

SESSION OF 2020

SUPPLEMENTAL NOTE ON SENATE BILL NO. 221

As Amended by House Committee on Federal
and State Affairs

Brief*

SB 221, as amended, would modify the Club and Drinking Establishment Act (Act) and law concerning the retail sales of alcoholic liquor as they relate to removable and sealable containers of beer and cereal malt beverage (CMB), would expand the categories of alcoholic liquor licensees who can sell CMB, would allow temporary permit holders to sell CMB along with alcoholic liquor, and would allow CMB to be consumed in common consumption areas.

Removable and Sealable Containers

Club and Drinking Establishments

The bill would allow a patron to remove or one or more containers of beer, domestic beer, and CMB sold on the licensed premises and served in refillable and sealable containers for consumption off the licensed premises. The bill would require such containers to:

- Contain between 32 and 64 fluid ounces;
- Have a label affixed that clearly indicates the licensee's name and the type of alcoholic beverage contained in such container; and
- Not be sold or removed from the premises after 11:00 p.m.

*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>

The bill would specify all alcoholic liquor, CMB, and non-alcoholic malt beverage sold by a licensee under the Act would be subject to the 10 percent tax on gross receipts from the sale of alcohol required under KSA 79-41a02.

Retail Sales

The bill would also allow retail liquor and CMB licensees to sell containers of beer, domestic beer, and CMB sold on the licensed premises and served in refillable and sealable containers for consumption off the licensed premises. Such containers would have to:

- Contain between 32 and 64 fluid ounces; and
- Have a label affixed that clearly indicates the licensee's name and the type of alcoholic beverage contained in such container.

CMB

Sale and Delivery of CMB by Liquor Retail Licensees

Under current law, retail liquor store licensees may sell CMB along with alcoholic liquor and CMB retailers are allowed to sell beer with an alcohol content of up to 6 percent alcohol by volume. Liquor retail licensees are also allowed to sell and deliver alcoholic liquor and CMB to a temporary permit holder for resale by such permit holder and to sell and deliver alcoholic liquor to a caterer, licensed premises of a public venue, club, or drinking establishment if such premises are either in the same county or in a county adjacent to that of the liquor retailer.

The bill would allow liquor retail licensees to sell and deliver CMB and beer containing not more than 6 percent alcohol by volume to the licensed premises of a CMB retailer who is licensed for on-premises consumption, provided such

premises are located either in the same county as the retailer or in an adjacent county.

The bill would also allow the retailer to charge a delivery fee for delivery of the CMB and beer containing not more than 6 percent alcohol by volume to a receiving CMB retailer .

Sales of CMB By the Drink

Current law allows clubs, restaurants, bars, caterers, and public venues to be licensed to sell liquor-by-the-drink. The bill would allow liquor-by-the-drink licensees to also sell CMB for consumption on the licensed premises pursuant to the same restrictions as for sales of liquor-by-the-drink.

Temporary Permits

Current law allows the Division of Alcoholic Beverage Control (ABC) of the Kansas Department of Revenue (KDOR) to issue temporary permits which allow the holder to sell alcoholic liquor at a location specified on the permit for a certain period of time. The bill would allow holders of temporary permits to sell CMB in addition to alcoholic liquor under the same permit and subject to the same restrictions.

Common Consumption Areas

Current law allows municipalities to establish common consumption areas in which alcoholic liquor may be consumed without being subject to enforcement of open container laws. The bill would allow the consumption of CMB within such common consumption areas.

The bill would also make technical and conforming amendments to ensure consistency in statutory phrasing.

Background

The House Committee on Federal and State Affairs (House Committee) added the provisions of HB 2672, as introduced by the House Committee, and further amended those provisions before recommending the bill for passage.

SB 221 (Removable and Sealable Containers)

The bill was introduced by the Senate Committee on Federal and State Affairs (Senate Committee) at the request of a representative of the Kansas Restaurant and Hospitality Association.

