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MEMORANDUM

To: Chairman Barker
Members of the House Committee on Federal and State Affairs

From: Jason B. Long, Senior Assistant Revisor

Date: March 22, 2019

Subject: SB 70 – Sale of alcoholic beverages by temporary permit holders

Senate Bill No. 70 (SB 70), as amended by the Senate Committee on Federal and State Affairs, revises statutory law concerning the issuance of temporary permits for the sale of alcoholic liquor and the sale of alcoholic liquor by temporary permit holders. Amendments were further added to the bill on the Senate floor regarding the serving of samples of alcoholic liquor and the serving of alcoholic liquor in common consumption areas.

Currently, different statutes that govern the issuance of temporary permits and the sale of alcoholic liquor by permit holders. SB 70 repeals K.S.A. 41-347 and 41-2645 (copies of which are attached) and replaces those statutes with six new sections of law.

Section 1 provides for the issuance of temporary permits and contains many of the current provisions of K.S.A. 41-2645. This section also provides of the issuance of permits for sales at a charitable auction and sales of porcelain containers, which are currently permitted under K.S.A. 41-347. Under SB 70 the permit holder must specify the premises in the permit including a diagram of the premises showing the boundaries and all entrances and exits. A drinking establishment that is adjacent to the premises may request to have the drinking establishment's premises made a part of the temporary permit premises. Any such drinking establishment along with the permit holder shall be liable for all violations of laws governing the sale and consumption of alcoholic liquor that occur in the permit premises.

Section 1 maintains the current duration limits of 12 days for each permit holder, except that a sufficient number of permits may be issued as required by the State Fair Board for the entire period of the State Fair, and a permit may be issued for up to 30 days for an event approved by a city or county governing body.

Section 1 further provides for how a permit holder may purchase alcoholic liquor for resale from a licensed retailer or farm winery, and resale any unsold liquor back to such retailer or farm winery. Also, the permit holder may not employ individuals under the age of 21 to mix or dispense drinks, or individuals with a certain criminal record.

Section 2 of SB 70 requires a permit holder to purchase alcoholic liquor for resale from a retailer or farm winery, and the retailer must possess a federal wholesaler's basic permit. All records of purchases by the permit holder must be kept for at least one year from the date of purchase. Finally, no alcoholic liquor may be removed from the permit premises, except at a charitable auction, in a porcelain container, or to a drinking establishment that is extended into the permit premises.

Section 3 of SB 70 requires all alcoholic liquor be dispensed from the original container. Also, an individual may carry alcoholic liquor into the permit premises with the approval of the permit holder.

Section 4 authorizes a permit holder to provide samples of alcoholic liquor in a manner similar to a liquor retailer.

Section 5 provides that the Beer and Cereal Malt Beverage Keg Registration Act is not applicable to retail sales of alcoholic liquor to permit holders.

Section 6 makes permit holders subject to the enforcement provisions of the Kansas Liquor Control Act and the Club and Drinking Establishment Act. It also makes the relevant definitions set forth in K.S.A. 41-102 and 41-2601 applicable to Sections 1 through 5 of SB 70.

SB 70 also makes various amendments regarding the provision of samples of alcoholic liquor by licensees. First, both K.S.A. 41-102 and 41-2601 are amended to include a definition of "sample" that provides precise amounts for samples of each type of alcoholic liquor. Second, the limit on five samples per visit on clubs and drinking establishments is stricken. Under current law there are no limits on the number of samples provided by a retailer on a single visit.

Finally, SB 70 amends the common consumption area statute, K.S.A. 41-2659, to allow a licensee to sell and serve alcoholic liquor from a non-contiguous service area within the common consumption area upon approval by the permit holder for the common consumption area.

If enacted, SB 70 would become effective on publication in the Kansas Register and April 1, 2019.

41-347. Temporary permit, charitable auction or limited issue decanter sale. (a) The director may issue, in accordance with rules and regulations of the secretary: (1) To one or more charitable organizations a temporary permit authorizing the sale of alcoholic liquor at an auction; or (2) to an individual a temporary permit authorizing the sale of one or more limited issue porcelain containers containing alcoholic liquor. The permit shall be issued in the names of the charitable organizations or individual to which it is issued.

(b) Applications for temporary permits shall be required to be filed with the director not less than 14 days before the event for which the permit is sought unless the director waives such requirement for good cause. Each application for a permit authorizing an auction shall state the purposes for which the proceeds of the event will be used. The application shall be upon a form prescribed and furnished by the director and shall be filed with the director in duplicate. Each application shall be accompanied by a permit fee of \$25 for each day for which the permit is issued. Such fee shall be paid in full by a certified or cashier's check of a bank within this state, United States post office money order or cash. All permit fees collected by the director pursuant to this section shall be remitted to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the state general fund.

(c) Temporary permits shall specify the premises for which they are issued and shall be issued only for premises which comply with all applicable zoning regulations.

(d) A temporary permit shall be issued for a period of time not to exceed three consecutive days, the dates and hours of which shall be specified in the permit. Not more than one temporary permit may be issued to any one applicant in a calendar year.

(e) All proceeds from an auction for which a temporary permit is issued shall be used only for the purposes stated in the application for such permit.

(f) A temporary permit shall not be transferable or assignable.

(g) The director may refuse to issue a temporary permit to any charitable organization or individual which has violated any provision of the Kansas liquor control act.

(h) This section shall be part of and supplemental to the Kansas liquor control act.

History: L. 1995, ch. 258, § 4; L. 2001, ch. 5, § 128; L. 2005, ch. 201, § 6; Nov. 15.

