

Report of the Special Committee on Liquor Law Modernization to the 2022 Kansas Legislature

CHAIRPERSON: Representative John Barker

VICE-CHAIRPERSON: Senator Larry Alley

RANKING MINORITY MEMBER: Representative Louis Ruiz

OTHER MEMBERS: Senators Brenda Dietrich, Richard Hilderbrand, Tom Holland, and Rick Kloos; and Representatives John Carmichael, Tom Kessler, Marty Long, and Sean Tarwater

STUDY TOPIC

The Committee is directed to:

- Evaluate the current laws in Kansas pertaining to alcoholic liquor, wine, beer, and cereal malt beverage (regulated beverages).

In its evaluation, the Committee will:

- Study current Kansas laws and regulations concerning regulated beverages;
- Study recently enacted legislation concerning regulated beverages; and
- Make recommendations to the 2022 Legislature to harmonize existing provisions and ensure the law treats regulated beverages and associated licensees in a similar fashion.



Special Committee on Liquor Law Modernization

REPORT

Conclusions and Recommendations

The Special Committee on Liquor Law Modernization (Committee) wishes to make the Legislature aware of the collateral effects of alcohol on the lives of Kansans and urges the Legislature to be diligent in monitoring such effects.

The Committee makes the following recommendations:

Kansas State Fair

The Committee recommends the appropriate House standing committee conduct hearings on 2021 SB 2, as introduced, concerning the consumption of alcohol on the grounds of the Kansas State Fair and collection of associated liquor taxes, and that the standing committee consider taking action on the bill.

Farm Wineries

The Committee recommends that a farm winery automatically be eligible for a drinking establishment license as an agribusiness without regard to any other local building codes or restrictions. The Committee also recommends that such licensee also be automatically granted a cereal malt beverage (CMB) retailer's license in the same manner as producer licensees, who under current law are automatically approved for a CMB retailer's license if the applicant has already been issued a producer's license for a vineyard pursuant to KSA 2020 Supp. 41-355, provided the applicant is not otherwise disqualified from holding the retailer's license under law.

Urban Farm Wineries

The Committee recommends the Legislature or an appropriate committee study the possibility of establishing an urban winery license that would have no Kansas agricultural production requirements.

Tax Rate on Wine

The Committee recommends the introduction of legislation to amend KSA 2020 Supp. 41-501(b) (1) concerning the excise tax on wine to increase the 14 percent alcohol by volume (ABV) threshold for state taxation to match the recently raised federal taxation threshold of 16 percent ABV for certain still wine classes.

Sale and Delivery of Alcoholic Beverages between a Retailer and Certain Licensees for Resale

The Committee recommends the introduction of legislation to amend the provisions of KSA 2020 Supp. 41-308 to authorize a retail liquor store licensee to sell and deliver alcoholic liquor and CMB to a caterer or to the licensed premises of a public venue, club, or drinking establishment for resale by such public venue, club, establishment, or caterer, regardless of the proximity to the retailer.

Proposed Legislation: None

BACKGROUND

The study directive from the Legislative Coordinating Council (LCC) to the Special Committee on Liquor Law Modernization (Committee) is to evaluate the current laws in Kansas pertaining to regulated beverages—alcoholic liquor, wine, beer, and cereal malt beverage (CMB)—and to make recommendations to the 2022 Legislature to harmonize existing provisions and ensure the law treats regulated beverages and associated licensees in a similar fashion.

The Committee was authorized by the LCC to meet on four days and met at the Statehouse on August 31; October 7 and 8; and November 10, 2021.

COMMITTEE ACTIVITIES

August 31, 2021, Meeting

The Committee met on August 31 to hear informational presentations from legislative staff and from the Director of the Alcoholic Beverage Control Division of the Department of Revenue (ABC Director).

Overview of Recent Liquor Legislation

A Senior Assistant Revisor of Statutes provided an overview of recent liquor and CMB legislation. He discussed the provisions of notable recently enacted legislation and explained the provisions of each bill.

