



October 1, 2021

To: Special Committee on Liquor Law Modernization

From: KLRD Staff

Re: Requested Research Topics

During the August 31, 2021, meeting of the Special Committee on Liquor Law Modernization (Committee), members asked Committee staff to research various topics related to liquor and provide that information to the Committee.

This memorandum provides information 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 cereal malt beverage (CMB) tax rates.

Sale and Delivery of Spirits to Drinking Establishments

The Committee requested information concerning the purchase of spirits for resale by drinking establishments. The Committee also requested information concerning when this requirement became law.

Currently, licensed clubs, public venues, or drinking establishments may only purchase and receive delivery of spirits for resale from a retailer.¹ Such retailer must be in the same county or an adjacent county in order for delivery to occur.² If the licensed establishment is not located as such, the sale can still occur, but the alcohol may not be delivered to the licensed establishment, and the licensed establishment must pick up the alcoholic liquor itself.³

Legislative History

During the November 1986 general election, voters approved an amendment to the *Kansas Constitution* to remove the prohibition on the "open saloon" and to allow the sale of

1 KAR 14-21-10(a). The regulation also allows such licensees to purchase bulk wine, beer, and CMB from a distributor.

2 KSA 41-308(b)(2)

3 See Division of Alcoholic Beverage Control (ABC) "Handbook for Retailers," citing KSA 41-308(b)(2).

liquor by-the-drink in counties that voted to allow such sales. In response to the amendment, the Legislature passed 1987 House Sub. for SB 141, which created and amended law related to the sales of liquor by-the-drink.

During the February 6, 1987, meeting of the Senate Committee on Federal and State Affairs (Senate Committee), a conceptual amendment was made to only allow retailers to sell and deliver alcoholic beverages to clubs and drinking establishments when the retailer is located in the same county as the establishment or in an adjacent county. The substitute bill was recommended favorably for passage by the Senate Committee on February 11, 1987. The House Committee on Federal and State Affairs made further amendments and recommended a House Substitute for the bill be passed. A conference committee met to consider the substitute bill passed by the House of Representatives. The Conference Committee Report was adopted by both chambers on April 29, 1987, and the bill was signed by the Governor on May 11, 1987.

Crime Statistics

The Committee requested information concerning the potential impacts of recently enacted legislation on alcohol-related crime, using 2017 as the starting point. The Kansas Bureau of Investigation (KBI) provided the following crime statistics for 2015 through 2020:

Arrests ⁴	2015	2016	2017	2018	2019	2020
DUI	8,377	6,995	6,640	6,788	7,560	7,431
Drunkenness (Drunk in Public)	215	153	153	137	141	128
Liquor Violations ⁵	3,448	2,964	2,695	2,530	2,403	1,952

Violent Offenses With Alcohol Involved ⁶	2015	2016	2017	2018	2019	2020
Murder	14	26	15	16	17	14
Rape	257	247	243	216	262	232
Robbery	80	98	81	44	98	84
Aggravated Assault	2,248	2,053	1,942	2,050	2,243	2,839
Kidnapping	478	48	504	347	605	716
Simple Assault	7,705	7,193	6,184	5,758	6,707	7,549
Sodomy	86	61	58	53	63	75
Sexual Battery	129	143	110	111	159	133

4 These categories are counted by arrest. No offense report is necessary for these crimes.

5 Liquor Violations include Minor in Possession, open container, and sale to a minor, among others.

6 These categories are counted by offense. They are counted as such when the local agency marks the report as offender suspected of using alcohol. Violent Offenses are counted by victim with the exception of Robbery, which is counted by incident.

According to the KBI, the data set excludes the following agencies for all years provided: Douglas County Sheriff's Office, Lawrence Police Department (PD), Topeka PD, and Kansas City, Kansas, PD. The data set also excludes the following agencies for 2015 through 2019: Olathe PD, Overland Park PD, Mission PD, and Roeland Park PD.

Locations of Farm Winery Premises

The Committee requested information concerning the allowable locations of farm wineries and whether the locations are regulated by state statute or local ordinance. State statutes provide some parameters, such as specific types of zones and specific distance requirements from certain buildings, while local jurisdictions may zone particular areas and set building codes.

A farm winery must be located in an area zoned either agricultural, commercial, or business.⁷ Additionally, the premises must not be within 200 feet of a school, college, or church, unless the premises predate such school, college, or church.⁸ The licensed premises must also conform to all applicable building code regulations, if any.⁹

Sampling Requirements for Microdistilleries—State Fair Restrictions

A sample is defined in law as not more than:

- 1/2 ounce distilled spirits;
- 1 ounce wine; or
- 2 ounces beer or CMB.¹⁰

Sampling rules for farm winery, microbrewery, and microdistillery licensees are set out in statutes specific to each license type. However, similar rules apply for each type of licensee. The Committee specifically inquired about sampling by microdistilleries at the State Fair. References listed in this section are to microdistillery statutes.

