

SESSION OF 2021

SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2212

As Recommended by House Committee on
Federal and State Affairs

Brief*

HB 2212 would amend the Liquor Control Act by removing the residency requirement for liquor license applicants and their spouses, including a prohibition on license issuance to residents who have not been a resident of Kansas for a full year, corporations not organized under the laws of Kansas, and persons who are not a resident of the county in which the premises sought to be licensed are located. The bill would also amend the current requirement to fingerprint all out of state applicants by making it optional if the applicant's identity is unclear.

The bill would specifically remove residency requirements for the following liquor licenses:

- Retailer;
- Manufacturer;
- Distributor;
- Microbrewery;
- Microdistillery; and
- Farm Winery.

*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>

Retailer License

The bill would remove a requirement in current law that retailer's licenses may not be issued to:

- A person who is not a resident of the county in which the place of business covered by the license is located; or
- A person who has not been a resident of such county for at least six months; and
- A person who has not been a resident of Kansas for at least one year immediately preceding application for a retailer's license.

Manufacturer License

The bill would specify that for copartnership applicants for a manufacturer license, all of the copartners would be required to be individually eligible to receive a manufacturer's license.

Resident Agent

The bill would also specify that if the applicant is not a Kansas resident, no license would be issued until the applicant has appointed a citizen of the United States who is a resident of Kansas as the applicant's agent and has filed certain documentation. Such agent would be required to meet certain qualifications as required by continuing law.

Nonresident Application Documentation

The bill would further provide that the Director of the Division of Alcoholic Beverage Control (Director), Department of Revenue (ABC) could require applicants, who are not residents of Kansas on the date of application, to submit

certain documentation, submit to a criminal history record check as provided in continuing law, and appoint a process agent who is a United States citizen and a resident of Kansas to be accept process for legal proceedings.

Current law requires the Director of ABC to require such documentation and background check for such applicants, or applicants who have not been a resident of Kansas for at least one year immediately preceding the date of application submission.

Conforming and Technical Amendments

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

Background

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

House Committee on Federal and State Affairs

In the House Committee hearing, **proponent** testimony was presented by the Director of ABC, and representatives of Davis Retail Liquor, the Institute for Justice, the Kansas Association of Beverage Retailers, and the Kansas Wine & Spirits Wholesalers Association. The proponents indicated that the bill was drafted in response to a United States Supreme Court decision, *Tennessee Wine and Spirits Retailers Association v. Thomas*, 139 S.Ct. 2449 (2019), which held that state residency laws for liquor licenses are unconstitutional. The proponents also cited Kansas Attorney General Opinion 2020-11 which concluded Kansas residency statutes may be unenforceable in light of the United States Supreme Court decision.

Written **proponent** testimony was provided by representatives of Americans for Prosperity and the League of Kansas Municipalities. No other testimony was provided.

Fiscal Information

According to the note prepared by the Division of the Budget on the bill, the Department of Revenue indicates enactment of the bill would have no fiscal effect on state revenues or expenditures; however, it would need to revise handbooks and forms to remove the residency requirement. The Kansas Association of Counties indicates the bill could increase revenues for counties if additional licenses are issued.

Liquor Control Act; liquor license; residency