

SESSION OF 2012

**SUPPLEMENTAL NOTE ON SUBSTITUTE HOUSE BILL
NO. 2689**

As Amended by Senate Committee on Federal
and State Affairs

Brief*

Sub. for HB 2689, as amended, would add the contents of nine other bills to the substitute bill as passed by the House.

The bill would allow railway cars to be licensed as drinking establishments under the Club and Drinking Establishment Act. The bill would add a definition of railway car to include a locomotive-drawn conveyance used for the transportation of people that is confined to a fixed route and which derives at least 30 percent of its gross receipts from all sales of food and alcoholic beverages on the railway car in a 12-month period.

Taxation on alcoholic liquor for consumption would conform to those taxes applied to other drinking establishments. Under the bill, 70 percent of the revenue collected from sale of liquor in railway cars would be divided equally among counties through which the railway car passes if the counties have approved the sale of liquor-by-the-drink.

The bill would delete the effective date of publication in the *Kansas Register* and make it effective upon the publication in statute.

The bill also would include provisions from nine bills.

Tasting samples. The provisions from SB 269 would allow any person or entity who is licensed to sell alcoholic liquor in the original package at retail to conduct wine, beer, 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>

distilled spirits tasting on a licensed premise or adjacent premises. Such activity would be monitored and regulated by the Director of the Division of Alcoholic Beverage Control and subject to the provisions in the Liquor Control Act. The bill would limit the tastings portions to one-half ounce for distilled spirits, two ounces for wine, and two ounces for beer and malt beverages. The bill would prohibit any charge for sample servings, and a person could be served more than one sample. The bill also would prohibit any samples from being removed from the premises. Finally, the bill would exempt the provision of samples from the requirement of holding a Kansas food service dealer license.

Special event permit. The provisions from SB 274 would allow a temporary permit for a special event for selling and serving alcoholic liquor for consumption at an unlicensed premise. The temporary permit would be valid at the Director of Alcoholic Beverage Control's discretion for the entire period of the special event, but not to exceed 30 days.

The bill also would allow a temporary permit holder to resell unused alcoholic beverages within three days after the end of the event to the licensee from whom the alcoholic beverages were purchased.

Repeal salesperson's permit. The provisions from SB 275 would repeal KSA 41-333 to KSA 41-341, inclusive, that currently authorize issuance of a salesperson's permit for the sale of, or the taking or soliciting of orders for the sale of alcoholic liquor or cereal malt beverages in the State of Kansas.

Amend hiring requirements. The provisions from SB 276 would remove the current requirements on hiring practices that previously necessitated background checks for employees working for licensees under the Club and Drinking Establishment Act.

Microdistilleries. The provisions from SB 277 would create a microdistillery license which would allow a licensee to

manufacture and store not more than 50,000 gallons of spirits per year. A microdistillery would be defined as a facility which produces spirits from any source or substance licensed by the Director of Alcoholic Beverage Control (ABC). The licensee would be allowed to sell spirits manufactured by the microdistillery and serve free samples of spirits on the licensed premises and at special events monitored and regulated by the Division of Alcoholic Beverage Control. In addition, the licensee would be able to sell spirits and other alcoholic liquor for consumption on the licensed premises if the microdistillery also is licensed as a club and drinking establishment.

The bill also would create a microdistillery packaging and warehouse facility license which would allow the microdistillery licensee to transfer manufactured spirits from the microdistillery licensed premises to the licensed packing and warehouse facility, transfer spirits from the licensed packing and warehouse facility to the licensed microdistillery, and remove spirits from the licensed packing and warehouse facility for delivery to a licensed spirits wholesaler.

The microdistillery license fee would be \$500, and the microdistillery packaging and warehouse facility license fee would be \$200. Each licensee would have to post a bond of \$2,000.

The Division of Alcoholic Beverage Control would be allowed to issue to the Kansas State Fair or any *bona fide* group of distillers a permit to import small quantities of spirits to be used for educational and scientific tasting programs.

A microdistillery would be prohibited from hiring persons under 21 years old for certain duties and persons under 18 years old for the manufacture, sale, or serving of any alcoholic liquor. The licensee would be prohibited from hiring any person who has been convicted of a felony.

Individual drinks, "happy hour." The provisions from SB 288 would allow clubs, drinking establishments, caterers, or

temporary permit holders to sell or serve beer or cereal malt beverage in a pitcher containing not more than 64 fluid ounces.

