

SESSION OF 2013

**SECOND CONFERENCE COMMITTEE REPORT BRIEF
SENATE SUBSTITUTE FOR HOUSE BILL NO. 2199**

As Agreed to May 8, 2013

Brief*

Senate Sub. for HB 2199 would enact changes to current alcoholic liquor law, including amendments to the Club and Drinking Establishment Act and the Kansas Liquor Control Act. Specifically, the bill would:

- Require any written administrative notice or order imposing a fine or other penalty for an alleged violation of the Kansas Liquor Control Act or the Kansas Club and Drinking Establishment Act to be issued within 90 days after the date the citation was issued;
- Allow the serving of complimentary alcoholic liquor or cereal malt beverage on the unlicensed premises of a business by the business owner or agent at an event sponsored by a nonprofit organization promoting the arts if approved by ordinance or resolution of the governing body of the city, county, or township where the event will take place. The Director of the Alcoholic Beverage Control Division (Director) would require a minimum ten days advance notice;
- Direct all rules and regulations adopted on and after July 1, 2012, and before July 1, 2013, to implement provisions of certain alcoholic liquor

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laws to remain effective until revised, revoked, or nullified by law;

- Authorize the preparing or mixing of samples at a licensed retail premises for the purpose of conducting wine, beer, or distilled spirit tastings;
- Make it unlawful for licensees to knowingly employ, or continue to employ, any person dispensing or serving alcoholic liquor, or mixing drinks containing alcoholic liquor, who:
 - Has been adjudicated guilty of two or more violations of KSA 21-5607 (furnishing alcoholic beverages to minors) or similar laws from other states regarding the furnishing of liquor to minors, within the immediately preceding five years; or
 - Has been adjudicated guilty of three or more violations of any other Kansas, or any other state, intoxicating liquor law, but not involving the furnishing of alcoholic liquor to minors, within the immediately preceding five years;
- Allow the sale or serving of certain mixed alcoholic beverages and any others approved by the Director in a pitcher containing not more than 64 fluid ounces;
- Permit certain licensees to offer self-service wine from automated devices on the licensee's premises;
 - The licensee and Kansas Racing and Gaming Commission would be required to monitor such consumption and the licensee would be required to have the ability to control the amount of consumption from automated devices;

- Allow hotels, if the entire premises is licensed as a drinking establishment, to distribute coupons to its guests, redeemable on the hotel premises for drinks containing alcoholic liquor;
- Require those licensed hotels to remit liquor drink tax on each drink served based on a price, which is not less than the acquisition cost of the drink;
- Allow other hotels for which the premises are not licensed as drinking establishments to distribute coupons to their guests redeemable at clubs and drinking establishments, in accordance with rules and regulations adopted by the Department of Revenue;
- Require each club or drinking establishment redeeming hotel coupons to remit liquor tax on each drink served based on a price not less than the acquisition cost of the alcohol in the drink; and
- Delete a requirement that clubs and drinking establishments provide price lists.

Free Samples

Regarding free samples, the bill would:

- Define “sample” to mean a serving of alcoholic liquor that contains not more than one-half ounce of distilled spirits, one ounce of wine, or two ounces of beer or cereal malt beverage. A sample of mixed alcoholic beverage could not contain more than one-half ounce of distilled spirits;
- Allow various licensees, including licensed Class A and Class B clubs, licensed drinking establishments, licensed caterers, licensed public venue clubs, and temporary permit holders to

serve free samples of alcoholic liquor on the licensed premises;

- Allow Class A and B clubs to serve the samples free of charge only to their members and their members' families and guests;
- Prohibit licensees from serving more than five samples to any individual per visit and no samples could be removed from the premises;
- Prohibit licensees from collecting either a cover charge or an entry fee at any time during the business day that free samples are provided for anyone; and
- Require samples to come from the licensee's inventory and require the licensee to pay all associated excise and drink taxes for any alcoholic liquor served in free samples.

Conference Committee Action

The first Conference Committee removed the contents of Senate Sub. for HB 2199 and inserted several provisions from SB 7, as amended by the House Committee on Commerce, Labor, and Economic Development; SB 36, as amended by the House Committee on Federal and State Affairs; SB 203, as amended by the House Committee on Federal and State Affairs; and Sub. for HB 2223, as recommended by the House Committee on Federal and State Affairs.

The second Conference Committee retained most items agreed to previously, with certain exceptions. The second Conference Committee agreed to delete the following provisions:

- Regarding homemade fermented beverages (Sub. for HB 2223);
- Changing citizenship requirements for a Kansas Liquor Control Act licensee; and
- Allowing of alcoholic liquor at the State Capitol.

Regarding automated devices, the first Conference Committee included a modified provision allowing automated devices that dispensed wine and requiring the machines to be supervised by the Kansas Racing and Gaming Commission. The second Conference Committee retained this provision.

Background

HB 2199. The bill, as introduced, established the Second Amendment Protection Act. The Senate Committee on Federal and State Affairs removed the contents of the bill and inserted the contents of **SB 102**, as amended by the House Committee on General Government Budget. The Senate Committee recommended a substitute bill.

