

Sale of Liquor and Cereal Malt Beverage; Transfer of Liquor; Liquor Licensure; HB 2137

HB 2137 amends various provisions in the Kansas Liquor Control Act (KLCA), the Cereal Malt Beverage Act (CMBA) and the Club and Drinking Establishment Act (CDEA) concerning the sale, transfer, and licensure requirements related to alcoholic liquor and cereal malt beverage (CMB).

Days and Times of Sale of Liquor and Cereal Malt Beverage

The bill amends the KLCA and the CMBA to expand the time when retail sales of alcoholic liquor and CMB are allowed.

The bill allows retail sales of alcoholic liquor and CMB in original packaging on Sundays between 9 a.m., rather than noon, and 8 p.m. and on Memorial Day, Independence Day, and Labor Day.

Electronic Submission of Records by Special Order Shipping License Holders

The bill changes the effective date of special order shipping licenses by specifying the license term begins on the date listed on the license, rather than on the date the license is issued.

The bill also changes the payment of gallonage taxes by licensees and requires such taxes to be paid electronically on a quarterly basis to the Division of Alcoholic Beverage Control (ABC), Kansas Department of Revenue, rather than annually.

Refillable and Sealable Containers

The bill authorizes alcoholic liquor retailers, class A and B clubs, and drinking establishments to sell refillable and sealable containers of beer and CMB for consumption off the licensed premises. Formerly, alcoholic liquor retailers were restricted to selling alcoholic liquor only in the original unopened container, and class A and B clubs are not able to sell refillable and sealable containers of beer and CMB; only microbreweries are allowed to make such sales.

The bill allows alcoholic liquor retailers and clubs to sell beer and CMB under the same conditions as microbreweries. The bill requires refillable and sealable containers to hold between 32 and 64 fluid ounces and have a label that clearly indicates the licensee's name and the type of alcoholic beverage in the container. Club and drinking establishment sales of beer and CMB in refillable and sealable containers will be prohibited after 11 p.m., and the bill specifies such sales will be subject to the liquor drink tax.

Sale and Delivery of CMB by Liquor Retail Licensees

Under former law, retail liquor store licensees could sell CMB along with alcoholic liquor, and CMB retailers were allowed to sell beer with an alcohol content of up to 6 percent alcohol by volume. Liquor retail licensees were also allowed to sell and deliver alcoholic liquor and CMB to a temporary permit holder for resale by such permit holder, to sell and deliver alcoholic liquor to a caterer, and to deliver alcoholic liquor to the licensed premises of a public venue, club, or drinking establishment, if such premises are either in the same county or in a county adjacent to that of the liquor retailer.

The bill allows liquor retail licensees to sell, and deliver for resale, CMB and beer containing not more than 6 percent alcohol by volume to the licensed premises of a CMB retailer who is licensed for on-premises consumption, provided such premises are located either in the same county as the retailer or in an adjacent county.

The bill also allows the retailer to charge a delivery fee for delivery of the CMB and beer containing not more than 6 percent alcohol by volume to a receiving CMB retailer.

Sale of CMB by the Drink

The bill allows liquor-by-the-drink licensees (e.g. clubs, restaurants, bars, caterers, and public venues) to also sell CMB for consumption on the licensed premises pursuant to the same restrictions as for sales of liquor-by-the-drink.

Removal of Unconsumed CMB from a Club or Drinking Establishment

The bill allows for the removal of unconsumed CMB, as well as alcoholic liquor as in continuing law, from the premises of a club or drinking establishment, both in the original unopened container and no longer in the original unopened container, under the following conditions:

- If the licensee can legally sell the liquor or CMB;
- Each container of liquor or CMB was purchased by a patron of the licensed premises;
- The licensee provides a dated receipt for the liquor or CMB;
- If any opened containers are resealed and each container is placed in a tamper-proof, transparent bag that makes subsequent opening or tampering obvious before it is removed from the licensed premises; and
- If no original unopened containers of spirits are removed from the licensed premises.

