

**CONFERENCE COMMITTEE REPORT BRIEF  
SENATE BILL NO. 2**

As Agreed to March 30, 2022

**Brief\***

SB 2 would amend various provisions in the Kansas Liquor Control Act (KLCA) and the Club and Drinking Establishment Act (CDEA) concerning the sale, consumption, and allowable alcohol by volume of alcoholic liquor and cereal malt beverage.

***State Fair Alcoholic Liquor Consumption***

Under current law, persons may not consume alcoholic liquor on the State Fairgrounds unless the consumption falls within certain exceptions, including:

- Domestic wine and beer or wine imported under a farm winery license and consumed for purposes of judging competitions;
- During certain permitted events of 75 people or less that are not a part of the annual State Fair event; or
- During the State Fair event, in certain premises subject to a temporary permit that authorizes the sale and service of wine or beer.

The bill would amend these provisions to specify that alcoholic liquor could be consumed on the State Fairgrounds within boundaries that have been marked with a three-dimensional barrier if:

- It is domestic beer or wine and is consumed only for purposes of judging competitions;
- It is during certain permitted events of 75 people or less that are not a part of the annual State Fair event; or
- It is alcoholic liquor that is sold during the State Fair event, or as authorized by the Kansas State Fair Board (Board), by the holder of a temporary permit in accordance with the provisions of the bill.

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\*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>

### ***Temporary Permit—State Fair***

The bill would amend law to allow issuance of a temporary permit for the sale of alcoholic liquor on the State Fairgrounds during the State Fair event, or as authorized by the Board, provided the Board has authorized such consumption and possession of alcoholic liquor.

The bill would require any temporary permit application to specify the premises within the State Fairgrounds where wine or beer could be consumed, including a diagram of the premises covered by the permit. The bill would require the diagram to match the entirety of the premises as leased from the Board. Additionally, the bill would require the boundaries of the State Fairgrounds to be clearly marked by signs, a posted map, or other means that would identify the area in which alcoholic liquor could be possessed or consumed.

The bill would also provide that each temporary permit holder would be liable for violations that occur in the temporary premises, but permit holders could also allow alcoholic liquor to be removed from the temporary premises and onto the State Fairgrounds.

The bill would further make conforming changes to existing law to allow the Director of Alcoholic Beverage Control, Kansas Department of Revenue (ABC Director) to issue temporary permits. Currently, the ABC Director may only issue temporary permits for consumption of wine or beer, or both, on the State Fairgrounds.

### ***Temporary Permit—Statewide***

The bill would prohibit a city, county, or township from charging more than \$25 for a temporary permit for the selling and serving of alcoholic liquor for each permitted day, and such permit fee would be nonrefundable.

The bill also would expand the maximum number of temporary permits an applicant could be issued in a calendar year from 4 to 12 and require all liquor drink taxes due from a previous temporary permit to be paid before an applicant could be approved for another temporary permit.

### ***Distribution of Liquor Drink Taxes***

Under current law, 25 percent of remitted liquor drink taxes are distributed to the State General Fund (SGF) and 5 percent of remitted liquor drink taxes are distributed to the Community Alcoholism and Intoxication Programs Fund (CAIPF), with the remaining taxes distributed to the Local Alcoholic Liquor Fund (LALF).

The bill would require 30 percent of the liquor drink taxes collected on the State Fairgrounds to be remitted to the SGF and the remaining taxes to be distributed to the State Fair Capital Improvements Fund (SFCIF). The bill would further specify that if the State Fair event were to be located outside the city limits of Hutchinson, the distribution provisions would expire.

### ***Sales Between Retail Liquor Stores and Licensees***

The bill would amend the KLCA regarding where a licensed liquor retailer may sell and deliver alcoholic liquor and cereal malt beverage (CMB) to a public venue, club, or drinking establishment licensee for resale by such licensee, to allow such sales to licensees located in a corner located within two miles measured along the adjacent county boundary, as well as in the same or in an adjacent county as the licensee's premises as in current law.

