

Expanding Retail Alcohol Sales in Kansas
An Analysis of HB 2556
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House Bill 2556 will radically alter the way retail alcohol sales are handled in Kansas. No state has ever transitioned from the type of market we currently have to the one being proposed. The following is an examination of the proposed legislation and impacts it will have on Kansans and 754 retail liquor store owners, all of which are local, community-based businesses.

Basics of the Legislation:

- Beginning July 1, 2014, the number of liquor licenses in Kansas will be frozen at the number as of this date, for a period of 10 years (Class C License). This means the ABC will not be allowed to issue any new liquor licenses that can sell strong beer, wine and spirits.
- Beginning July 1, 2015, retailers with an existing license would be allowed to sell their license to a qualified liquor, grocery or convenience store, as defined by the bill, which uses NAICS Codes for these definitions. The licenses can only be purchased from a store within the same county.
- Beginning July 1, 2017, Strong beer licenses can be issued by the Kansas ABC to anyone who qualifies, with no limit on the number of licenses that can be issued (Class A License)
- Beginning July 1, 2020, Strong beer and wine licenses (Class B License) can be issued by the Kansas ABC to big-box, grocery and convenience stores with no limit on the number of locations. Beginning July 1, 2020, current alcohol retailers would be allowed to begin selling products other than alcohol.
- Beginning July 1, 2024, the freeze on liquor licenses is lifted and the Kansas ABC can issue a Class C License to any establishment that qualifies, with no limit on number of locations.
- Allows big-box, grocery and convenience stores to qualify for federal wholesale permits and sell alcohol to clubs and restaurants.
- Allows for multiple store ownership and corporate ownership of liquor licenses.
- Allows corporate licensure even if one investor would be otherwise disqualified from holding a liquor license individually or had a license previously revoked, as long as their ownership interest is less than 25 percent.
- Allows 18, 19 and 20-year-olds to sell, stock and handle alcohol, as long as they are under the supervision of someone 21-years of age or older.
- Allows felons to work on a premise where alcohol is sold.
- Allows for sampling of alcohol in big-box, grocery and convenience stores.
- Takes 3% of all liquor enforcement tax collected and remits to local units of government.
- Would allow holders of Class C Licenses to install pinball machines or any game of chance or skill.

IMPACTS

HB 2556 proposes: Beginning July 1, 2014, the number of liquor licenses in Kansas will be frozen at the number as of this date, for a period of 10 years (Class C License). This means the ABC will not be allowed to issue any new liquor licenses that can sell strong beer, wine and spirits.

The Impact:

- The market value of existing licenses will be dictated by out-of-state corporations. Licenses will only be worth what these companies are willing to pay, and they will predominantly purchase the cheapest licenses from the most unprofitable stores. This legislation does not give the power to set license prices to current liquor store owners. It gives the power to dictate the market price of a liquor license to the same companies who want to dominate the market.
- One reason out-of-state companies will set the market value of licenses is because this provision shuts out other Kansans from entering the market or opening new stores. They could buy a license from an existing retailer, but there is no incentive for anyone to enter a market when the law allows it to be dominated by big-box, out-of-state corporations.
- This is a false freeze. The freeze only applies to those interested in selling strong beer, wine and spirits immediately. During this “freeze”, big-box, grocery and convenience stores will be able to add strong beer, wine and spirits in incremental phases, without ever having to purchase the license of an existing liquor store. This is another reason the market value for existing licenses will be low.

HB 2556 proposes: Beginning July 1, 2015, retailers with an existing license would be allowed to sell their license to a qualified liquor, grocery or convenience store, as defined by the bill, which uses NAICS Codes for these definitions. The licenses can only be purchased from a store within the same county.

The Impact:

- See previous section for reasons why this creates low market values for current liquor licenses.
- The county provision does not protect current license holders next door to big-box, grocery or convenience stores. For example, if Liquor Store A is next to Big-box Store A, HB 2556 does not require Big-box Store A purchase Liquor Store A’s license. HB 2556 allows Box-box Store A to buy the license of someone else in the county for a likely cheaper price then put in strong beer, wine and spirits right next door to Liquor Store A. There is no provision in HB 2556 ensuring an existing liquor store next to a big-box, grocery or convenience store will be able to sell their license. When this scenario occurs, the liquor store will go out-of-business and their license will have little market value.
- This provision assists out-of-state corporations in consolidating the marketplace. As previously established, the only value of an existing license will be a low market rate. Three things will happen to current liquor stores: Some will go out-of-business, some will stay in business, and some will sell their license. *“An Economic Case for Increased*

Competition in the Sale of Beer, Wine and Spirits in the State of Kansas” by Dr. Art Hall, Director for the Center of Applied Economics at the University of Kansas School of Business, indicated these proposals will lead to closure of half of the Kansas’ liquor stores. As many stores close and the low value stores sell their licenses to out-of-state corporations, this transitions the current retail alcohol market from one that is small-business and community bases, to a market in which all licenses - i.e. the entire retail alcohol market - is now controlled by out-of-state corporations.

