



KANSAS ASSOCIATION OF BEVERAGE RETAILERS

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Testimony in Support of HB 2212 – House Federal and State Affairs Committee February 19, 2021

Thank you for the opportunity to submit comments regarding HB 2212. It is unfortunate that we must stand before you and support changing Kansas law because another state's statute was struck down by the United State Supreme Court. The Tennessee Wine and Spirits Retailers Assn. v. Thomas decision deemed that state's residency law violated the commerce clause of the U.S. constitution.

The Kansas Association of Beverage Retailers supports HB 2212 to update our licensing statutes to remove the unconstitutional residency requirements.

The Kansas Association of Beverage Retailers was created at the repeal of prohibition in Kansas and is made up of licensed off premise retailers – liquor store owners – across the state of Kansas. Our members are all Kansans, a fact that has been a source of efficient regulation for the Kansas Liquor Control Act since its creation in 1949.

Every change to our statutes has an effect on current liquor store owners and their business viability. Please remember that our Kansas liquor store owners are still dealing with the aftermath of the 2019 Beer Law. That law shifted a significant portion of beer sales to grocery and convenience stores. According to the January 2021 ABC Report to the Legislature, Kansas has 35 fewer licensed liquor stores than in 2017. 2020 has provided a temporary boost to some of our stores, as wine and spirits buying has been temporarily shifted, but we fully expect those purchases to shift back to restaurants, bars and entertainment venues when people are again comfortable going out.

Our retailers support reasonable business-friendly regulation of the sale of spirits, wine and beer to the public. We ask that K.S.A. 41-311 continue to require a fair and even playing field for licensees by retaining the balance of current requirements for off-premise retailers.

According to the Kansas Liquor Control Act, a licensee must:

- Be a citizen of the United States;
- Be 21 years of age
- Be the actual owner and operator of the business
- Provide a truthful application and current in taxes
- Own or currently lease the business property

A licensee must not:

- Propose for licensure an LLC, Co-Partnership or Trust in which the participants would not be eligible for a license;
- Have felony convictions, prior license revocations, have convictions relating to gambling or prostitution businesses, hold licenses from other tiers of the liquor system;
- Be a law enforcement official or who, other than as a member of the governing body of a city or county, appoints or supervises any law enforcement officer, or who is an employee of the director;
- Or be married to a spouse who would be ineligible to receive a license under this act for any reason other than citizenship, residence requirements or age, or has been convicted of a felony or other crime which would disqualify a person from licensure under this section and such felony or other crime was committed during the time that the spouse held a license under this act.

The Tennessee Wine and Spirits Retailers Assn. v. Thomas decision has been touted by those who favor widespread deregulation of alcohol sales to upend state licensing laws, however, the decision is narrow and should be applied narrowly.

The Tennessee decision deems durational residency unconstitutional and applies an unusual concept of regulation and oversight – indicating that somehow technology can overcome the problems a state might encounter with an absentee business owner. The decision cites a number of measures that can be implemented to provide important oversight and regulation in lieu of residency including decision cites limiting the number of licenses issued as one option for exercising the State’s legitimate police powers. The decision does not revoke the State’s ability to require an in-state presence, and this is very important.

It is the role of the Legislature to establish statutes regulating licensing for the sale of alcoholic products as provided by the U.S. Constitution. KABR members believe that every change to the Liquor Control Act should mitigate the health and safety risks posed by alcohol. These risks are real. Our members are acutely aware of the costs to our communities and families when illegal activities occur under the radar.

We will continue to work closely with the Division of Alcoholic Beverage Control and appreciate the Director and her agency’s hard work to regulate our industry with a business friendly approach. Please make it a priority to provide them with the resources they need.

Any attempt to expand licensure to corporations, chains or big box stores would be viewed by our members as a violation of the Beer Law Compromise promised before the Kansas Legislature. That agreement assures they will not pursue legislation to expand the products they sell beyond beer up to 6% ABV for ten years.

Thank you for your assistance in preserving that agreement and for your support of our small business owners.

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