The Senate Committee of the Whole amended the bill to add the language regarding rules and regulations on alcoholic liquor.

SB 7. The bill was introduced by the Joint Committee on Administrative Rules and Regulations. The Senate Committee on Federal and State Affairs recommended the bill as introduced favorably for passage.

At the House Committee on Commerce, Labor and Economic Development hearing on the bill, proponent testimony was provided by representatives from the Kansas Association of Beverage Retailers, Kansas Licensed Beverage Association, and the Kansas Wine and Spirits Wholesalers Association. Opponent testimony was provided by a representative from Schneider Public Strategies. Neutral

testimony was provided by representatives from Alcoholic Beverage Control, Department of Revenue and the Kansas Restaurant and Hospitality Association.

The House Committee on Commerce amended the bill to add the State Capitol or its surrounding premises to the list of public property locations where alcoholic liquor could be consumed, with certain restrictions.

The fiscal note provided by the Division of the Budget for the bill, as introduced, indicates passage of the bill would increase FY 2013 all funds expenditures by \$3,600.

SB 36. At the Senate Committee hearing, testimony in support of the bill was provided by the Kansas Licensed Beverage Association and the Kansas Restaurant and Hospitality Association. Testimony opposing the bill was provided by Alcoholic Beverage Control, Department of Revenue. Neutral testimony was provided by the Kansas Wine and Spirits Wholesalers Association.

The Senate Committee on Federal and State Affairs requested its amendments be included in a substitute bill for SB 36 that would limit the number of and quantity of alcoholic liquor in free samples; prohibit any type of charges (cover, entry or any other consideration) being collected by licensees offering free samples; and pay all required excise and drink taxes based on the acquisition costs of alcoholic liquor in the free samples.

The House Committee on Federal and State Affairs amended the bill by adding certain provisions from 2013 SB 7 as passed by the Senate. The language from SB 7 would permit licensed retail sellers to provide free samples of mixed alcoholic beverages in the same manner as other licensees addressed in the bill. Other language that would continue the rules and regulations in effect for micro-distilleries and public venues from SB 7 also was added.

The House Committee on Federal and State Affairs also amended the bill by adding certain provisions from 2013 **SB**

35 as passed by the Senate, except for one provision. Language referring to anyone convicted of a person or drug felony, or offender as defined in KSA 22-4902, was eliminated by the House Committee, thus reverting to language in current law that refers to anyone guilty of a felony or of any crime involving a morals charge.

The House Committee on Federal and State Affairs concurred with the Senate-passed 2013 **Sub. for SB 36** provisions and made no changes in its language, except to reconcile it with the addition of the provisions from the two other bills.

The fiscal note, as provided by the Division of the Budget on the original bill, is no longer applicable to the provisions of the substitute bill. The Department of Revenue indicated SB 36, as introduced, could result in the loss of excise tax revenue to the State General Fund, but did not provide an estimate. The original bill did not require remittance of the liquor excise tax on the value of the alcohol served free of charge.

SB 203. At the Senate Committee on Federal and State Affairs hearing, testimony in support of the bill was provided by representatives of the Department of Revenue, the Kansas Restaurant and Hospitality Association, the Kansas Licensed Beverage Association, and the Kansas Star Casino.

The Senate Committee amended the bill to allow the selling of certain mixed alcoholic liquor in pitchers, allow the regulated self-service of alcoholic liquor, delete a current requirement for a price list to be provided by clubs and drinking establishments, establish civil penalties relating to individuals providing false proof of age for the purpose of acquiring alcohol, and establish civil penalties relating to individuals of legal consumption age who provide alcohol to persons under 21 years of age.

The Senate Committee on Federal and State Affairs further amended the bill to allow, under certain conditions, the

serving of complimentary liquor at events sponsored by nonprofit organizations promoting the arts, to delete prior language allowing the regulated self-service of alcoholic liquor monitored by the Kansas Racing and Gaming Commission, and to add new language allowing the regulated self-service of alcoholic liquor as approved by the Director.

At the hearing in the House Committee on Federal and State Affairs, representatives from the Kansas Viticulture and Farm Winery Association, the Artisan Distillers of Kansas, the Craft Brewers Guild of Kansas, and two representatives from the Kansas Licensed Beverage Association testified in support of the bill. Written testimony in support of the bill was submitted by representatives of the Kansas Restaurant and Hospitality Association and Hangar One Steakhouse in Wichita. A representative from the Division of Alcoholic Beverage Control testified as a neutral conferee on the bill.

The House Committee on Federal and State Affairs made two changes in the Senate passed version of the bill. First, the provisions were removed that would have established civil penalties for violations of possessing alcohol by minors or providing alcohol to minors. Second, the House Committee amended the bill to change current law that requires any licensee under the Liquor Control Act to have been a citizen for at least ten years; the Committee added language that would prohibit anyone who is not a citizen of the U.S. from obtaining a license.

The fiscal note provided by the Division of the Budget on the bill as introduced indicated the bill would have no impact on Department of Revenue revenues and would increase FY 2014 All Funds expenditures by \$4,800.

Alcoholic liquor, rules and regulations, samples, Club and Drinking Establishment Act, licensees, Kansas Liquor Control Act

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