### ***Farm Wineries—Issuance of CMB License***

The bill would require the board of county commissioners, the governing body of the city, or the ABC Director to issue a CMB retailer's license to licensees who have already been issued a farm winery license and satisfy the requirements for such CMB retailer's license. Licensing authorities would not be able to deny a CMB retailer's license on the basis of zoning or other regulations or any city or county resolutions or ordinances.

The bill would also eliminate a provision requiring a recipient of a CMB retailer's license to be of good character and reputation in the community in which the person resides.

The bill would also amend related liquor licensing statutes to conform with the issuing requirement for farm wineries.

### ***Domestic Wine—Allowable Alcohol by Volume***

The bill would amend the KLCA's definitions of certain domestic wine classifications to raise the allowable alcohol by volume (ABV) level and would make a corresponding amendment to current law concerning gallonage taxes.

The bill would amend the definition of domestic fortified wine to include wine manufactured in Kansas of more than 16.0 percent ABV but no more than 20.0 percent ABV. Current law defines such wine as having more than 14.0 percent ABV and a maximum of 20.0 percent ABV.

The bill would amend the definition of domestic table wine to include wine manufactured in Kansas with no more than 16.0 percent ABV. Current law defines such wine as having a maximum of 14.0 percent ABV.

The bill also would make corresponding changes to current statutory provisions on gallonage taxes to replace references to 14.0 percent ABV with 16.0 percent ABV.

### ***Effective Date***

The provisions of the bill relating to consumption of alcoholic liquor on the Kansas State Fairgrounds, temporary permits, issuance of CMB retailer licenses to farm wineries, and sale and delivery of alcoholic liquor and CMB between retail liquor stores and other licensees would be effective upon publication in the *Kansas Register*.

The provisions of the bill relating to the percentage of ABV in domestic table wine and domestic fortified wine would be effective on January 1, 2023.

### ***Technical and Conforming Amendments***

The bill would make technical amendments and conforming amendments to ensure consistency in statutory phrasing and remove outdated references to a previous Statutory Supplement.

### **Conference Committee Action**

The Conference Committee agreed to the provisions of SB 2, as passed by the House, regarding consumption of alcoholic liquor on the State Fairgrounds and temporary permits, with a modification to the effective date to make those provisions effective upon publication in the *Kansas Register*.

The Conference Committee agreed to add the contents of HB 2502, as passed by the House, regarding sales of alcoholic liquor between retail liquor stores and licensees.

The Conference Committee agreed to add the contents of HB 2688, as amended by the Senate Committee on Federal and State Affairs, regarding the issuance of CMB licenses to farm wineries with a modification to specify that CMB licenses could only be issued to current farm winery licensees.

The Conference Committee further agreed to add the contents of HB 2710, as amended by the Senate Committee on Federal and State Affairs, regarding the allowable ABV level in domestic wines, with a modification to make the effective date January 1, 2023.

### **Background**

The Conference Committee agreed to the contents of SB 2 and agreed to amend and include the contents of HB 2502, HB 2688, and HB 2710.

### ***SB 2 (State Fair Alcoholic Liquor Consumption; Temporary Permit—State Fair; Temporary Permit—Statewide; Distribution of Liquor Drink Taxes)***

The bill was prefiled for introduction by Senator McGinn.

[*Note:* Provisions of SB 2 are the same as those for 2020 SB 408, as amended by the Senate Committee on Federal and State Affairs.]

### ***Senate Committee on Federal and State Affairs***

In the Senate Committee hearing on February 25, 2021, the Interim General Manager for the State Fair provided **proponent** testimony. The proponent indicated enactment of the bill could result in increased sales of alcohol, and the increased sales would add revenue to the

SGF and the SFCIF. The proponent further indicated the bill could enhance the experience of fairgoers, and similar legislation has been implemented successfully in other states without increasing cases of underage consumption of alcohol.

