

SESSION OF 2015

**SUPPLEMENTAL NOTE ON SUBSTITUTE FOR HOUSE
BILL NO. 2200**

As Recommended by House Committee on
Commerce, Labor and Economic Development

Brief*

Sub. for HB 2200 would amend the Kansas Liquor Control Act pertaining to the number and type of licenses issued, who may receive a license, and the activities a licensee may engage in; provide for the distribution of revenue from the liquor enforcement tax; and repeal certain sections of law. The bill also would establish the County Option Retailers Act (CORA), which would allow voters to decide at a county election whether to allow grocery stores to sell alcoholic liquor and convenience stores to sell beer in addition to cereal malt beverages, which convenience stores currently may sell.

Starting on July 1, 2015, all retailer liquor licenses would become class C licenses. Class C licensees would continue to sell alcoholic liquor (beer, wine, and spirits) as retail liquor licensees currently do. A distributor would be permitted to establish minimum order requirements based on either invoice dollar amounts or product case quantity.

County Option Retailers Act

The proposition could be placed on a county ballot by one of two means: by the board of county commissioners passing a resolution to submit the question or by a petition signed by a number of voters that would not be less than 10 percent of the votes cast in the county for the Office of

*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>

Secretary of State at the last preceding general election. If a majority of voters approved the measure, the provisions of CORA, as outlined below, would take effect. If a majority of voters defeated the measure or if the measure was not submitted to the voters, current law would apply.

In a county where the voters approved CORA, three types of retailer's licenses would become available:

- A class A license, which could be issued to either a convenience or grocery store;
 - For the sale of beer and other goods and services; and
 - Which would cost \$1,500;
- A class B license, which could be issued to a grocery store after the store obtained a class C license from a liquor store;
 - For the sale of alcoholic liquor and other goods and services, provided the alcoholic liquor would be displayed separately; and
 - Which would cost \$1,500; and
- A class C license, which could be issued to a liquor store;
 - For the sale of alcoholic liquor and—starting two and a half years after the election—other goods and services; and
 - For the sale of alcoholic liquor to licensed drinking establishments and caterers; and
 - Would continue to cost \$500 as provided by current law.

“Convenience store,” “grocery store,” and “liquor store” would be defined in the Liquor Control Act. “Convenience store” would mean a retail business with primary emphasis placed on providing the public a convenient location to quickly purchase from a wide array of consumable products

(predominantly food or food and gasoline) and services. "Grocery store" would mean an establishment primarily engaged in retailing a general line of groceries, including, but not limited to, packaged food, fresh and frozen food, prepared foods, and other consumable products, and would include establishments primarily engaged in retailing a general line of groceries in combination with general lines of new merchandise. "Liquor store" would mean a store whose primary business is the retail sale of alcoholic liquor in the original and unopened container and not for consumption on the premises.

The total number of class B and class C licenses in a county would be capped at the number of class C licenses issued at the time of the election. Licenses could be issued by the Director of Alcoholic Beverage Control (ABC) if licenses have been revoked or not renewed.

Three years after the election, a class A license, which would permit the sale of beer and other goods and services, could be issued to a person engaged in business as either a convenience or a grocery store.

Three years after the election, a person who is qualified under the Liquor Control Act to hold a class B license would be permitted to acquire a license by transfer from one of the three existing liquor stores in closest proximity to the premises of the person buying the license. Six years after the election, a qualified person could purchase a license from an existing liquor store located in the same county as the premises of the person buying the license. The transaction between the transferor and transferee, pending the approval of the Director of ABC, would be required to provide for the sale of the transferor's inventory of alcoholic liquor. A new class B license would be issued to the transferee for the remainder of the original class C license's term. The transferee would pay a transfer fee of \$10,000.

A person would not be permitted to hold a class B license dormant for more than 180 days without engaging in

retail sales of alcoholic beverages; if a person could show good cause to the Secretary of Revenue for not selling alcoholic beverages, the Secretary could extend the inactive period by an additional 180 days. If a class B license were to be revoked, the Secretary would sell the license by public auction to qualified persons in the same county where the license was issued. The proceeds of the sale would be applied to any enforcement taxes due, and the remainder would be deposited in the State General Fund (SGF). The transfer fee established by the bill would be applicable to an auctioned license.

Tastings of alcoholic beverages would continue to be conducted at liquor stores only and would not be permitted at grocery or convenience stores. The Director of ABC would be permitted to authorize a grocery store to become a supplier of alcoholic liquor for a licensed restaurant, club, or drinking establishment if no liquor store was available to supply that business.

In counties that approved CORA, the eligibility for licenses would be revised, changing reference from “person” to “individual” in the residency requirements. A corporation would be allowed to hold a license provided any corporation officer, manager, director, or shareholder owning in the aggregate more than 5 percent of the corporation stock would be eligible for a license, excluding the residency requirements. If an individual associated with the corporation had a license previously revoked or was convicted of a violation under the Liquor Control Act, then the corporation would become ineligible for a license. A corporation would be required to file with the Secretary of State and designate a Kansas resident as an agent for service of process purposes. The prohibition placed on individuals from holding multiple licenses would be repealed.

