

SESSION OF 2021

**SUPPLEMENTAL NOTE ON SUBSTITUTE FOR HOUSE
BILL NO. 2252**

As Recommended by Senate Committee on
Federal and State Affairs

Brief*

Sub. for HB 2252 would amend and create law related to fulfillment house licenses, farm winery licenses, electronic submission of records by special order shipping license holders, residency requirements for certain liquor licenses, and licenses that can be held by an alcoholic liquor manufacturer.

Fulfillment House Licenses

The bill would establish a new fulfillment house license under the Liquor Control Act (LCA) to be issued by the Director of Alcoholic Beverage Control (ABC).

The bill would amend the definition section of the LCA to include the definition of "fulfillment house" as any location or facility for any in-state or out-of-state entity that handles logistics, including warehousing, packaging, order fulfillment, or shipping services, on behalf of the holder of a special order shipping license.

The fulfillment house license would allow the license holder to warehouse, package, and ship alcoholic liquors produced by and belonging to a Kansas special order shipping licensee and would apply for each location that is involved in the shipping process to Kansas residents.

*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>

Fulfillment House License Application

The bill would clarify that before making or causing any shipment of alcoholic liquor to Kansas residents, an applicant for a fulfillment house license would be required to:

- Pay a \$50 license fee for each of the locations involved in the shipping process to Kansas residents; and
- Provide any information required by rules and regulations adopted by the Director and contained in the application.

The bill would provide that such licenses would remain valid for two years from the date specified on the license.

Fulfillment House Licensee Requirements

The bill would require a licensee to:

- Make reasonable efforts to confirm that any winery for which the licensee ships has a Kansas special order shipping license and may rely on the representations of each such winery for such assurance;
- Ensure that all containers of alcoholic liquors shipped directly within the state are labeled with the name, address, and license number of the fulfillment house licensee;
- Ensure containers are labeled with the following conspicuously printed statement: "SIGNATURE OF PERSON AGE 21 OR OLDER REQUIRED FOR DELIVERY";
- Require the signature of a receiver over the age of 21 for all packages shipped; and

- Ship all packages by a common carrier pursuant to continuing law.

Electronic Records

The bill would require fulfillment house licensees to keep records of all shipments for a three-year period and electronically submit them to ABC on a monthly basis.

Reports submitted would be available as open records, in accordance with the Kansas Open Records Act; however, the bill would specify the names and addresses of consignees must be redacted from the paragraphs open for public inspection.

The bill would provide that confidentiality of the redacted report information would expire on July 1, 2026, unless reenacted pursuant to continuing law by the Legislature prior to such date.

Record and Report Requirements

The bill would require the following information to be maintained by the licensee as a record for a minimum of three years after the shipment date:

- The name, address, and license number of the special order shipping licensee for whom the alcoholic liquor is being shipped;
- The name and license number of the express company or common carrier used;
- The date of each shipment;
- The carrier tracking number;
- The name and address of the consignee of such alcoholic liquors; and

- The weight of the package and the product type of alcoholic liquors shipped.

The bill would require such records to be submitted monthly to the Director of ABC in the form and format prescribed.

Penalty for Failure to Report

The bill would state willful failure, neglect, or refusal to report any shipments would be subject to civil penalty of no more than \$100. The bill would further specify that after notice and an opportunity for a hearing in accordance with the Kansas Administrative Procedure Act (KAPA), the Director of ABC could refuse to issue or renew, or could revoke, a fulfillment house license upon a finding that the licensee has failed to comply with the provisions of the bill.

The bill also would specify that an out-of-state license holder would be deemed to have appointed the Secretary of State as the resident agent and representative of the licensee to accept service of process from the Secretary of Revenue, the Director of ABC, and the courts concerning enforcement of the provisions of the bill, state law, and any rules and regulations adopted pursuant to those sections, and to accept service of any notice or order provided for in the LCA.

Rules and Regulations Authority

The bill would direct the Secretary of Revenue to adopt rules and regulations to implement, administer, and enforce the provisions of the bill.

