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MEMORANDUM

To: Chairman Mason
Members of the House Committee on Commerce, Labor and Economic
Development

From: Jason B. Long, Senior Assistant Revisor

Date: January 29, 2018

Subject: HB 2502 – Regulation and taxation of beer sold by CMB licensees.

House Bill No. 2502 (HB 2502) is trailer legislation for the policy enacted under House Substitute for Senate Bill No. 13 (SB 13) during the 2017 Session. SB 13 provided that beginning April 1, 2019, any person licensed as a cereal malt beverage (CMB) licensee will be authorized to sell beer containing not more than 6% alcoholic by volume. HB 2502 creates new law and amends existing law to clarify the regulatory authority of the Director of Alcoholic Beverage Control (Director) over sales of beer by CMB licensees and to establish the applicable tax rate on such sales.

Section 1 of HB 2502 authorizes the Director to issue citations and impose fines up to \$1,000 against CMB licensees for violations of the Kansas Liquor Control Act or the Kansas Cereal Malt Beverage Act involving the sale of beer by such CMB licensees. The provisions of section 1 are substantively similar to existing law authorizing the Director to take such action against liquor retailers (see K.S.A. 41-328).

Section 2 amends K.S.A. 41-212, which was enacted as part of SB 13. The amendment clarifies that the Director's 10th anniversary market impact study on the sale of beer containing not more than 6% alcohol by volume is to be based on the information available to the Director.

Section 3 amends K.S.A. 41-2702 regarding approval for a CMB license or renewal of such license. Each applicant for a CMB license must submit the license application to the Director with a \$25 fee and have the Director affix a stamp to the application. HB 2502 authorizes the Director to withhold the stamp if the applicant is not current in the payment of any fines imposed by the Director.

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Section 4 amends K.S.A. 41-2704 to make technical amendments that conform to the policy enacted under SB 13. That technical amendment can be found on page 5 of HB 2502.

Finally, HB 2502 amends K.S.A. 79-3602 so that the applicable tax rate for the sale of beer is dependent on the licensure of the person selling the beer. Under current law the retail sale of beer, which is defined as having more than 3.2% alcohol by weight, by liquor retailers is subject to an excise tax under K.S.A. 79-4101, and the retail sale of cereal malt beverage by CMB licensees is subject to the applicable sales tax under the Kansas Retailers' Sales Tax Act. HB 2502 adds a specific definition of "cereal malt beverage" to the Kansas Retailers' Sales Tax Act that includes beer containing not more than 6% alcohol by volume within the definition of "cereal malt beverage." This definition is only applicable to the Sales Tax Act. The amendment allows for retail beer sales by liquor retailers to remain subject to the 8% excise tax, while the sale of beer by CMB licensees would be subject to the applicable sales tax rate.

If enacted, HB 2502 would be effective April 1, 2019, which is the same effective date as SB 13.