The bill also specifies that no licensee may allow any alcoholic liquor or CMB to be removed from the licensed premises after 11:00 p.m., unless such alcoholic liquor is wine that was purchased and partially consumed on the licensed premises.

The bill also removes the sunset date of March 31, 2021, for the provisions related to removal of alcoholic liquor from licensed premises.

[*Note:* The provisions in law for removal of alcoholic drinks from licensed premises had a sunset date of January 26, 2021, pursuant to 2020 Special Session HB 2016. SB 14 (2021), which was signed by the Governor on January 25, 2021, extended those provisions through March 31, 2021.]

Temporary Permits

The bill allows holders of temporary permits issued by the ABC to sell CMB, in addition to alcoholic liquor as in continuing law, subject to the same permit application requirements, limitations, and restrictions in continuing law.

Common Consumption Areas

The bill allows municipalities to establish common consumption areas in which CMB, as well as alcoholic liquor as in continuing law, may be consumed without being subject to enforcement of open container laws.

Special Events at Class A and Class B Clubs

[*Note:* Continuing law defines a “class A club” (club) as a premises that is owned or leased by a corporation, partnership, business trust, or association and that is operated as a *bona fide* nonprofit social, fraternal, or war veterans’ club, as determined by the Director of ABC (Director), for the exclusive use of the corporate stockholders, partners, trust beneficiaries, or associates (members) and their families and guests accompanying them.]

The bill authorizes a club to offer the sale and service of alcoholic liquor on the club’s licensed premises to individuals outside of members, families, and accompanying guests during events held at the club.

An “event” is defined by the bill as any function, occasion, celebration, or other event held on the licensed premises for a contractually specified duration of time and during which individuals who are not members of the licensee, their families, or guests are permitted to enter and use the licensed premises.

The bill also requires a club hosting an event to provide electronic notice to the Director no less than 48 hours prior to the event. The Director is then required to provide notification to local law enforcement agencies. The bill requires such notice consist of the date, time, location, and names of the contracting parties of the event. The bill requires all agreements, receipts, and records of alcohol purchased at events to be retained by the licensee for a minimum of three years for inspection by the Director.

Mixed Alcoholic Beverages in Pitchers

The bill authorizes a public venue, club, drinking establishment, caterer, or holder of a temporary permit to sell or serve mixed alcoholic beverages in a pitcher, changed from authorization for the sale or serving of only certain mixed drinks listed in statute or others specifically approved by the Director.

The bill also defines the following terms:

- “Mixed alcoholic beverage” means a beverage that is made by combining alcoholic liquor with a non-alcoholic liquid or other edible substance and that is composed of at least 25 percent non-alcoholic liquid or other edible substance, including, but not limited to, margarita, sangria, daiquiri, or mojito; and
- “Pitcher” means any container capable of containing more than 32 fluid ounces, but not more than 64 fluid ounces, that is used to serve alcoholic liquor or CMB to one or more individuals.

Transfer of Alcohol for Canning and Bottling

The bill allows any manufacturer or supplier of alcoholic liquor or CMB, or holder of a distilled spirits plant permit issued by the Alcohol and Tobacco Tax and Trade Bureau of the U.S. Department of the Treasury to apply for an annual packaging and warehousing facility permit. The bill also allows such permit holders to receive and transfer liquor in a bulk container from any manufacturer, supplier, farm winery, microbrewery, or microdistillery for the purposes of packaging in cans or bottles, in addition to actions allowed in continuing law.

Residency Requirements for Certain Liquor Licenses

The bill amends the KLCA 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 residents of the county in which the premises sought to be licensed are located. The bill also amends the requirement to fingerprint all out-of-state applicants by making it optional if the applicant’s identity is unclear.

The bill specifically removes residency requirements for the following liquor licenses:

- Retailer;
- Manufacturer;
- Distributor;
- Microbrewery;
- Microdistillery; and
- Farm winery.