Technical and Conforming Amendments

The bill would include technical and conforming amendments to ensure consistency in statutory phrasing.

Farm Winery Licenses

The bill would allow farm wineries, in accordance with federal law, to:

- Transfer or receive wine in a bulk container or packaged wine in bond to any bonded premises;
- Transfer or receive wine in a bulk container in bond to a distilled spirits plant;
- Receive distilled spirits in a bulk container; and
- Produce fortified wine with the addition of wine spirits to domestic wine if the added spirits are produced from the same kind of fruit used to produce the wine.

Under the bill, a farm winery licensee may import wine from outside Kansas for use in the production of its domestic table wine and domestic fortified wine. The bill would require such imports of wine to be reported on forms prescribed by the Director of ABC.

The bill would specify farm wineries could not transfer wine in a bulk container to the premises of a brewery.

Additionally, the bill would allow a farm winery, microdistillery, microbrewery, or the holder of a federal distilled spirits plant permit to receive and transfer alcoholic liquor in a bulk container from any manufacturer or supplier of liquor or cereal malt beverage, licensed in any state, for packaging in cans or bottles.

Any terms not defined in state law would have the same meaning as in the definitions found in federal law.

The bill would also remove provisions generally requiring farm wineries and microbreweries to use at least 30

percent Kansas-grown products in the manufacture of domestic wine and hard cider, respectively.

Electronic Submission of Records by Special Order Shipping License Holders

The bill would amend provisions in law related to the effective date of special order shipping licenses by specifying the license term begins on the date listed on the license. Current law specifies such license terms begin on the date the license is issued.

The bill would also amend law related to the payment of gallonage taxes by licensees and would require such taxes to be paid electronically on a quarterly basis to the ABC, Kansas Department of Revenue (KDOR), rather than annually, as in current law.

[Note: These provisions are identical to those included in 2020 SB 432.]

Residency Requirements for Certain Liquor Licenses

The bill would amend the LCA by removing the residency requirement for liquor license applicants and their spouses, including a prohibition on license issuance to residents who have not been a resident of Kansas for a full year, corporations not organized under the laws of Kansas, and persons who are not a resident of the county in which the premises sought to be licensed are located. The bill would also amend the current requirement to fingerprint all out of state applicants by making it optional if the applicant's identity is unclear.

The bill would specifically remove residency requirements for the following liquor licenses:

- Retailer;

- Manufacturer;
- Distributor;
- Microbrewery;
- Microdistillery; and
- Farm Winery.

Retailer License

The bill would remove a requirement that retailer's licenses may not be issued to:

- A person who is not a resident of the county in which the place of business covered by the license is located; or
- A person who has not been a resident of such county for at least six months; and
- A person who has not been a resident of Kansas for at least one year immediately preceding application for a retailer's license.

Manufacturer License

The bill would require, for copartnership applicants for a manufacturer license, all of the copartners to be individually eligible to receive a manufacturer's license.

Resident Agent

The bill would also specify that if the applicant is not a Kansas resident, no license would be issued until the applicant has appointed a citizen of the United States who is a resident of Kansas as the applicant's agent and has filed

certain documentation. Such agent would be required to meet certain qualifications as required by continuing law.

Nonresident Application Documentation

The bill would further provide the Director of ABC could require applicants, who are not residents of Kansas on the date of application, to submit certain documentation, submit to a criminal history record check as provided in continuing law, and appoint a process agent who is a U.S. citizen and a resident of Kansas to accept service of process for legal proceedings.

Current law requires the Director of ABC to require such documentation and background check for such applicants, or applicants who have not been a resident of Kansas for at least one year immediately preceding the date of application submission.

Licenses Held by Alcoholic Liquor Manufacturers

The bill would amend the Club and Drinking Establishment Act to allow any person who has a beneficial interest in a manufacturer licensed pursuant to the LCA to be issued one drinking establishment license.