- The majority of existing licenses that will be sold will likely be sold by the most unprofitable stores who have no other way of selling their store due to factors such as poor location, bad business practices, enforcement issues or other factors. These will be the primary licenses available and purchased initially by big-box and out-of-state corporations. These licenses will be purchased for low market value as these retailers will compete to sell their licenses by lowering their price in an effort to get out of the business. This will be another factor leading to the low market value for existing liquor licenses.
- Big-box, grocery and convenience stores will be able to purchase licenses and add alcohol to their current stores immediately and sell strong beer beginning in July 2017. However, existing liquor stores would not be allowed to add other items to their inventory until 2020. This seems an unequal trade practice and in violation of the free market principles supporters of this legislation claim they are fighting for.
- The proposed system does not benefit locally-owned convenience or grocery stores. It will only assist big-box stores and out-of-state corporate-owned stores. Those corporations will immediately buy up the liquor licenses they can pick off at low market value, leaving locally-owned convenience stores and grocers unable to afford other options.

HB 2556 proposes: Beginning July 1, 2017, Strong beer licenses can be issued by the Kansas ABC to anyone who qualifies, with no limit on the number of licenses that can be issued (Class A License)

Beginning July 1, 2020, Strong beer and wine licenses (Class B License) can be issued by the Kansas ABC to big-box, grocery and convenience stores with no limit on the number of locations. Beginning July 1, 2020, current alcohol retailers would be allowed to begin selling products other than alcohol.

Beginning July 1, 2024, the freeze on liquor licenses is lifted and the Kansas ABC can issue a Class C License to any establishment that qualifies, with no limit on number of locations.

The Impact:

- This is a false “phase-in” that does not assist current retail liquor store owners. This process favors big-box stores and corporate convenience and grocery stores by allowing them to slowly steal away the alcohol market from locally-owned businesses
- This process takes away the No. 1 selling product of liquor stores within three years (strong beer); the No. 2 selling product within six years (wine) and the No. 3 selling

product within 10 years (spirits), without big-box, grocery or convenience stores ever having to purchase the license of existing liquor stores.

- While spirits are a high-margin item, the alcohol industry is a volume business and beer is the No. 1 volume driver of the industry. This legislation allows big-box, grocery and convenience stores to sell the No. 1 selling alcohol product within three years, further devaluing the market value of existing liquor licenses.
- This process creates a distribution nightmare for wholesalers, who will have to sell and distribute different products to different stores across the state in a scattershot method which defies efficiency. It also increases the number of outlets they must distribute to. This disruption in the distribution system will be costly, and that cost will be passed on to stores and consumers.
- Note that big-box, convenience and grocery stores will have the ability to sell strong beer beginning in 2017, but does not allow current retail alcohol licensees to add other products until 2020.

HB 2556 proposes: It allows for multiple store ownership and corporate ownership of liquor licenses.

The Impact:

- This erodes the ability of local law enforcement and the state of Kansas to ensure regulatory compliance. Currently, the Kansas ABC and local law enforcement have direct control over retailers found in violation of the Liquor Control Act, local ordinances and other related statutes, rules and regulations. It is easier to enforce laws when dealing directly with the owner of a store and holder of a license. Under the system being proposed, the Kansas ABC and law enforcement will not have the same ability to enforce Kansas law with corporations governed by a Board of Directors and with offices in other states.

HB 2556 proposed: Allows corporate licensure even if one investor would be otherwise disqualified from holding a liquor license individually or had a license previously revoked, as long as their ownership interest is less than 25 percent.

The Impact:

- This exemption ignores the influence a bad actor can have on the management and operation of store that sells alcohol.
- This is a loophole for criminal elements to be involved in the sale of alcohol products.
- Current Kansas law does not allow for someone who has had a license revoked to hold a license again. Revocation in Kansas is an act of last resort and taken upon those who allowed things such as too many sales to minors', failed to pay taxes or created atmospheres not in the best interests of a community. HB 2556 allows these individuals to continue to have ownership interest in alcohol sales, and these individuals will continue to create problems for communities and law enforcement.

HB 2556 proposes: Allows 18, 19 and 20-year-olds to sell, stock and handle alcohol, as long as they are under the supervision of someone 21-years of age or older.

The Impact:

- This sets new precedent in Kansas, as transactions of retail alcohol have always been conducted by individuals of legal drinking age.
- This may set new precedent nationally, as no state has rolled back their age requirement. Some states allow those under-21 to conduct transactions and stock, however those states had that provision in law since they designed their systems. Kansas could become the first state to take a retail system operated by those solely of legal drinking age, and allow minors to have essential roles in that process.
- HB 2556 does not mandate the supervisor who is 21-or-older has to witness or monitor sales or handling of alcohol by someone under drinking age. It only says they must be on the premise. For many big-box, grocery and convenience stores, these premises are quite large and this does not ensure appropriate monitoring will occur.