Overview of the Three-tier System

The ABC Director discussed the history of the ABC from the Prohibition Era to the present. She also discussed the structure of the three-tier system of suppliers, distributors, and retail establishments.

The ABC Director also described different taxes applicable to the production and sale of liquor and CMB. She answered questions on topics including counterfeit spirits, consolidation of liquor statutes, crimes, and home delivery of regulated beverages.

Committee Discussion

Committee members asked Kansas Legislative Research Department (KLRD) and Office of Revisor of Statutes staff to provide information on the following topics:

- Sales of alcohol at the Kansas State Fair (State Fair);
- Sampling of alcohol at the State Fair;
- Tax rates on alcohol products;
- Local government zoning requirements for farm wineries;
- Available tax credits for farm wineries;
- Distributor franchise agreements;
- Alcohol-related crime statistics;
- Home delivery of alcohol products; and

- Location restrictions on sales between liquor stores and drinking establishments.

October 7, 2021, Meeting

Presentation of Committee Research Topics

A KLRD Senior Research Analyst gave a presentation on the following topics:

- Sale and delivery of spirits to a drinking establishment;
- Alcohol-related crime statistics;
- Farm winery location requirements;
- Sampling requirements for liquor and alcohol consumption at the State Fair; and
- Liquor and CMB tax rates.

A Senior Assistant Revisor of Statutes gave a presentation on the following topics:

- Agritourism tax credit availability for farm wineries;
- Alcohol consumption at the State Fair;
- Distributor franchise agreements;
- Permitted activities for farm wineries; and
- Restrictions on in-state shipping for farm wineries, microbreweries, and microdistilleries.

The Committee requested information on local building codes applicable to farm wineries and on distributor franchise agreements and farm winery licensees.

Overview of the Kansas Open Meetings Act

A Senior Assistant Revisor of Statutes gave a presentation on the Kansas Open Meetings Act (KOMA). He discussed the requirement that legislative meetings be open to the public and

situations in which a gathering could be considered a meeting.

The Chairperson noted past instances of legislative committee members having a conversation via text message, and discouraged similar conversations from occurring.

Conferee Testimony on Delivery of CMB

A representative of Walmart stated the company is asking for authorization to deliver CMB to the homes of customers. The conferee further stated that Walmart belongs to a loose coalition of other CMB retailers that would like to make similar deliveries.

A representative of Dillons stated the company agrees with the comments of Walmart and discussed deliveries the company makes in other states.

A representative of Fuel True, Casey's General Stores, and the Retail Grocers Association discussed the history of CMB legislation in Kansas and legislation in regional states. The representative also discussed the effects of the COVID-19 pandemic on retail sales and the desire of his clients to deliver CMB. The representative stated his clients are working to draft legislation to allow CMB retailers to deliver CMB and other products.

The ABC Director addressed questions raised during conferee presentations concerning delivery of liquor and CMB by a retail liquor store. The ABC Director discussed ABC's interpretation of KSA 2020 Supp. 41-308, and noted a minor correction that could be made to the statute.

A Senior Assistant Revisor of Statutes provided his interpretation of KSA 2020 Supp. 41-308 and stated he believes further clarification will be necessary. The Senior Assistant Revisor of Statutes also addressed a question concerning farm wineries by stating such a licensee must also have a drinking establishment license to sell CMB.

A representative of the Kansas Wine & Spirits Wholesalers Association stated that if the Legislature modifies the Liquor Control Act, it

may also need to modify the Drinking Establishment Act. He also discussed the farm winery zoning questions, and referred to two Attorney General opinions in conjunction with a statute. The representative also discussed current franchise agreement laws and tax rates of regulated beverage products. In response to questions, the representative discussed the possibility of legislation limiting the geographical area of delivery and also discussed the differences between delivery and shipping of regulated beverages.

A representative of the Kansas Association of Beverage Retailers stated there has been a decline in the number of retail liquor stores in the state and noted that when new entities enter the marketplace, more business is diverted from licensed retailers. She asked the Committee to not recommend legislation that would introduce additional out-of-state and unlicensed entities into the marketplace.

