

SESSION OF 2021

SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2252

As Amended by House Committee on Federal
and State Affairs

Brief*

HB 2252, as amended, would establish a new fulfillment house license under the Liquor Control Act (Act) to be issued by the Director (Director) of Alcoholic Beverage Control (ABC).

The bill would amend the definition section of the Act to include the definition of “fulfillment house” as any location or facility for any in-state or out-of-state entity that handles logistics, including warehousing, packaging, order fulfillment, or shipping services, on behalf of the holder of a special order shipping license.

The fulfillment house license would allow the license holder to warehouse, package, and ship alcoholic liquors produced by, and belonging to, a Kansas special order shipping licensee, and would apply for each location that is involved in the shipping process to Kansas residents.

Fulfillment House License Application

The bill would clarify that before making or causing any shipment of alcoholic liquor to Kansas residents, an applicant for a fulfillment house license would be required to:

- Pay a \$50 license fee for each of the locations involved in the shipping process to Kansas residents; and

*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>

- Provide any information required by rules and regulations adopted by the Director and contained in the application. The bill would provide that such licenses would remain valid for two years from the date specified on the license.

Fulfillment House Licensee Requirements

The bill would require a licensee to:

- Make reasonable efforts to confirm that any winery the licensee ships for has a Kansas special order shipping license, and may rely on the representations of each such winery for such assurance;
- Ensure that all containers of alcoholic liquors shipped directly within the state are labeled with the name, address, and license number of the fulfillment house licensee;
- Ensure containers are labeled with the following conspicuously printed statement: "SIGNATURE OF PERSON AGE 21 OR OLDER REQUIRED FOR DELIVERY";
- Require the signature of a receiver over the age of 21 for all packages shipped; and
- Ship all packages by a common carrier pursuant to continuing law.

Electronic Records

The bill would require fulfillment house licensees to keep records of all shipments for a three-year period and electronically submit them to ABC on a monthly basis.

Reports submitted would be available as open records, in accordance with the Kansas Open Records Act. However,

the bill would specify that the names and addresses of consignees must be redacted from the paragraphs open for public inspection.

The bill would provide the confidentiality of the redacted report information would expire on July 1, 2026, unless reenacted pursuant to continuing law by the Legislature prior to such date.

Record and Report Requirements

The bill would require the following information to be maintained by the licensee as a record for a minimum of three years after the shipment date:

- The name, address, and license number of the special order shipping licensee for whom the alcoholic liquor is being shipped;
- The name and license number of the express company or common carrier used;
- The date of each shipment;
- The carrier tracking number;
- The name and address of the consignee of such alcoholic liquors; and
- The weight of the package and the product type of alcoholic liquors shipped.

The bill would require such records to be submitted to the Director monthly in the form and format prescribed.

Penalty for Failure to Report

The bill would state willful failure, neglect, or refusal to report any shipments would be subject to civil penalty of no more than \$100. The bill would further specify that after notice and an opportunity for a hearing in accordance with the

Kansas Administrative Procedure Act (KAPA), the Director could refuse to issue or renew, or may revoke, a fulfillment house license upon a finding that the licensee has failed to comply with the provisions of the bill.

The bill also would specify that an out-of-state license holder would be deemed to have appointed the Secretary of State as the resident agent and representative of the licensee to accept service of process from the Secretary of Revenue, the Director, and the courts concerning enforcement of the provisions of the bill, the Act, and any rules and regulations adopted pursuant to those sections, and to accept service of any notice or order provided for in the Act.

Rules and Regulations Authority

The bill would direct the Secretary of Revenue to adopt rules and regulations to implement, administer, and enforce the provisions of the bill.

Technical and Conforming Amendments

The bill would include technical and conforming 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 Miller.

House Committee on Federal and Senate Affairs

In the House Committee hearing on February 19, 2021, representatives of the Kansas Association of Beverage Retailers and the Kansas Wine and Spirits Wholesalers Association testified as **proponents** of the bill, stating the bill would help ABC identify and regulate unlawful shipments and

help bring shippers into compliance. Written-only proponent testimony was submitted by representatives of Americans for Prosperity and the League of Kansas Municipalities.

The Director of Alcoholic Beverage Control provided neutral testimony on the bill. No other testimony was provided.

The House Committee amended the bill to:

- Reduce the fulfillment house license fee from \$100 to \$50;
- Clarify that a fulfillment house must pay a separate fee for each location involved in the shipping process to Kansas residents;
- Remove certain required label information;
- Remove specific information required in the application, and providing that the Director could specify application information in rules and regulations; and
- Change the date the license would commence.

Fiscal Information

According to the fiscal note prepared by the Division of the Budget on the bill, as introduced, the Kansas Department of Revenue (Department) estimates the bill would increase expenditures by \$56,000 from the State General Fund for FY 2022 for system updates and 760 hours would be needed to make changes to forms, websites, and the Public One Stop Service Engine System and to create a handbook. The Department estimates the bill would increase revenues to the Liquor Control Act License Fund by \$5,000 for FY 2022 for 50 licenses at \$100 per license. Any fiscal effect associated with the bill is not reflected in *The FY 2022 Governor's Budget Report*.

Alcoholic liquor; fulfillment house licensure; Liquor Control Act