), and the League of Kansas Municipalities (LKM), HB 2482, as introduced, would have the potential to increase state revenues. The increase in administrative costs would be negligible. KAC indicates the

bill would have no fiscal effect on counties, and LKM states there is a potential to increase municipal revenues.

### **SB 433**

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

#### *Senate Action*

In the Senate Committee hearing, proponent testimony was presented by representatives of Brew Bank, LLC, Downtown Topeka, Inc., Greater Topeka Chamber of Commerce, and the Kansas Restaurant and Hospitality Association. Proponents stated the majority of states allow automated dispensers and the bill would help promote Kansas brewers and local development. Written-only proponent testimony was provided by AIM Strategies, LLC, and a representative of Brew Bank, LLC. No other testimony was provided.

Neutral testimony was presented by the Director of ABC and a representative of the Kansas Licensed Beverage Association.

The Senate Committee amended the bill to include the definitions of “automated device” and “day.” The amendments also included provisions related to notifications to the Director of ABC for intent to use an automated device by a licensee; video monitoring of automated devices during business hours and storage of recorded footage; the purchase, activation, and deactivation provisions related to access cards; and establishing certain hours when alcohol cannot be served, mixed, or consumed in a public venue, club, or drinking establishment. [*Note:* The second Conference Committee retained the changes.]

### *House Action*

In the House Committee on Federal and State Affairs hearing, proponent testimony was presented by a representative of Brew Bank, LLC, and Capitol Connection. Written-only proponent testimony was provided by AIM Strategies, LLC, Brew Bank, LLC, Downtown Topeka, Inc., and the Greater Topeka Chamber of Commerce. Written-only neutral testimony was provided by the Director of ABC. No other testimony was presented.

The House Committee amended the bill by amending the effective date of the bill and removing provisions that would have expanded service hours. [*Note:* The second Conference Committee retained the changes.]

### *Fiscal Note*

According to the fiscal note prepared by the Division of the Budget on the bill, as introduced, KDOR estimates the bill would not have a fiscal effect on the agency or state revenues.

alcohol; alcoholic candy and confectionery products; microbreweries; on-premises sale of certain large containers of beer for off-premises consumption; farm wineries; microbreweries; microdistilleries; alcohol sales hours; self-service dispensers; self-service automated devices

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