

MINUTES

2021 SPECIAL COMMITTEE ON LIQUOR LAW MODERNIZATION

November 10, 2021
Room 582-N—Statehouse

Members Present

Representative John Barker, Chairperson
Senator Larry Alley, Vice-chairperson
Representative Louis Ruiz, Ranking Minority Member
Senator Brenda Dietrich
Senator Tom Holland
Senator Rick Kloos
Representative John Carmichael
Representative Tom Kessler
Representative Marty Long
Representative Sean Tarwater

Members Absent

Senator Richard Hilderbrand

Staff Present

Jordan Milholland, Kansas Legislative Research Department
Andrew Finzen, Kansas Legislative Research Department
Mileshea Segun, Kansas Legislative Research Department
Leighann Thone, Kansas Legislative Research Department
Jason Long, Office of Revisor of Statutes
Matt Sterling, Office of Revisor of Statutes
Connie Bahner, Committee Assistant

Conferees

Tuck Duncan, Kansas Wine & Spirits Wholesalers Association
Debbi Beavers, Director, Alcoholic Beverage Control Division, Kansas Department of Revenue

Others Attending

See [Attached List](#)

WEDNESDAY, NOVEMBER 10 ALL DAY SESSION

Call to Order

Chairperson Barker called the meeting to order at 10:10 a.m. It was noted that Representatives Carmichael and Long were on Webex.

Chairperson Barker stated the Kansas Legislative Research Department (KLRD) has done an excellent job of providing the Committee with information on several different subject matters, and Matt Sterling, Senior Assistant Revisor, Office of Revisor of Statutes, has been of great assistance as well. Jordan Milholland, Senior Research Analyst, KLRD, provided a list of the research questions posed by the members of the Committee during the August and October meetings, which the Committee will review and discuss during the meeting ([Attachment 1](#)).

Survey of State Legislation Regarding Home Delivery of Alcohol

Chairperson Barker asked Leighann Thone, Research Analyst, KLRD, to provide an overview of the Survey of State Legislation Regarding Home Delivery of Alcohol memorandum ([Attachment 2](#)). She stated the survey relates to the sale of alcoholic beverages by off-premises liquor licensees, such as liquor stores, grocery stores, and convenience stores, and on-premises licensees such as restaurants. The memorandum also provides information about who may deliver alcoholic beverages, which includes third-party services. Ms. Thone stated 20 states currently allow for home delivery of mixed drinks from restaurants and other appropriately-licensed establishments, 21 states limit delivery to alcohol sealed by the manufacturer, 25 states allow for home delivery of alcohol through a third-party contractor or service, and 7 states do not allow for any type of local home delivery of alcohol to consumers. A table in the memorandum shows what each state allows, what may be delivered and from where, and the relevant bill, statute, or action. This document is on the KLRD website at <http://www.kslegresearch.org>.

Approval of October 7 and 8, 2021, Minutes

Chairperson Barker stated the minutes of October 7 and 8, 2021, were ready to be approved. The minutes were handed out and the Committee took time to review them.

Representative Ruiz moved the minutes of October 7 and 8, 2021, be approved as submitted and was seconded by Senator Dietrich. The minutes were approved.

Discussion on Committee Research Topics

Chairperson Barker stated the Committee will discuss the research questions raised by the members in their previous meetings and consider recommendations in the afternoon. The first topic for discussion was the Kansas State Fair. Last year, the Senate passed a bill, but the House did not get an opportunity to consider the bill.

Senator Alley stated that for several years, the Kansas State Fair has had an enclosed area where wine and beer could be consumed. The State Fair Board has requested to expand that area and allow for additional vendors that would sell wine and beer. The Senate passed SB 2 to address the request. Chairperson Barker stated that testimony was given, and there was no opposition to the bill, but the House had not had an opportunity to consider the bill. He would anticipate that the House may take this up at the beginning of the 2022 Legislative Session.

Senator Alley stated he would like discussion on the changes SB 2 would make regarding a common consumption area and whether there are sampling requirements or restrictions for microdistilleries at the Kansas State Fair.

Mr. Sterling stated SB 2 would expand where beer and wine can be consumed during the Kansas State Fair. Currently, consumption must occur on the licensed premises of the temporary permit holder. The bill would allow the State Fair Board to designate a broader area to serve as the licensed premises, similar to a common consumption area. The boundaries of that area would have to be designated on a map and would be marked by physical barriers indicating the location on the State Fairgrounds. The bill would also make some changes to the alcoholic liquor enforcement tax. The bill would direct a portion of the tax revenue from the sales at the Kansas State Fair to the State Fair Capital Improvements Fund — 70 percent of the tax revenue from both the 8 percent retail sales enforcement tax and the 10 percent enforcement tax would be credited to the State Fair Capital Improvements Fund.