The bill also would clarify that an *individual* drink would be defined as a beverage containing alcoholic liquor or cereal malt beverage served to a single individual, but which is not intended to be consumed by two or more people. An *individual* drink would be defined as a beverage containing not more than eight ounces of wine, thirty-two ounces of beer or cereal malt beverage, or four ounces of a single spirit.

The bill would allow the sale of individual drinks at different prices throughout the day. The bill would delete the proportionate pricing requirement in current law as applied to an alcoholic drink or a cereal malt beverage. The bill would amend KSA 41-2722, which would conform the sale of cereal malt beverages to the revised provisions in the bill.

Public venue license. The provisions from SB 299 would amend the Liquor Control Act and the Club and Drinking Establishment Act by creating a new class of license for a public venue. A public venue would be defined as an arena, stadium, hall or theater, used primarily for athletic or sporting events, live theater productions, and live concerts, containing not less than 4,000 permanent seats and not less than two private suites. The public venue licensee would be subject to taxes in the same manner as other licensees selling liquor by the drink under the Club and Drinking Establishment Act.

The licensee would be allowed to sell and serve alcoholic beverages in designated areas by individual drinks, unlimited drinks for a fixed price, unlimited drinks in inclusive packages, and liquor in the original container for consumption in private suites. The licensee also would be allowed to store alcohol in private suites.

The fee for a public venue license would be \$5,000 with a maximum capacity of not more than 10,000 people; \$7,500 with a maximum capacity of not more than 25,000; and \$10,000 with a maximum capacity exceeding 25,000 people.

The bill also would allow a city or county to levy a biennial occupation or license tax of not less than \$200 on the public venue licensee. The bill would restrict the offering and serving of alcoholic liquor or cereal malt beverages at a public venue.

Consumption in certain parks. The provisions from SB 313 would allow a person to consume alcoholic liquor on the premises of any land or water owned or managed by the Department of Wildlife, Parks and Tourism, except where prohibited by rules and regulations of the Department. The effective date of this portion of the bill would be January 1, 2013.

Manufacturer samples. The provisions from SB 358 would allow the holder of a manufacturer's license to offer free samples of alcoholic liquor manufactured by the licensee on the licensed premises. No samples could be served to a minor, and samples could not be removed from the licensed premise. The licensee would not be permitted to sell any alcoholic liquor for consumption on the premises.

Background

Background information from the ten bills combined into one bill by the Senate Committee on Federal and State Affairs in amending the bill is given below.

Sub. for HB 2689

Proponents in the House Committee on Federal and State Affairs for HB 2689 included Representative TerriLois Gregory, the owner of the Elkhorn Valley Railcar Company, and representatives of the Douglas County Commission, the Kansas Licensed Beverage Association, and the Kansas Wine and Spirits Wholesalers Association. Numerous other written testimony was submitted favoring the proposed legislation.

The bill as introduced would have established a new railway car license for the sale and consumption of alcoholic liquor. The conferees indicated that the Midland Railway in Baldwin City would be the short line railroad that a Nebraska corporation, the Elkhorn Valley Railcar Company doing business as the Fremont Dinner Train, would like to operate if the company were able to serve beer, wine and mixed drinks. Current limitations in Kansas law would prohibit such sales unless liquor law modifications were made.

The House Committee adopted a substitute bill to amend the Club and Drinking Establishment Act rather than to establish a separate new class of license that would authorize operators to offer for sale, to sell and to serve alcoholic liquor for consumption on a railway car.

The Director of Alcoholic Beverage Control (ABC) at the Department of Revenue appeared as neutral and concurred with the simplified version for regulation under existing law as included in the substitute bill rather than establishment of a separate new class of license for railway cars.

The fiscal note for the bill as introduced indicated an increase of \$15,000 in one-time expenditures to update the computer system and publications for the Division of ABC and an increase in new revenue of less than \$10,000 annually from the new taxes. No fiscal note was available for the substitute bill, but the ABC Director suggested lower computer modification costs would result due to not creating a new class of license.

The Senate Committee on Federal and State Affairs agreed to the House-passed version of Sub. for HB 2689. The Senate Committee also amended into this bill nine other bills passed by the Senate.

SB 269. Proponents of the bill included representatives from the Wine & Spirits Wholesalers Association, the Distilled Spirits Council of the United States, and the Wine Institute. Opponents included representatives from the Kansans for

Addictions Prevention and the Women's Christian Temperance Union. Neutral testimony was provided by representatives of the Kansas Restaurant and Hospitality Association, Kansas Association of Beverage Retailers, Topsy's Wine and Spirits, and the Division of Alcoholic Beverage Control.