In the Senate Committee hearing on February 19, 2020, representatives of Kansas Association of Beverage Retailers and the Kansas Restaurant and Hospitality Association appeared in support of the bill. Written-only proponent testimony was provided by the Kansas Craft Brewers Association, Kansas Licensed Beverage Association, and Kansas Viticulture and Farm Winery Association.

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

In the Senate Committee hearing on March 20, 2019, representatives of the Kansas Association of Beverage Retailers, Kansas Beer Wholesalers Association, Kansas Craft Brewers Association, Kansas Licensed Beverage Association, Kansas Restaurant and Hospitality Association, Kansas Viticulture and Farm Winery Association, and Talk of the Town Restaurants appeared in support of the bill.

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

The Senate Committee amended the bill to include the retail sales provisions described above.

The Senate Committee of the Whole amended the bill to specify all alcoholic liquor, CMB, and non-alcoholic malt beverage sold by licensees under the Act would be subject to the 10 percent tax on gross receipts from the sale of alcohol.

In the House Committee hearing on March 16, 2020, representatives of the Kansas Association of Beverage Retailers and the Kansas Restaurant and Hospitality Association appeared in support of the bill. Written-only proponent testimony was provided by the Kansas Craft Brewers Association, Kansas Licensed Beverage Association, and Kansas Viticulture and Farm Winery Association.

Neutral testimony was provided by the Director and representatives of Casey's General Stores, Petroleum Marketers and Convenience Store Association of Kansas, and Walmart. No other testimony was provided.

The House Committee amended the bill to add provisions relating to the removal of CMB and beer from clubs and drinking establishments; insert the provisions of HB 2672, as introduced; insert provisions relating to CMB delivery fees; require CMB premises be in the same or adjacent county to a liquor retailer; and make technical and conforming amendments.

According to the fiscal note prepared by the Division of the Budget on the bill as introduced, KDOR indicates the bill would increase the sale of beer, domestic beer, and CMB at clubs and drinking establishments. However, KDOR is not able to estimate the fiscal effect on liquor taxes that would be deposited in the State General Fund starting in FY 2020. Any fiscal effect associated with the bill is not reflected in *The FY 2021 Governor's Budget Report*.

HB 2672 (CMB)

HB 2672 was introduced by the House Committee at the request of a representative of the Kansas Beer Wholesalers' Association.

In the House Committee hearing, a representative of the Kansas Beer Wholesalers' Association testified in favor of the bill, stating CMB products are in high demand as Kansans seek lower calorie beverages and beverages with lower alcohol content, and the bill would allow the sale of CMB products at licensed club and drinking establishments that do not have a separate CMB license. Written-only testimony in support of the bill was provided by a representative of Anheuser-Busch.

Neutral testimony was provided by a representative of ABC, stating the current regulatory scheme requires distributors to create separate invoices. Written-only neutral testimony was received after the House Committee hearing from the Kansas Association of Beverage Retailers that requested the House Committee consider an amendment to add CMB on-premise licensees to the list of licensees that can purchase product from a retail liquor store with a federal wholesale permit.

According to the fiscal note prepared by the Division of the Budget on the bill as introduced, KDOR indicates the bill would have no fiscal effect on state revenues. KDOR indicates the bill would require the agency to revise certain license handbooks and license privileges that are printed on the license certificates; however, those costs are estimated to be negligible and could be absorbed within existing resources. The bill is also estimated to decrease local license fee revenues; however, the specific estimate of lower license fee revenues was not calculated by KDOR. KDOR indicates local license fees for CMB retailer licenses vary from \$25 to \$200.

The Kansas Association of Counties and the League of Kansas Municipalities indicate the bill would reduce revenues to local governments from retailers no longer being required to obtain a CMB retailer license to sell CMB. These fees are used in part to finance local governments.

Any fiscal effect associated with the bill is not reflected in *The FY 2021 Governor's Budget Report*.