Seeing no questions, Chairperson Barker stated the Committee would now discuss the laws concerning permitted activities of farm winery licenses and whether there is a conflict between the farm winery Kansas-grown product reduction and agritourism tax credit eligibility.

Mr. Sterling stated current law authorizes a tax credit for the first five taxable years commencing after a taxpayer opens their business. The tax credit is for 20 percent of the cost of liability insurance for a registered agritourism operator who starts an agritourism activity. The Secretary of Wildlife, Parks and Tourism (Secretary) maintains a list of all registered agritourism operators, the activities that they have registered, and the location of those activities. Farm wineries operating an agritourism activity can register as an agritourism operator and be eligible to receive the tax credit. Before July 1, 2021, farm wineries were required to use at least 30 percent of Kansas-grown products in the production of domestic table wine and fortified wine. During the 2021 Legislative Session, the Legislature passed HB 2137, which reduced that percentage to 15 percent after July 1, 2021, and until January 1, 2023. After January 1, 2023, there will be no Kansas-grown product requirements in the production of wine. This could potentially allow farm wineries that do not grow any products in Kansas to register as an agritourism operator and receive the tax credit for liability insurance costs associated with an agritourism activity. To the extent that creates a conflict is the decision of the policymakers. The Secretary is not required to check or verify the agritourism activity, so there could be a need for changes.

Representative Tarwater discussed two Attorney General opinions concerning agribusiness. He stated several of the larger counties are trying to enforce building codes on agribusinesses in order to get their liquor license. Representative Tarwater would like to make a recommendation that farm wineries automatically be eligible for a drinking establishment (DE) license as an agribusiness without regard to any other local building codes or restrictions and that they automatically be granted a cereal malt beverage (CMB) license.

Chairperson Barker stated Phil Bradley, Kansas Licensed Beverage Association, submitted testimony with recommendations for urban and farm winery licenses ([Attachment 3](#)).

In response to a question by Representative Carmichael, Representative Tarwater stated the intent is to keep current farm winery business restrictions and codes. Problems arise when, as in Johnson County, codes require DE licensees to adhere to additional requirements, like having fire sprinklers installed. Many farm wineries do not have those sprinklers, so they are being denied DE licenses. The intent of a prospective bill would be to allow them to acquire a DE license and serve drinks not produced on the premises at their events.

Representative Carmichael stated his concern is with having large numbers of people in a facility that otherwise would be required to comply with life safety codes and exempt those businesses simply because they can sell farm wine.

Senator Dietrich asked if the requirement that Kansas-grown grapes have to be in the product is being removed, would a tax credit still be allowed? In response to the question, Mr. Sterling stated growing the grapes is not a requirement. The requirement is that the applicant is operating an agritourism activity, which is not tied to the grapes.

Senator Holland stated there are a number of wineries that do grow grapes used in their production, but these instances are minimal, and the wineries rely on Kansas vineyards to supply the Kansas produce to make Kansas wines. His winery produces about 1,000 gallons of wine a year and very little of that came from his vineyard, but all of the grapes contained in the wine came from Kansas vineyards.

Chairperson Barker stated the Committee will next discuss the law regarding in-state shipping by farm wineries, microbreweries, and microdistilleries. He stated the Committee discussed recommending a statutory change conforming to the Alcoholic Beverage Control Division, Kansas Department of Revenue (ABC) handbook which would allow a club owner to buy liquor from anywhere in the state of Kansas.

Mr. Sterling discussed the statute concerning sales between clubs and liquor stores (KSA 41-308(b)), stating the issue is that subsection(b)(2) of the statute has a general prohibition against these sales, and an exception would have to be examined if the Committee wants to broaden it to any county.

Chairperson Barker stated some information was handed out in the last meeting regarding the Kansas tax rates for liquor and CMB ([Attachment 4](#)). Mr. Milholland stated the memorandum provided at the last meeting set out the ten different tax rates that were applicable to the different regulated beverages. He discussed the memorandum and noted the various tax rates listed in the document.

Chairperson Barker stated the Committee was also provided with a letter from a number of organizations, including Central States Counsel Wine Institute, Standard Beverage, Handcrafted Wine & Spirits, Southern Gazers, and Kansas Wine & Spirits Wholesalers ([Attachment 5](#)). The letter states the alcohol by volume (ABV) threshold for the federal excise tax rate has recently changed from 14 percent to 16 percent. The ABV threshold in Kansas for its excise tax on wine is presently at 14 percent, and there is a recommendation that the state adopt the 16 percent rate.