Persons under the age of 21 employed by a class A licensee could work on the premises so long as they were supervised by someone who was 21 years old or older; persons under the age of 18 would not be permitted to sell

beer in convenience stores. Persons under the age of 21 who are employed by a class B licensee would be prohibited from selling, stocking, or handling alcoholic liquor in a grocery store. Persons under the age of 21 could not be employed by a class C licensee in a liquor store. Current law prohibits persons under the age of 21 from selling alcoholic liquor. A person convicted of a felony would be allowed to work for a class A or class B licensee but would not be permitted to sell the product. Persons with a felony conviction would not be permitted to be employed by a class C licensee. Under current law a person convicted of a felony may not be employed by a liquor store.

The prohibitions placed on the sale of cereal malt beverages next to alcoholic liquor and interior entrances connecting a business that sells alcoholic liquor with another business would be repealed in those counties that approved CORA.

The Local Cereal Malt Beverage Sales Tax Fund (Fund), which would be used for liquor enforcement purposes, would be created in the state treasury. Three percent of the revenue from the liquor enforcement tax collected in those counties where CORA was approved would be credited to the Fund, and moneys would be distributed quarterly to the respective cities and counties on a weighted population basis. Under current law, the revenue collected from the liquor enforcement tax is credited to the SGF.

By July 1, 2016, the Secretary of Revenue would adopt rules and regulations to administer the provisions of the bill, including limiting the number of licenses issued monthly after July 1, 2018, and the means to submit license applications prior to July 1, 2018.

Background

At the House Committee hearing, testimony in favor of the bill was provided by Representative Rubin,

representatives for Uncork Kansas and trade associations for retail grocery and convenience stores, individuals, and business owners. Proponents said the bill would provide convenience for consumers who are wanting an improved shopping experience. The bill would encourage more competition, better pricing, and increase product selection.

Opponent testimony was provided by representatives of beer and alcohol trade associations, suppliers, wholesalers, liquor stores, local law enforcement agencies, and the Woman's Christian Temperance Union. Noting Kansas is among the lowest alcohol consumption states in the country, opponents noted the three-tiered system of regulation has been effective in the taxation, regulation, and sale of alcohol. Opponents in the liquor industry expressed concern the bill would cause the loss of jobs and income. Law enforcement representatives expressed concern the bill could lead to more shoplifting crimes, especially crimes committed by minors.

Neutral testimony was provided by the Director of ABC and representatives for the League of Kansas Municipalities, the Kansas Licensed Beverage Association, and the Kansas Health Institute. The Director of ABC suggested the beneficial interest for corporations be reduced from 25 percent to 5 percent, making the licensing qualification uniform with other alcohol laws. The representative for the League of Kansas Municipalities expressed concern about the loss of sales tax revenue from cereal malt beverage sales and encouraged replacement funding through liquor enforcement tax revenue. The representative for the Kansas Licensed Beverage Association expressed concern that as class B licenses are sold and bought, on-premise retail licensees, especially in rural parts of the state, could find themselves without a supplier for beer and alcoholic liquor. The representative for the Kansas Health Institute outlined the negative public health impacts which could be a result of the bill.

The House Committee on Commerce, Labor and Economic Development amended the bill on February 23, 2015, to:

- Specify the vicinity in which a class B license may be purchased;
- Provide for the sale of wholesale products between parties in a class B license transaction and increase the transfer fee from \$500 to \$10,000;
- Require rules and regulations to be established by a date certain;
- Revise the definitions for “convenience store,” “grocery store,” and “liquor store”;
- Allow distributors to establish minimum order requirements;
- Allow a grocery store with a class B license, if certain conditions exist, to sell alcoholic liquor to a licensed on-premises establishment for resale;
- Allow a liquor store to sell other goods and services starting January 1, 2018, instead of July 1, 2018;
- Require displays of wine and spirits in a grocery store to be segregated from other goods;
- Decrease the beneficial interest from 25 percent to 5 percent for corporations to be eligible for a retailer’s license;
- Limit the period of time class B licenses may be held inactive and allow revoked class B licenses to be auctioned;
- Allow employees under the age of 21 to work in a class A licensed establishment under adult supervision; and
- Preclude tastings in grocery and convenience stores.

On March 18, the bill was withdrawn from the House Calendar and re-referred to the Committee on Commerce, Labor and Economic Development. On May 5, the Committee recommended a substitute bill be passed which would allow for a county option to decide where alcoholic liquor and beer may be sold and provide for three types of retailer liquor licenses.

According to the fiscal note prepared by the Division of the Budget, in consultation with the Department of Revenue and the Department for Aging and Disability Services, the bill, as introduced, would require the Division of ABC to begin hiring additional staff in the fourth quarter of FY 2018 to conduct licensing functions for as many as 1,528 new licenses and 247 retail license transfers and to maintain the enforcement of the liquor laws at the current level. For FY 2018, the Department estimated expenditures would increase by \$657,967, which would include \$200,440 for 12.0 FTE positions (9.0 enforcement agents and 3.0 support staff) and \$457,527 in other operating expenditures. For FY 2019, the first full fiscal year of operations, the Department estimated expenditures would be \$1,293,494, which would include \$1,202,631 for salaries and wages for 12.0 FTE positions and \$90,863 for other operating expenditures.

According to the fiscal note, the sale of cereal malt beverages currently generates approximately \$7.5 million in state sales taxes and \$1.9 million in local sales taxes annually.

The Department for Aging and Disability Services indicated the bill could increase consumption of alcohol and tobacco, requiring greater levels of service for substance abuse treatment, but the Department did not indicate an additional amount of funds necessary to provide services.