HB 2556 proposes: Allows felons to work on a premise where alcohol is sold.

The Impact:

- Under current Kansas law, felons are not allowed to work in liquor stores. HB 2556 does not allow anyone with a felony to conduct an alcohol sale on a premise with a liquor license, but does allow them to work on the premise. This is a dramatic departure from current Kansas law.

HB 2556 proposes: Allows for sampling of alcohol in big-box, grocery and convenience stores.

The Impact:

- Current law allows for liquor stores to sample alcohol. However, sampling is conducted in stores that have more controls than big-box, grocery and convenience stores, such as: more contained & controlled spaces; all servers are 21-years-or-older; liquor stores have higher compliance rates than convenience stores.

HB 2556 proposes: Takes 3% of all liquor enforcement tax collected and remits to local units of government.

The Impact:

- Tax collected on CMB sales currently stay with local units of government where CMB is purchased. This fund is an effort to return some of those dollars; however it comes with no guarantees any local unit of government will ever receive these funds or replace the actual dollars lost.

- The formula favors large communities over small communities, harming cities and counties in Western Kansas at a time when they will likely be losing their local liquor store.
- If followed through, this removes several million dollars from the State General at a time when the state has no extra money to give away. Taking money from SGF means budget cuts elsewhere, such as social services or education.
- There is no guarantee the funds will get sent to local units of government. There is no protection of the dollars collected and “promised” to cities and counties. If the Legislature needs the money, they will likely keep it and not send it back to local units of government. So the end result is cities and counties will lose tax revenue.

HB 2556: Would allow holders of Class C Licenses to install pinball machines or any game of chance or skill.

The Impact:

- This section would make some games that are currently illegal in all of Kansas, except in Casinos and the lottery, legal in places that hold liquor licenses.
- This section makes HB 2556 not just a liquor bill, but a gaming bill that rewrites decades of gaming law.

NAICS CODES

HB 2556 does not just limit retail alcohol sales to grocery, convenience and liquor stores. The legislation uses federal NAICS codes as definitions of who can qualify for a license. These definitions are broad and there is little difference between a Kroger store that sells televisions and a Menard’s which sells groceries. HB 2256 opens the floodgates to thousands of new outlets selling strong beer, wine and spirits in Kansas.

Here is a look at NAICS codes and those that will inevitably apply for liquor licenses in Kansas. The cross referencing illustrates just how finite the difference is between many of these establishments.

The North American Industry Classification System (NAICS) is the standard used by Federal statistical agencies in classifying business establishments for the purpose of collecting, analyzing, and publishing statistical data related to the U.S. business economy.

NAICS was developed under the auspices of the Office of Management and Budget (OMB), and adopted in 1997 to replace the Standard Industrial Classification (SIC) system. It was developed jointly by the U.S. Economic Classification Policy Committee (ECPC), Statistics Canada, and Mexico's Instituto Nacional de Estadística y Geografía, to allow for a high level of comparability in business statistics among the North American countries.

Sector 44-45 -- Retail Trade^T

44512 Convenience Stores

See industry description for 445120.

445120 Convenience Stores

This industry comprises establishments known as convenience stores or food marts (except those with fuel pumps) primarily engaged in retailing a limited line of goods that generally includes milk, bread, soda, and snacks.

Cross-References. Establishments primarily engaged in--

- Retailing a general line of food, known as supermarkets and grocery stores--are classified in Industry 445110, Supermarkets and Other Grocery (except Convenience) Stores; and
- Retailing automotive fuels in combination with a convenience store or food mart--are classified in Industry 447110, Gasoline Stations with Convenience Stores.

447110 Gasoline Stations with Convenience Stores

This industry comprises establishments engaged in retailing automotive fuels (e.g., diesel fuel, gasohol, gasoline) in combination with convenience store or food mart items. These establishments can either be in a convenience store (i.e., food mart) setting or a gasoline station setting. These establishments may also provide automotive repair services.

Cross-References. Establishments primarily engaged in--

- Retailing automotive fuels without a convenience store--are classified in Industry 447190, Other Gasoline Stations; and
- Retailing a limited line of goods, known as convenience stores or food marts (except those with fuel pumps)--are classified in Industry 445120, Convenience Stores.

445110 Supermarkets and Other Grocery (except Convenience) Stores

This industry comprises establishments generally known as supermarkets and grocery stores primarily engaged in retailing a general line of food, such as canned and frozen foods; fresh fruits and vegetables; and fresh and prepared meats, fish, and poultry. Included in this industry are delicatessen-type establishments primarily engaged in retailing a general line of food.