Samples may only be provided at a “special event” monitored by the Director of ABC in a “wet” county that allows the sale of liquor by-the-drink.¹¹ Licensees are required to notify ABC before participation in the event, with electronic notification required not less than ten days before the event. “Special event” means a public or private gathering of two or more persons arranged for a specific commercial, charitable, or social purpose, having a limited duration, and not conducted in the ordinary course of business.¹²

7 KSA 41-710(b)

8 KSA 41-710(c)(1)

9 KSA 41-710(c)(2)

10 KSA 41-102(dd)

11 KSA 41-354(a)(4)

12 See ABC Handbook for Microdistilleries, accessible at:
<https://www.ksrevenue.org/abchbmicrodistilleries.html>

Consumption of alcoholic liquor at the State Fairgrounds is restricted by statute, with certain exceptions.¹³ Specifically, consumption of alcoholic liquor is allowed on the day of any parimutuel race held pursuant to the Kansas Parimutuel Racing Act, and during nonfair days in conjunction with a State Fair Board (Board) sanctioned event with at least 75 invited guests, subject to any restrictions set by the Board. KSA 41-719 does not contain any further provisions concerning the consumption of alcoholic liquor other than the consumption of domestic beer or wine.

Consumption of domestic beer or wine, or wine imported for educational purposes, is allowed on the State Fairgrounds, but only for the purposes of judging competitions. Consumption of domestic beer or wine is also allowed during the days of the State Fair, only in an area leased by the Board to a person with a temporary permit.

Liquor and CMB Tax Rates

The Committee requested information on the tax rates for liquor and CMB. Taxes are levied upon the person who first manufactures, uses, sells, stores, purchases, or receives the alcoholic liquor or CMB. If the liquor or CMB is manufactured and sold in the state, the taxes are paid by the manufacturer, microbrewery, microdistillery, or farm winery producing it.¹⁴ If the liquor or CMB is imported into the state, taxes are paid by the distributor. Manufacturers, microbreweries, microdistilleries, farm wineries, or distributors at wholesale of alcoholic liquor or CMB are exempt from paying such taxes upon providing proof the product was produced in Kansas, but shipped out of state for sale and consumption in another state.¹⁵

Tax rates for the production and sale of alcoholic liquor and CMB are listed below.

Spirits¹⁶

- Gallonage tax of \$2.50 per gallon, due at the time of manufacturing or bottling.

Wine¹⁷

- 30¢ per gallon on wine containing less than 14 percent alcohol by volume;
- 75¢ per gallon on wine containing more than 14 percent alcohol by volume (fortified wine); and
- \$2.50 per gallon on all spirits imported for use in manufacturing.

13 See KSA 41-719(d)

14 KSA 41-501(b)(2)

15 KSA 41-501(c)

16 KSA 41-501(b)(1)

17 *Id.*

Beer and CMB¹⁸

- 18¢ per gallon on beer and CMB;
- 20¢ per gallon on wort and liquid malt;
- 10¢ per pound on malt syrup and malt extract; and
- 30¢ per gallon on hard cider.

Liquor Enforcement Tax¹⁹

An enforcement tax of 8 percent is levied on sales of alcoholic liquor and CMB; this tax is levied in place of sales tax. The tax is paid by the purchaser and collected by the seller. The tax is levied on the following sales:

- Alcoholic liquor sold by a distributor to clubs, drinking establishments, caterers, or temporary permit holders;
- Alcoholic liquor sold by a microdistillery, microbrewery, or farm winery to consumers for off-premises consumption;
- Alcoholic liquor, CMB, and nonalcoholic malt beverage sold by retailers. [Note: A retailer who is licensed to sell alcoholic liquor holds a different license than a CMB retailer who may only sell CMB and beer containing not more than 6 percent alcohol by volume.]

Liquor Drink Tax²⁰

A drink tax of 10 percent is levied on the sales of alcoholic liquor and CMB by any club, caterer, drinking establishment, public venue, or temporary permit holder. The tax is paid by the consumer and collected by the seller. Any club, caterer, drinking establishment, public venue, or temporary permit holder that serves free samples is responsible for paying the drink tax.

Retail Sales Tax – CMB Retailers²¹

CMB sold by either off-premise or on-premise CMB retailers is subject to the applicable retail sales tax. [Note: CMB retailers may only sell CMB and beer containing not more than 6 percent alcohol by volume.]

¹⁸ *Id.*

¹⁹ KSA 79-4101(a)

²⁰ KSA 79-41a02

²¹ KSA 79-3602(hhh)