Retailer License

The bill removes a prohibition on issuing a retailer license to a person who:

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

Manufacturer License

The bill requires, 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 specifies that if the applicant is not a Kansas resident, no license will be issued until the applicant has appointed a U.S. citizen, who is a resident of Kansas, as the applicant's agent and has filed certain documentation. Such agent is required to meet certain qualifications as required by continuing law.

Nonresident Application Documentation

The bill provides the Director may 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.

Former law required the Director 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.

Suspending, Canceling, or Revoking Certain Liquor Licenses

The bill allows the Director to suspend, cancel, or revoke a license under the KLCA or the CDEA for violation of a lawful order issued by the Director.

The bill amends the law to expand the lists of unlawful conduct for which the Director is authorized to suspend, cancel, or revoke a license to include violations of lawful orders issued by the Director.

Liquor Licensure of Spouses of Law Enforcement Officers

Former law prohibited liquor licensure for an applicant whose spouse is employed as a law enforcement officer (LEO) and such applicant is ineligible to hold a license. The bill allows a person whose spouse is employed as an LEO to be eligible to receive a liquor license, provided the applicant meets the requirements in continuing law.

[*Note:* KSA 2020 Supp. 41-2623(a)(1), which establishes eligibility for licensure under the CDEA, specifically references the eligibility provisions being amended in this bill.]

Fulfillment House License

The bill establishes a new fulfillment house license under the KLCA to be issued by the Director.

The bill adds to the KLCA a definition of “fulfillment house”: 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 allows the license holder to warehouse, package, and ship alcoholic liquors produced by and belonging to a Kansas special order shipping licensee and applies for each location that is involved in the shipping process to Kansas residents.

Fulfillment House License Application

The bill clarifies that before making or causing any shipment of alcoholic liquor to Kansas residents, an applicant for a fulfillment house license is 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 provides that such licenses will remain valid for two years from the date specified on the license.

Fulfillment House Licensee Requirements

The bill requires a licensee to:

- Make reasonable efforts to confirm that any winery for which the licensee ships has a Kansas special order shipping license, and the bill specifies the licensee 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 requires fulfillment house licensees to keep records of all shipments for a three-year period and electronically submit them to the Director monthly.

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

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

Record and Report Requirements

The bill requires 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 requires such records to be submitted to the Director monthly in the form and format prescribed.

Penalty for Failure to Report

The bill states a fulfillment house that willfully fails, neglects, or refuses to report any shipments is subject to civil penalty of no more than \$100. The bill specifies that after notice and an opportunity for a hearing in accordance with the Kansas Administrative Procedure Act, the Director may refuse to issue or renew, or may revoke, a fulfillment house license upon a finding the licensee has failed to comply with the provisions of the bill.

The bill also specifies that an out-of-state license holder is 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, and the courts concerning enforcement of the provisions of the bill, the KLCA, and any rules and regulations adopted pursuant to those sections, and to accept service of any notice or order provided for in the KLCA.

Farm Winery Licenses

The bill allows 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 requires such imports of wine to be reported on forms prescribed by the Director.

The bill specifies farm wineries may not transfer wine in a bulk container to the premises of a brewery.

Additionally, the bill allows 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.

The bill specifies any terms not defined in state law will have the same meaning as in the definitions found in federal law.

The bill also amends 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. Under the bill, farm wineries and microbreweries are required to use at least

15 percent Kansas-grown products beginning on July 1, 2021. The Kansas-grown products requirement will sunset on January 1, 2023.

Licenses Held by Alcoholic Liquor Manufacturers

The bill amends the CDEA to allow any person who has a beneficial interest in a manufacturer licensed pursuant to the KLCA to be issued one drinking establishment license.

The 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 creates an exemption from those provisions for manufacturers holding drinking establishment licenses with respect to purchases made by such a drinking establishment.

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

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

Producer's Licenses

The bill requires approval of an application for a retailer's license if the applicant has already been issued a producer's license for a vineyard pursuant to KSA 41-355, provided the applicant is not otherwise disqualified from holding the retailer's license under continuing law.