The Senate Committee amended the bill with clarifying language. The Senate Committee also added that sampling could be provided in adjacent premises under regulation by the ABC.

The fiscal note indicated there would be no fiscal effect from the enactment of the bill.

SB 274. Representatives from the City of Wichita and the Kansas Wine & Spirits Wholesalers Association testified in support of the bill.

Written testimony in support of the bill was submitted by a representative of the League of Kansas Municipalities. Neutral testimony was provided by a representative of the Kansas Department of Revenue.

The Senate Committee amended the bill by prohibiting the special event from exceeding a 30-day period. Also, the Committee amended the bill by allowing the temporary permit holder to resell unused alcoholic beverages to the licensee within three days after the end of the event.

According to the fiscal note, SB 274 would increase expenditures by \$4,800 in FY 2013.

SB 275. According to a representative of the Kansas Department of Revenue, the application and issuance of salespersons' permits is burdensome to the industry and the Department, and serves no compelling state interest.

Written testimony in support of the bill was submitted by representatives of the Kansas Wine & Spirits Wholesalers

Association and Kansas Beer Wholesalers Association.

No opponents testified on the bill.

According to the Division of the Budget, SB 275 would decrease revenue to the State General Fund by \$9,000 in FY 2013.

SB 276. The Director of the ABC testified as a proponent of the original bill. Testifying in opposition to the original bill were representatives of the Kansas Restaurant and Hospitality Association, the Kansas Licensed Beverage Association, the Kansas Wine & Spirits Wholesalers Association, and the Kansas Beer Wholesalers Association.

The Senate Committee removed the original amendment in the bill that would have required a background check.

The fiscal note on the original bill was negligible, and ABC indicated that any costs could be absorbed within existing resources. The fiscal note for the amended bill was not available to the Senate Committee.

SB 277. Proponents included the Mayor of Lenexa, an individual, and representatives from the Artisan Distillers of Kansas and the Kansas Restaurant and Hospitality Association.

Neutral testimony was submitted by the Director of Alcoholic Beverage Control.

The Senate Committee amended the bill by allowing samples to be served free of charge at special events monitored and regulated by the ABC, modified the definition of "microdistillery," and added clarifying language to the definition of retailer.

The fiscal note indicated enactment of SB 277, as introduced, would increase fee fund expenditures by \$14,460

in FY 2013 to update the computer processing system. The fiscal note estimated the revenue generated from the fees would be between \$200 and \$500.

SB 288. Proponents of the bill included representatives from the ABC and the Kansas Restaurant and Hospitality Association. Opponents included a representative from the Kansas Licensed Beverage Association.

The Senate Committee amended the bill to clarify the definition of *individual* drink and conform the statute dealing with the sale of cereal malt beverages to the revisions for the sale of alcoholic beverages in specific sizes and by the individual drink, and different prices during the day.

The fiscal note estimates the costs associated with updating the computer processing system would be a total of \$4,800.

SB 299. Proponents for the bill included the Director of Alcoholic Beverage Control, and representatives of the Kansas Restaurant and Hospitality Association and the League of Kansas Municipalities.

A representative from the Kansas Licensed Beverage Association testified as an opponent. Neutral testimony was provided by a representative of the Kansas Association of Beverage Retailers.

The Senate Committee of the Whole amended the bill to make public venue licenses subject to the same taxes as other licensees selling liquor by the drink. In addition, the Senate Committee of the Whole also reduced two classes of license fees from \$10,000 to \$7,500 and from \$20,000 to \$10,000.

The fiscal note estimates that the original bill would increase fee revenues by a minimum of \$80,000 every two years beginning in FY 2013. In addition, the fiscal note estimates the costs to update the computer processing

system would increase expenditures by the Department of Revenue from the fee funds in FY 2013 by \$5,040. There was no revised fiscal note at the time the amended bill was passed by the Senate Committee of the Whole, but revenues would not increase as much in the original bill because license fees would decrease for two license classes.

SB 313. A representative of the Department of Wildlife, Parks and Tourism testified as a proponent for the bill. No opponents testified.

According to the fiscal note, enactment of the bill would have no fiscal effect on the Department of Wildlife, Parks and Tourism.

SB 358. Proponents of the bill included representatives from the Artisan Distillers of Kansas and the Dark Horse Distillery. Also, one individual and the Mayor of Lenexa testified as proponents.

Neutral testimony was presented by the Director of ABC.

The Senate Committee amended the bill to delete restrictions on the sample sizes and the limitation on the number of samples an individual can be served.

According to the fiscal note, the enactment of the bill would have no fiscal effect on state revenues or expenditures.