No other testimony was provided.

#### *House Committee on Federal and State Affairs*

In the House Committee hearing on February 9, 2022, the General Manager for the State Fair provided **proponent** testimony, indicating that alcohol consumption is an important entertainment component for many people and would enhance the State Fair experience.

A representative of the Wine Institute provided written-only proponent testimony. No other testimony was provided.

The House Committee amended the bill to:

- Establish maximum temporary permit fees for cities, counties, and townships;
- Expand the maximum number of temporary permits issuable to a permittee in a calendar year;
- Allow for the sale of alcoholic liquor at the State Fair, rather than solely beer or wine; and
- Make technical amendments.

[Note: The Conference Committee retained these amendments.]

#### ***HB 2502 (Sales Between Retail Liquor Stores and Licensees)***

The 2021 Special Committee on Liquor Law Modernization met over the 2021 Interim to study various topics related to alcoholic liquor. Among the topics studied by the Special Committee was the sale of alcoholic liquor and CMB by liquor retailers for resale by public venues, clubs, and drinking establishments. The Special Committee recommended that the Liquor Control Act be amended to allow such sales regardless of proximity of the licensee to the retailer.

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

#### *House Committee on Federal and State Affairs*

During the House Committee hearing on January 27, 2022, **proponent** testimony was provided by the Kansas Restaurant and Hospitality Association, who indicated economic change in western Kansas is necessitating greater flexibility for licensees to purchase products from a wider selection of retail liquor stores.

**Opponent** testimony was provided by representatives of American Family Action of Kansas & Missouri, the Kansas Association of Beverage Retailers, the Kansas Association for Responsible Liquor Laws, the Kansas Beer Wholesalers Association, and the Kansas Wine & Spirits Wholesalers Association. The opponents stated their concern with the scope of the bill, the interruption of current regional markets, the issue of buying back expired product, and cleaning beer taps.

No other testimony was provided.

The House Committee amended the bill to allow sales to licensees located in a corner located within two miles measured along the adjacent county boundary. The bill as introduced would have allowed sales to licensees in any county in Kansas. [*Note:* The Conference Committee retained this amendment.]

### ***HB 2688 (Farm Wineries-Issuance of CMB License)***

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

#### *House Committee on Commerce, Labor and Economic Development*

In the House Committee hearing, **proponent** testimony was provided by representatives of the Kansas Viticulture and Farm Winery Association and KC Wine Co., who stated the bill would allow farm wineries to sell beer to their customers. Written-only proponent testimony was provided by a representative of Bourgmont Winery.

Neutral testimony was provided by the Director of ABC, who made two technical suggestions.

No **opponent** testimony was provided.

A representative of the Kansas Wine and Spirits Wholesalers Association provided historical information to the House Committee during the hearing on the bill.

The House Committee amended the bill to:

- Remove language stating a CMB retailer’s license shall not be issued to “a person who is not of good character and reputation in the community where the person resides”;
- Add “the governing body of a city” as a licensing authority required to issue a CMB retailer’s license to farm wineries;
- Specify that licensing authorities shall not deny a CMB retailer’s license on the basis of zoning or other regulations or any city or county resolutions or ordinances; and
- Make technical and conforming amendments.

[*Note:* The Conference Committee retained these amendments.]

*Senate Committee on Federal and State Affairs*

In the Senate Committee hearing, representatives of, Kansas Grape Growers and Winemakers Association, Kansas Viticulture and Farm Winery Association, and KC Wine Co. provided **proponent** testimony, stating the bill would afford farm wineries the ability to sell additional products to their customers.

Written-only opponent testimony was provided by a representative of Kansas Association of Counties, stating the bill, as amended, would restrict zoning enforcement on farm wineries.

Neutral testimony was provided by a representative of the Kansas League of Municipalities, stating an amendment added by the House Committee would allow CMB licenses to be issued without regard to zoning requirements or local ordinances.