41-2645. Temporary permit; authorization of certain sales. (a) A temporary permit shall allow the permit holder to offer for sale, sell and serve alcoholic liquor for consumption on unlicensed premises, which may be open to the public, subject to the terms of such permit.

(b) The director may issue a temporary permit to any one or more persons or organizations applying for such a permit, in accordance with rules and regulations of the secretary. The permit shall be issued in the names of the persons or organizations to which it is issued.

(c) Applications for temporary permits shall be required to be filed with the director not less than 14 days before the event for which the permit is sought unless the director waives such requirement for good cause. Each application shall state the purposes for which the proceeds of the event will be used. The application shall be upon a form prescribed and furnished by the director and shall be filed with the director in duplicate. Each application shall be accompanied by a permit fee of \$25 for each day for which the permit is issued, which fee shall be paid by a certified or cashier's check of a bank within this state, United States post office money order or cash in the full amount thereof. All permit fees collected by the director pursuant to this section shall be remitted to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the state general fund.

(d) Temporary permits shall specify the premises for which they are issued and shall be issued only for premises where the city, county or township zoning code allows use for which the permit is issued. No temporary permit shall be issued for premises which are not located in a county where the qualified electors of the county:

(1) (A) Approved, by a majority vote of those voting thereon, to adopt the proposition amending section 10 of article 15 of the constitution of the state of Kansas at the general election in November, 1986; or (B) have approved a proposition to allow the sale of liquor by the individual drink in public places within the county at an election pursuant to K.S.A. 41-2646, and amendments thereto; and

(2) have not approved a proposition to prohibit such sales of alcoholic liquor in such places at a subsequent election pursuant to K.S.A. 41-2646, and amendments thereto.

(e) (1) A temporary permit may be issued for the consumption of alcoholic liquor on a city, county or township street, alley, road, sidewalk or highway for a special event; provided, that such street, alley, road, sidewalk or highway is closed to motor vehicle traffic by the governing body of such city, county or township for such special event, a written request for such consumption and possession of such alcoholic liquor has been made to the local governing body and the special event is approved by the governing body of such city, county or township by ordinance or resolution. The boundaries of such special event shall be clearly marked by signs, a posted map or other means which reasonably identify the area in which alcoholic liquor may be possessed or consumed at such special event.

(2) Drinking establishments that are immediately adjacent to, or located within the licensed premises of a special event, for which a temporary permit has been issued and the consumption of alcoholic liquor on public property has been approved, may request that the drinking establishment's licensed premises be extended into and made a part of the licensed premises of the special event for the duration of the temporary permit issued for such special event.

(3) Each licensee selling alcoholic liquor for consumption on the premises of a special event for which a temporary permit has been issued shall be liable for violations of all laws governing the sale and consumption of alcoholic liquor.

(4) For the purposes of this section, "special event" shall have the same meaning given that term in K.S.A. 41-719, and amendments thereto.

(f) (1) Except as otherwise provided in this subsection, a temporary permit shall be issued for a period of time not to exceed three consecutive days, the dates and hours of which shall be specified in the permit. Not more than four temporary permits may be issued to any one applicant in a calendar year.

(2) (A) On or before June 30, 2016, the director may issue one temporary permit, valid for the entire period of time of the Kansas state fair, which authorizes the sale of wine in its original, unopened container and the serving by the drink of only wine or beer, or both, on the state fairgrounds on premises specified in the temporary permit, by a person who has entered into an agreement with the state fair board for that

purpose;

(B) On and after July 1, 2016, the director may issue a sufficient number of temporary permits as required by the state fair board, valid for the entire period of time of the Kansas state fair, which authorizes the sale of wine in its original, unopened container and the serving by the drink of wine or beer, or both, on the state fairgrounds on premises specified in the temporary permit, by a person who has entered into an agreement with the state fair board for that purpose subject to the conditions imposed by the state fair board. Nothing in this subsection (f)(2)(B) shall be construed to limit the number of temporary permits the director may issue for the sale of wine or beer, or both, on the state fairgrounds consistent with the requirements of the state fair board.

(3) The director may issue a temporary permit for a special event approved by the governing body of a city, county or township pursuant to subsection (e)(1), which may, at the director's discretion, be valid for the entire period of such special event, but in no event shall such permit be issued for a period of time that exceeds 30 consecutive days.

(g) All proceeds from an event for which a temporary permit is issued shall be used only for the purposes stated in the application for such permit.

(h) Upon written permission from the director and within three business days after the end of an event conducted pursuant to a temporary permit, the holder of a temporary permit may sell back to the licensee from whom alcoholic liquor was purchased any alcoholic liquor sold to the holder of the temporary permit for such event.

(i) A temporary permit shall not be transferable or assignable.

(j) The director may refuse to issue a temporary permit to any person or organization which has violated any provision of the Kansas liquor control act, the drinking establishment act or K.S.A. 79-41a01 et seq., and amendments thereto.

History: L. 1987, ch. 182, § 91; L. 1990, ch. 179, § 8; L. 2001, ch. 5, § 132; L. 2006, ch. 206, § 2; L. 2008, ch. 126, § 3; L. 2009, ch. 114, § 10; L. 2012, ch. 144, § 42; L. 2015, ch. 82, § 28; July 1.

41-2657. Licensee; samples; drink tax. Each licensee licensed under this act who provides samples shall pay the drink tax imposed by K.S.A. 79-41a01 et seq., and amendments thereto, on the alcoholic liquor and cereal malt beverage inventory when the inventory is withdrawn from the licensee's stock based on the licensee's acquisition cost.

History: L. 2013, ch. 130, § 16; July 1.