Cross-References. Establishments primarily engaged in--

- Retailing automotive fuels in combination with a convenience store or food mart--are classified in Industry 447110, Gasoline Stations with Convenience Stores;
- Retailing a limited line of goods, known as convenience stores or food marts (except those with fuel pumps)--are classified in Industry 445120, Convenience Stores;
- Retailing frozen food and freezer meal plans via direct sales to residential customers--are classified in Industry 454390, Other Direct Selling Establishments;
- Providing food services in delicatessen-type establishments--are classified in U.S. Industry 722513, Limited-Service Restaurants; and

- Retailing fresh meat in delicatessen-type establishments--are classified in Industry 445210, Meat Markets.

446110 Pharmacies and Drug Stores

This industry comprises establishments known as pharmacies and drug stores engaged in retailing prescription or nonprescription drugs and medicines.

Cross-References. Establishments primarily engaged in--

- Retailing food supplement products, such as vitamins, nutrition supplements, and body enhancing supplements--are classified in U.S. Industry 446191, Food (Health) Supplement Stores; and
- Retailing prescription and nonprescription drugs via electronic home shopping, mail-order, or direct sale--are classified in Subsector 454, Nonstore Retailers.

452111 Department Stores (except Discount Department Stores)

This U.S. industry comprises establishments known as department stores that have separate departments for various merchandise lines, such as apparel, jewelry, home furnishings, and linens, each with separate cash registers and sales associates. Department stores in this industry generally do not have central customer checkout and cash register facilities.

Cross-References. Establishments primarily engaged in--

- Retailing apparel without a significant amount of housewares or general merchandise--are classified in Subsector 448, Clothing and Clothing Accessories Stores;
- Retailing a wide variety of general merchandise in department stores with central customer checkout and cash register facilities--are classified in U.S. Industry 452112, Discount Department Stores; and
- Retailing a wide variety of general merchandise in combination with a general line of perishable groceries, such as fresh meat, vegetable, and dairy products--are classified in Industry 452910, Warehouse Clubs and Supercenters.

452112 Discount Department Stores

This U.S. industry comprises establishments known as department stores that have central customer checkout areas, generally in the front of the store, and that may have additional cash registers located in one or more individual departments. Department stores in this industry sell a wide range of general merchandise (except fresh, perishable foods).

Cross-References. Establishments primarily engaged in--

- Retailing apparel without a significant amount of housewares or general merchandise--are classified in Subsector 448, Clothing and Clothing Accessories Stores;

- Retailing a wide variety of general merchandise in department stores with separate cash registers and sales associates for each department--are classified in U.S. Industry 452111, Department Stores (except Discount Department Stores); and
- Retailing a wide variety of general merchandise in combination with a general line of perishable groceries, such as fresh meat, vegetable, and dairy products--are classified in Industry 452910, Warehouse Clubs and Supercenters.

452910 Warehouse Clubs and Supercenters

This industry comprises establishments known as warehouse clubs, superstores or supercenters primarily engaged in retailing a general line of groceries in combination with general lines of new merchandise, such as apparel, furniture, and appliances.

Cross-References. Establishments primarily engaged in--

- Retailing general lines of merchandise via electronic home shopping, mail-order, or direct sale--are classified in Subsector 454, Nonstore Retailers;
- Retailing a general line of food, generally known as supermarkets and grocery stores--are classified in Industry 445110, Supermarkets and Other Grocery (except Convenience) Stores;
- Retailing general lines of new merchandise with little grocery item sales--are classified in Industry 452990, All Other General Merchandise Stores;
- Retailing new merchandise in discount department stores--are classified in U.S. Industry 452112, Discount Department Stores;
- Retailing new merchandise in department stores other than discount department stores--are classified in U.S. Industry 452111, Department Stores (except Discount Department Stores); and
- Retailing used merchandise--are classified in Industry 453310, Used Merchandise Stores.

452990 All Other General Merchandise Stores

- This industry comprises establishments primarily engaged in retailing new goods in general merchandise stores (except department stores, discount department stores, warehouse clubs, superstores, and supercenters). These establishments retail a general line of new merchandise, such as apparel, automotive parts, dry goods, hardware, groceries, housewares or home furnishings, and other lines in limited amounts, with none of the lines predominating.

Illustrative Examples:

Dollar stores

General stores

General merchandise catalog showrooms (except catalog mail-order)

General merchandise trading posts

Home and auto supply stores
Variety stores

445310 Beer, Wine, and Liquor Stores

This industry comprises establishments primarily engaged in retailing packaged alcoholic beverages, such as ale, beer, wine, and liquor.

Cross-References.

- Establishments primarily engaged in retailing packaged liquor in combination with providing prepared drinks for immediate consumption on the premises are classified in Industry 722410, Drinking Places (Alcoholic Beverages).