Current law prohibits manufacturers and others from influencing, coercing, or attempting to influence or coerce drinking establishment licensees from purchasing particular brands or kinds of alcoholic liquor or purchasing alcoholic liquor from a specific distributor. The bill would create an exemption from those provisions for manufacturers holding drinking establishment licenses with respect to purchases made by such a drinking establishment.

The bill would specify that if a drinking establishment licensee also holds a manufacturer's license:

- The licensed premises specified in the drinking establishment license would be required to be separate from, and could be not more than two miles by the road usually traveled from, the licensed premises specified in the manufacturer's license;
- The drinking establishment could not sell alcoholic liquor manufactured by such manufacturer's licensee to the exclusion of other alcoholic liquor;
- All beer and cereal malt beverage sold by the drinking establishment would be required to be acquired from a licensed distributor or retailer; and
- All wine and spirits sold by the drinking establishment would be required to be acquired from a licensed retailer or farm winery who possesses a federal wholesaler's basic permit.

Background

The bill contains provisions of HB 2552, SB 253 (with an amendment added by the Senate Committee), SB 258, HB 2057, and HB 2212.

HB 2552 (Fulfillment House Licenses)

The bill was introduced by the House Committee on Federal and State Affairs at the request of Representative Miller.

House Committee on Federal and Senate Affairs

In the House Committee hearing on February 19, 2021, representatives of the Kansas Association of Beverage Retailers and the Kansas Wine and Spirits Wholesalers Association testified as **proponents** of the bill, stating the bill would help ABC identify and regulate unlawful shipments and help bring shippers into compliance. Written-only **proponent** testimony was submitted by representatives of Americans for Prosperity and the League of Kansas Municipalities.

The Director of ABC provided neutral testimony on the bill. No other testimony was provided.

The House Committee amended the bill to:

- Reduce the fulfillment house license fee from \$100 to \$50;
- Clarify that a fulfillment house must pay a separate fee for each location involved in the shipping process to Kansas residents;
- Remove certain required label information;
- Remove specific information required in the application, and providing that the Director could specify application information in rules and regulations; and
- Change the date the license would commence.

Senate Committee on Federal and State Affairs

In the Senate Committee hearing on March 10, 2021, representatives of the Kansas Association of Beverage Retailers, the Kansas Restaurant and Hospitality Association, and the Kansas Wine and Spirits Wholesalers Association testified as **proponents** of the bill, stating the bill would help

ABC identify and regulate unlawful shipments and help bring shippers into compliance.

The Director of ABC provided neutral testimony on the bill. No other testimony was provided.

The Senate Committee amended the bill by inserting the contents of SB 253 (farm wineries and winery outlets), SB 258 (license terms and electronic records and payments by special order shipping licensees), HB 2057 (licenses held by an alcoholic liquor manufacturer), HB 2212 (eliminating residency requirements for certain liquor licenses), and removing the general 30 percent Kansas products requirement for domestic wine and hard cider.

Fiscal Information

According to the fiscal note prepared by the Division of the Budget on HB 2552 as introduced, KDOR estimates the bill would increase expenditures by \$56,000 from the State General Fund for FY 2022 for system updates and 760 hours would be needed to make changes to forms, websites, and the Public One Stop Service Engine System and to create a handbook. The agency estimates the bill would increase revenues to the Liquor Control Act License Fund by \$5,000 for FY 2022 for 50 licenses at \$100 per license. [Note: The House Committee reduced the license fee to \$50.] Any fiscal effect associated with the bill is not reflected in *The FY 2022 Governor's Budget Report*.

SB 253 (Farm Wineries, Bulk Wine and Fortified Wine)

The bill was introduced by the Senate Committee on Federal and State Affairs at the request of a representative of the Kansas Wine and Spirits Wholesaler Association.

Senate Committee on Federal and State Affairs

In the Senate Committee hearing on February 25, 2021, on the bill, representatives of BevHub LLC, the Kansas Grape Growers and Winemakers Association, and the Kansas Viticulture and Farm Winery Association, and one private citizen provided **proponent** testimony. The proponents generally stated that the bill would clarify, in state law, the authority given to farm wineries under federal law.