The Senate Committee amended the bill to clarify language added by the House Committee allowing issuance of a farm winery or producer's license to an individual holding a retailer's license under the CMB Act.

[*Note:* The Conference Committee retained these amendments.]

***HB 2710 (Domestic Wine—Allowable ABV)***

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

*House Committee on Federal and State Affairs*

In the House Committee hearing on March 1, 2022, representatives of the Kansas Wine & Spirits Wholesalers Association and the Wine Institute provided **proponent** testimony, stating the bill would conform Kansas law with recently amended federal liquor law provisions on ABV classifications for wine and associated taxes.

Neutral testimony was provided by the Director of the Alcoholic Beverage Control Division, Department of Revenue (ABC), who stated the bill would reduce the amount of gallonage taxes collected in the state, but the ABC is unable to provide an estimate of the impact.

No other testimony was provided.

On March 1, 2022, the House Committee recommended the bill be placed on the Consent Calendar.

*Senate Committee on Federal and State Affairs*

In the Senate Committee hearing on March 21, 2022, representatives of the Kansas Wine & Spirits Wholesalers Association and the Wine Institute provided **proponent** testimony stating the bill would conform Kansas law with recently amended federal liquor law provisions on ABV classifications for wine and associated taxes.

Neutral testimony was provided by the Director of ABC.

No other testimony was provided.

The Senate Committee amended the bill to change the enactment date to upon publication in the *Kansas Register*.

[*Note:* The Conference Committee did not retain this amendment.]

## **Fiscal Information**

### ***SB 2 (State Fair Alcoholic Liquor Consumption; Temporary Permit—State Fair; Temporary Permit—Statewide; Distribution of Liquor Drink Taxes)***

According to the January 25, 2021, fiscal note prepared by the Division of the Budget on the bill, as introduced, the Kansas Department of Revenue (KDOR) estimates enactment of the bill would result in an increase in revenue from liquor drink taxes at the State Fairgrounds of about 20 percent above FY 2019 actual revenue, for a total revenue of \$37,854 during calendar year 2021. Of this amount, 30 percent, or \$11,356, would go to the SGF, for an increase of \$3,470 above the FY 2019 actual amount transferred. The remaining \$26,498 would be deposited in the SFCIF. The CAIPF and LALF would experience a decrease from calendar year 2019 actual revenue of \$23,659.

KDOR indicates it would require \$29,000 from the SGF for FY 2022 to implement the bill and modify the automated tax system. The required programming for the bill by itself would be performed by existing KDOR staff. In addition, if the combined effect of implementing the bill and other enacted legislation exceeds KDOR's programming resources or, if the time for implementing the changes is too short, additional expenditures for outside contract programmer services beyond KDOR's current budget may be required.

The State Fair bases its estimate for revenue resulting from enactment of the bill on the fiscal note provided by KDOR. The Kansas Association of Counties indicates enactment of the bill would affect only Reno County and the cities in Reno County, which would lose an estimated \$23,659 from the CAIPF and the LALF, according to the KDOR estimate for FY 2022.

Any fiscal effect associated with enactment of the bill is not reflected in *The FY 2022 Governor's Budget Report*.

### ***HB 2502 (Sales Between Retail Liquor Stores and Licensees)***

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

### ***HB 2688 (Farm Wineries—Issuance of CMB License)***

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

**HB 2710 (Domestic Wine—Allowable ABV)**

According to the fiscal note prepared by the Division of the Budget on the bill, as introduced, KDOR indicates enactment of the bill would decrease revenues from gallonage tax collections, but the fiscal impact could not be estimated. Any fiscal effect associated with the bill is not reflected in *The FY 2023 Governor’s Budget Report*.

Alcoholic liquor; cereal malt beverage; club; consumption; domestic fortified wine; domestic table wine; drink taxes; drinking establishment; farm winery; gallonage tax; Kansas Liquor Control Act; Kansas State Fair; permit; premises; public venue; retailer

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