

To: House Federal and State Affairs

From: John Goodyear, Staff Attorney

Date: February 19, 2021

RE: Proponent Testimony on HB 2212 – Written Only

I want to thank Chairman Barker and the members of the Committee for giving the League of Kansas Municipalities the opportunity to provide testimony in support of HB 2212.

HB 2212 will provide necessary updates to statutes outlining the requirements to obtain liquor and cereal malt beverage (CMB) licenses. This bill, drafted in response to a 2019 U.S. Supreme Court decision and, perhaps more specifically, an opinion recently issued by the Attorney General, will remove residency requirements to obtain liquor and CMB licenses from the statutory framework.

In *Tennessee Wine and Spirits Retailers Assn. v. Thomas*<sup>1</sup>, the Supreme Court struck down similar residency requirements in Tennessee statute, ruling that these requirements were violations of the Commerce Clause of the U.S. Constitution. In making this decision, Justice Alito cited the negative implication of the Clause, otherwise known as the Dormant Commerce Clause. This judicial doctrine states that in reserving to the Federal Government the exclusive authority to regulate interstate commerce, the Commerce Clause, by implication, inheres that the states cannot pass laws that would discriminate against or unduly burden interstate commerce. In the *Tennessee Wine* decision, residency requirements were found to favor in-state economic actors over those from outside of the state, and thus were violations of the Constitution. Attorney General Schmidt issued an opinion<sup>2</sup> in December 2020 stating that similar requirements in Kansas law regarding liquor licenses were also likely to be found unconstitutional if they were ever challenged. Those same residency requirements are also found in the Kansas CMB statutes.

The League supports this bill's efforts to bring state liquor and CMB licensing requirements into compliance with the U.S. Constitution and would ask that the Committee recommend HB 2212 favorably for passage.

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<sup>1</sup> 139 S.Ct. 2449 (2019).

<sup>2</sup> Attorney General Opinion No. 2020-11.