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MEMORANDUM

To: Chairman Hutton and Members of the House Committee on Commerce,
Labor and Economic Development

From: Charles Reimer, Assistant Revisor of Statutes

Date: 3-11-2016

Subject: 2016 HB 2718

HB 2718 permits persons licensed to sell 3.2% beer (cereal malt beverage¹) and engaged in a convenience store or grocery store business to sell full strength beer if, as the result of the reduced manufacture of cereal malt beverages, the tax revenue from the cereal malt beverage gallonage tax has or will decline by 25% or more from the previous year's calendar month. The bill creates a new "beer retailer's license," permits cereal malt beverage to be sold together with beer and permits persons with retailer's licenses for the sale of alcoholic liquor to also sell cereal malt beverage. Cities and counties will receive a formula-based distribution of liquor enforcement tax money through a new "local cereal malt beverage sales tax fund" that is funded with 3% of the liquor enforcement taxes remitted to the state. Except for permission for the secretary of revenue to adopt rules and regulations, the bill does not go into effect until the governor declares the required cereal malt beverage gallonage tax revenue reduction has occurred. Any rules and regulations adopted by the secretary of revenue also are not effective until the governor makes such a declaration.

Section 1 establishes the trigger mechanism for the bill's provisions. Licensed manufacturers of cereal malt beverage must provide the secretary of revenue at least 30 days' notice of ceasing the manufacture of a brand. The secretary of revenue then analyzes projected tax revenue reduction based on the brand's sales performance and

¹ "Cereal malt beverage" means any fermented but undistilled liquor brewed or made from malt or from a mixture of malt or malt substitute or any flavored malt beverage, as defined in K.S.A. 41-2729, and amendments thereto, but does not include any such liquor which is more than 3.2% alcohol by weight. K.S.A. 41-2701.

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determines whether the actual or projected tax revenue from the cereal malt beverage gallonage tax has or will decline by 25% or more when compared to the previous year's calendar month. If so, the governor makes a declaration which causes the bill to go into effect.

Subsections (a) and (b) define a new "beer retailer's license" as entitling the licensee to sell beer or cereal malt beverage at retail in the original and unopened containers and not for consumption on the licensed premises. Licensees must be in business as a grocery store or convenience store and may only sell beer or cereal malt beverage and not wine or liquor. Licensees have all rights and are subject to all restrictions applicable to a retailer under the Kansas liquor control act, except they must be and have been a resident for the prior four years and may not have an interest in a manufacturer, farm winery, microbrewery or microdistillery. However, a spouse may hold a farm winery license or microbrewery license. Licensees must also meet the requirements of K.S.A. 41-311(a) and (b) (attached) except if otherwise provided in this section. Corporations are not eligible if any officer, director or manager of the premises, or any stockholder owning more than 25% of the stock would be ineligible under K.S.A. 41-311(a), other than citizenship requirements. Subsection (e) also provides that corporations must comply with the applicable requirements of K.S.A. 41-313 (Attached.)

Subsections (c) and (d) describe the rights of the holder of a beer license. This includes selling lottery tickets and any other goods or services.

Section 2 (Pg. 2) defines "convenience store" and "grocery store" for purposes of the bill. In addition to the language of subsections (a) and (b), the bill references NAICS codes. (Attached.)

Section 3 (Pg. 3) permits a beer licensee to employ persons who are at least 18 to sell beer at the point of sale. Employees under the age of 21 may work on the premises if under the supervision of any employee 21 or older.

Section 4 (Pg. 3) grants rule and regulation authority to the secretary of revenue. The secretary may adopt regulations on and after July 1, 2016, but the regulation would not take effect until the provisions of the bill are triggered.

Section 5 (Pg. 3) amends the definition section of the Kansas liquor control act to define “beer retailer” as a convenience store or grocery store as defined in section 2.

Section 6 (Pg. 6) amends current law to permit cereal malt beverage and beer to be sold at retail together and on the same premises. Current law prohibits cereal malt beverage from being sold or dispensed with any other alcoholic liquor.

Section 7 (Pg. 6) adds a beer retailer’s license to the list of licenses that are issued by the director of alcoholic beverage control of the department of revenue.

Section 8 (Pg. 6) permits holders of a retailer’s license to sell cereal malt beverage, in addition to alcoholic liquor, for use or consumption off and away from the premises and for resale as specified under current law.

Section 9 (Pg. 9) sets the fee for a beer retailer’s license at \$500. Cities and townships may also levy and collect a biennial occupation or license tax on the holder of a beer retailer’s license as current law permits such taxes for retailer’s licensees. This section also specifies the length of licenses issued by the director of alcoholic beverage control which is current law.

Section 10 (Pg. 9) established a local cereal malt beverage sales tax fund in the state treasury, to be funded by 3% of the revenue collected by the director of taxation from the liquor enforcement tax, K.S.A. 79-4101. This money is distributed quarterly as part of the quarterly sales tax distribution to each city and county which levies a local retailers’ sales tax. The amount for each city and county is determined by a formula based on a weighted population average, set out in the bill, which is updated annually with population data. The bill specifies that the fund is to be used only for the purpose set forth for the liquor enforcement tax and is to remain intact and inviolate for such purpose.