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Shawn Sullivan, Director of the Budget

Sam Brownback, Governor

March 31, 2015

The Honorable Ralph Ostmeyer, Chairperson
Senate Committee on Federal and State Affairs
Statehouse, Room 136-E
Topeka, Kansas 66612

Dear Senator Ostmeyer:

SUBJECT: Fiscal Note for SB 298 by Senate Committee on Federal and State Affairs

In accordance with KSA 75-3715a, the following fiscal note concerning SB 298 is respectfully submitted to your committee.

SB 298 would enact the County Option Retailers Act. The act would authorize a board of county commissioners to submit, by resolution or petition at any general election, a proposition to permit the sale of alcoholic liquor at grocery stores and the sale of beer at convenience stores. If any such proposition is approved, existing retail liquor licenses would be classified as Class B licenses and the number of Class B licenses issued would be limited to the total number licensed by the Division of Alcoholic Beverage Control (ABC) on the date immediately preceding the date of the election. Immediately preceding the date of the election, Class B liquor retail licenses could be transferred to one of the three existing liquor stores in closest proximity. Class B licenses could be transferred to any qualified person within the same county after three years from the date the proposition is approved. The transferee would be required to pay a transfer fee of $10,000 to ABC.

Class A retail liquor store licenses would be issued to grocery stores and convenience stores after three years from the date the proposition is approved. The bill would define a Class A retailer's license as a license to sell at retail beer issued pursuant to the Kansas Liquor Control Act to a convenience store or a grocery store. Class B retailer's license would be defined as a license to sell retail liquor issued pursuant to the Kansas Liquor Control Act to a liquor store or a grocery store. The bill also includes definitions for grocery store, convenience store, liquor store and retailer's license. The bill would prohibit the issuance of a Class A retail license to a person who is not a convenience store or grocery store though the person could become eligible if they changed their business type to a convenience store or grocery store upon licensure. Likewise, it would prohibit the issuance of a Class B retail license to a person who is not a liquor store or grocery store though the person could become eligible if they changed their business type to a liquor store or grocery store upon licensure. The two-year license fee for a retailer's Class A would be $1,500. For a Class B license engaged in business as a grocery store, the fee would be $1,500. For Class B licensees engaged in business as a liquor store, the license fee would be $500.

SB 298 would reduce the minimum age a person must be in order to sell liquor from 21 to 18 years of age, with the exception of sales by class B retailers. It would require an employee who is under the age of 21 to be supervised by the licensee or an employee of the licensee who is at least 21 years of age. The bill lists the requirements that corporations and individuals must meet in order to obtain a license and the circumstances under which no license could be issued. Specifically, the bill would remove prohibitions against a retailer owning a beneficial interest in another retail license and against a corporation holding a retailer's license. The bill also would provide that a corporation would be ineligible for a retailer's license if any officer, manager or director, or any stockholder owning more than 5.0 percent of the stock is ineligible to hold a license for any reason other than citizenship or residency. Further, the bill would outline the requirements expected of retailers licensed under these provisions and would require the Department of Revenue to adopt the rules and regulations necessary to carry out those provisions. In addition, the bill would create the Local Cereal Malt Beverage Sales Tax Fund and would require 3.0 percent of liquor enforcement remittances to be deposited in this fund with quarterly distributions to each city and county which levied a local sales tax. The amount distributed would be determined based on a weighted population average.

Under the bill, a distributor would be allowed to establish a minimum order requirement for deliveries to a retailer based on invoice dollar amount or product case quantity. Beginning July 1, 2018, a grocery store would be prohibited from selling liquor to on-premise establishments unless there is no liquor store within the county that makes such sales; and a liquor store would be permitted to sell non-liquor items. Grocery stores would be allowed to display wine and spirits only in an area of the store which is segregated from other grocery items. The Director of Alcoholic Beverage Control would be authorized to deny an application for a class B retailer's license to any person who does not in good faith intend to carry on a bona fide business for the retail sale of liquor. If the retail business is inactive for a period of 180 days, the Secretary of Revenue would revoke the license. A revoked license would be auctioned off among qualified candidates located within the same county. Finally, the bill would require the Department of Revenue to adopt rules and regulations to carry out this act by July 1, 2016.

The Department of Revenue indicates the administrative impact of SB 298 would depend on the number of counties that approve propositions to permit these sales. If the majority of higher populated counties approve, the Department estimates the enactment of SB 298 would require the hiring of additional staff in FY 2018 to conduct liquor licensing functions for as many as 1,528 new licenses; oversee the transfer of up to 247 retail licenses; administer prosecution relating to liquor law violations; enforce liquor laws to maintain the current level of enforcement among liquor retailers; and process the liquor enforcement tax. The Department indicates it would begin hiring in the fourth quarter of FY 2018 to prepare for when these convenience stores and grocery stores get the ability to apply for a Class A license to sell strong beer in FY 2019.

For FY 2018, the Department estimates expenditures would increase by $664,050, which includes $200,440 for 12.00 additional FTE positions; $403,655 for contractual services and one-time costs such as office equipment, vehicle purchases, and system upgrades to the ABC computer processing system; and $59,955 to modify forms, processes and the liquor tax processing system. The new positions would include 9.00 Enforcement Agent FTE positions to enforce liquor laws throughout the state, 2.00 Revenue Customer Representative Senior FTE positions to process the transfer of licensees, and 1.00 Administrative Specialist FTE position for support. The Department estimates expenditures would increase to $1,293,494 in FY 2019, which includes $1,202,631 to maintain the 12.00 FTE positions added in FY 2018 in addition to 2.00 Special Investigator II FTE positions, 1.00 Revenue Customer Representative Senior FTE position, 1.00 Administrative Specialist FTE position, 1.00 Assistant Attorney General FTE position, and 1.00 Legal Assistant FTE position; and $90,863 for contractual costs, office supplies, and background checks.

The Department of Revenue indicates it is unknown how many licenses would be issued or transferred; however, assuming all 1,528 grocery stores and conveniences stores obtain a Class A license, the fees from those licenses would increase state revenues by approximately $2.3 million in FY 2019. Additional revenues would be generated from the $10,000 fee paid by liquor and cereal malt beverage licensees who transfer their existing license to a Class A license.

Currently, the Department indicates the sale of cereal malt beverages generates approximately $7.5 million in state sales tax and approximately $1.9 million in local sales tax. The Department indicates as businesses switch from selling cereal malt beverages to beer in FY 2018, sales tax revenue would decrease and liquor enforcement tax revenue would increase. Since the bill would provide 3.0 percent of liquor enforcement remittances credited to the Local Cereal Malt Beverage Sales Tax Fund, distributions to cities and counties would increase to help recoup the loss of local sales tax. The Department for Aging and Disability Services indicates this bill could increase consumption of alcohol and tobacco, requiring greater levels of enforcement and service for substance abuse treatment. Any fiscal effect associated with SB 298 is not reflected in *The FY 2016 Governor's Budget Report*.

Sincerely,

Shawn Sullivan,
Director of the Budget

cc: Melissa Wangemann, Association of Counties
Jack Smith, Department of Revenue