Chairperson Barker stated that a question was raised on the Kansas tax rate for alcoholic candy. Mr. Milholland stated the ABC advised that alcoholic candy is included in the definition of alcoholic liquor, so gallonage taxes are assessed according to the type of alcohol in the candy. It is paid by the in-state manufacturer or the importing distributor provided it is greater than 0.5 percent ABV. Any candy with greater than one percent ABV must be sold by a liquor

licensee and is subject to the enforcement tax of eight percent or the liquor drink tax of ten percent, depending on whether it is sold by an on or off-premises licensee. Mr. Milholland further stated the ABC does not regulate any candy that has less than 0.5 percent ABV. Mr. Sterling stated if the candy has less than 0.5 percent ABV, it does not meet the definition of alcoholic candy. Mr. Sterling stated he would review statutes concerning adulterated foods to see if candy with under 0.5 percent ABV would qualify.

Tuck Duncan, Kansas Wine & Spirits Wholesalers Association, stated the topic of alcoholic candy came up during a conference committee. Kansas has manufacturers who use less than one-half of one percent alcohol in the manufacture of their candy, and the alcohol dissipates through that process. He discussed the history of the provisions of law regarding ABV and alcoholic candy.

Chairperson Barker stated the next question was whether the sales of beer by retail liquor licensees had decreased since the enactment in 2019 of expanded beer sales by CMB licensees and what data was available regarding the expanded sales of goods and services by retail liquor licensees under that same law.

Representative Tarwater stated he wanted to know how liquor stores were impacted when grocery stores began selling CMB products. In 2018, 471 liquor stores collected \$1.2 million in sales tax for all items sold. In 2020, 639 liquor stores collected \$2.7 million in sales tax for an increase of over 100 percent. On average, about \$2,500 was collected in sales tax per liquor store in 2018 and \$4,200 per liquor store in 2020.

Chairperson Barker stated the last question is the impact of recent legislation on alcohol-related crime. Representative Carmichael stated he received information from KLRD which provided alcohol-related crime statistics from 2015-2020 ([Attachment 6](#)). Alcohol-related violent crimes are increasing in Kansas at a rate of 20-25 percent per year. As the Committee prepares its recommendations, Representative Carmichael hopes the Committee will make note of the fact that alcohol is a highly regulated product and has a high potential for addiction, and there appears to be some relationship between consumption of alcohol and crime.

Senator Dietrich asked about the restrictions in law on in-state shipping by farm wineries, microbreweries, and microdistilleries. Mr. Sterling stated that currently farm wineries are authorized to ship wine in-state if the winery obtains a special order shipping license pursuant to KSA 41-350. Microbreweries and microdistilleries do not have that authority.

Senator Alley stated that Kansas has farm wineries that produce the product on-site, but Kansas also has a lot of farm vineyards that may not produce their product. Do they both get a tax credit? Mr. Sterling stated that eligibility for the tax credit is predicated on the operation of a registered agritourism activity, or any activity which allows members of the general public for recreational, entertainment, or educational purposes to view or enjoy rural activities including, but not limited to, farming or ranching activities or historic, cultural, or natural attractions.

Mr. Sterling also addressed earlier questions concerning adulterated food products. He stated the Secretary of Agriculture regulates adulterated foods. A food shall be deemed to be adulterated if it is a confectionery and it bears or contains any alcohol in excess of 0.4 percent. However, the subsection does not apply to any confectionery by reason of its containing not more than 1.0 percent by volume of alcohol.

Chairperson Barker recessed the Committee at 11:08 a.m.

Finalization of Committee Recommendations

Chairperson Barker reconvened the meeting at 12:55 p.m. He had KLRD staff prepare a draft of the recommendations discussed during the morning session ([Attachment 7](#)). Mr. Milholland stated these recommendations are not meant to be all-inclusive, but a starting point.

The Committee adopted the following recommendations:

- 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.
- 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 the House standing committee should consider taking action on the bill.
- The Committee recommends that a farm winery automatically be eligible for a DE 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 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.
- 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.
- 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 ABV threshold for state taxation to match the recently raised federal threshold of 16 percent ABV for certain still wine classes.
- The Committee recommends the introduction of legislation to amend the provisions of KSA 2020 Supp. 41-308 such that a retail liquor store licensee may 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.

There being no further business, the meeting was adjourned at 1:30 p.m.

Prepared by Connie Bahner

Edited by Jordan Milholland and Leighann Thone

Approved by the Committee on:

March 18, 2022

(Date)