The Director of ABC provided neutral testimony on the bill. No other testimony was provided.

The Senate Committee amended the bill to make farm wineries, microdistilleries, and microbreweries eligible to apply for an annual packaging and warehousing facility permit. The Senate Committee further amended the bill to remove provisions requiring farm wineries and microbreweries to use at least 30 percent Kansas-grown products in the manufacture of domestic wine and hard cider.

Fiscal Information

According to the fiscal note prepared by the Division of Budget on SB 253 as introduced, KDOR has indicated enactment of the bill would have no fiscal effect.

SB 258 – Special Order Shipping Licenses

The bill was introduced by the Senate Committee on Federal and State Affairs at the request of Senator Alley on behalf of the Director of ABC.

Senate Committee on Federal and State Affairs

In the Senate Committee hearing on March 10, 2021, the Director of ABC and a representative from the Wine Institute testified as **proponents** on the bill. The **proponents**

generally stated that the bill would allow matching of common carrier reports to special order shipping reports and assist in identifying unlawful shipments and unpaid gallonage or liquor enforcement taxes. No other testimony was provided.

Fiscal Information

According to the fiscal note prepared by the Division of the budget on SB 258, KDOR has indicated enactment of the bill would increase information technology expenditures by \$1,150 in FY 2022. However, if the combined effect of implementing this bill and other enacted legislation exceeds KDOR's programming resources, or if the time for implementing the changes is too short, expenditures for outside contract programmer services beyond the agency's current budget may be required. Any fiscal effect associated with enactment of the bill is not reflected in *The FY 2022 Governor's Budget Report*.

HB 2057 (Alcoholic Liquor Manufacturer, Drinking Establishment License)

The bill was introduced by the House Committee on Federal and State Affairs at the request of Representative Eplee.

[*Note:* HB 2057 is identical to 2020 HB 2596, as amended by the House Committee on Federal and State Affairs.]

House Committee on Commerce Labor and Economic Development

In the House Committee hearing on February 15, 2021, **proponent** testimony was provided by Representative Eplee and representatives of the City of Atchison, the League of Kansas Municipalities, MGP Ingredients, Inc., and the Kansas Wine and Spirits Wholesalers Association. **Proponents** noted

enactment of the bill would support local economies by increasing tourism and providing opportunities for economic growth. No other testimony was provided.

Fiscal Information

According to the fiscal note prepared by the Division of the Budget on HB 2057, KDOR indicates enactment of the bill would have no fiscal effect.

HB 2212 (Residency Requirements)

The bill was introduced by the House Committee on Federal and State Affairs at the request of Representative Averkamp.

House Committee on Federal and State Affairs

In the House Committee hearing on February 19, 2021, **proponent** testimony was presented by the Director of ABC and representatives of Davis Retail Liquor, the Institute for Justice, the Kansas Association of Beverage Retailers, and the Kansas Wine and Spirits Wholesalers Association. The **proponents** indicated that the bill was drafted in response to a U.S. Supreme Court decision, *Tennessee Wine and Spirits Retailers Association v. Thomas*, 139 S.Ct. 2449 (2019), which held that state residency laws for liquor licenses are unconstitutional. The **proponents** also cited Kansas Attorney General Opinion 2020-11 which concluded Kansas residency statutes may be unenforceable in light of the U.S. Supreme Court decision.

Written-only **proponent** testimony was provided by representatives of Americans for Prosperity and the League of Kansas Municipalities. No other testimony was provided.

Fiscal Information

According to the fiscal note prepared by the Division of the Budget on HB 2112, KDOR indicates enactment of the bill would have no fiscal effect on state revenues or expenditures; however, it would need to revise handbooks and forms to remove the residency requirement. The Kansas Association of Counties indicates the bill could increase revenues for counties if additional licenses are issued.

Liquor Control Act; Club and Drinking Establishment Act; alcoholic liquor; liquor licenses; farm wineries; special order shipping license; residency; alcoholic liquor manufacturers; drinking establishment licenses