A representative of the Distilled Spirits Council of the United States discussed the rise in online shopping for groceries and regulated beverages due to the COVID-19 pandemic. He discussed demand for direct-to-consumer shipping by manufacturers and discussed survey results showing that consumers want the ability to purchase products directly. The representative also discussed issues with craft distillers finding a wholesaler to distribute their product.

A representative of the Wine Institute stated the Wine Institute would like to see the distribution of wine be removed from franchise law, or amended to allow more flexibility in franchise agreements. He also discussed the tax rates of ready-to-drink beverages and stated the Wine Institute requests fair and equitable tax rates for such beverages. In response to questions, the representative discussed franchise laws and related litigation.

October 8, 2021, Meeting

The ABC Director addressed Committee questions from the prior day's meeting. The ABC Director discussed ABC's role as the custodian of franchise agreements. She discussed notice required for alterations, modifications, or terminations of such agreements; remedies for

aggrieved parties; and the timeline of when changes to the agreement take effect. The ABC Director also cited statistics related to requests to change a franchise agreement and resulting litigation.

The ABC Director also discussed taxes on alcoholic candy, noting the minimum level of alcoholic content to be assessed taxes and to be sold by retail liquor stores. In response to a question, the ABC Director stated there is no maximum amount of alcohol that may be contained in alcoholic candy.

Conferee Testimony on Liquor Sales and Delivery

A representative of Vern's Retail Liquor described the effects of 2019 law on retail liquor stores and current supply chain challenges due to the COVID-19 pandemic. The representative stated the supply chain challenges would be exacerbated if more parties were introduced to the market.

A representative of the Kansas Association for Responsible Liquor Laws reviewed the temporary provisions in place during the COVID-19 pandemic that allowed restaurants to sell mixed beverages along with food orders and discussed the extension of that privilege to other entities in 2021. The representative discussed concerns with allowing home delivery and direct sales and stated the organization supports the current construction of the three-tier system.

A representative of the Kansas Beer Wholesalers Association described the products CMB retailers are authorized to sell and, in response to a question, stated 3.2 percent beer is still available for purchase in the state. He stated his opinion that the three-tier system is working and that franchise laws protect independence and provide for consumer choice. The representative also discussed his concerns with direct shipping.

A representative of the Kansas Licensed Beverage Association, the Kansas Craft Brewers Association, the Kansas Viticulture and Farm Winery Association, and the Artisan Distillers of Kansas discussed the differences between direct delivery and direct shipping, and that his clients would like to be involved when the Legislature

considers legislation on direct delivery. The representative also proposed a new urban farm winery license be created that would have no agriculture requirements, and he discussed an issue regarding the transfer of beer between a caterer and a distributor.

November 10, 2021, Meeting

A KLRD Research Analyst presented a memorandum to the Committee concerning home delivery of regulated beverages, addressing questions Committee members had raised at the October 7 meeting. She described the current status of alcohol delivery laws across the country and noted that many states' laws were enacted during the COVID-19 pandemic.

Discussion on Committee Research Topics

Topics reviewed by staff and discussed by the Committee included:

- Permitted activities of farm wineries;
- Farm winery agritourism tax credit eligibility;
- Allowable locations of farm wineries;
- Building code requirements for farm winery buildings;
- A State Fair common consumption area;
- Sampling requirements at the State Fair;
- Current law on distributor franchise agreements;
- Current law on in-state shipping by farm wineries, microbreweries, and microdistilleries;
- Sale and delivery of alcoholic beverages between a retailer and an on-premises licensee;
- Home delivery of regulated beverages;

- Tax rates for liquor, CMB, and alcoholic candy;
- Effect of 2017 House Sub. for SB 13 on sales of items in addition to liquor at retail liquor stores; and
- The impact of recent alcohol legislation on alcohol-related crime.

CONCLUSIONS AND RECOMMENDATIONS

Following discussion, the Committee adopted the following recommendations:

Effects of Alcohol

The Committee wishes to make the Legislature aware of the collateral effects of alcohol on the lives of Kansans and urges the Legislature to be diligent in monitoring such effects.

State Fair

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