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300 SW TENTH AVENUE ■ SUITE 24-E ■ TOPEKA, KS 66612 ■ (785) 296-2321

MEMORANDUM

To: Chairperson Thompson
Members of the Senate Committee on Federal and State Affairs

From: The Office of Revisor of Statutes

Date: March 10, 2023

Subject: SB 253 – Delivery of alcoholic liquor and cereal malt beverage by third-party delivery service

Senate Bill No. 253 (SB 253) would create new statutes within the three primary alcoholic beverage regulatory acts to authorize the delivery of alcoholic liquor and cereal malt beverage (CMB) to a private address by the licensee or a third-party delivery service. Currently, direct shipments to consumers can generally only be done by wineries holding a special order shipping license and a valid federal basic wine manufacturing permit and who ship wine directly to the consumer.

Section 1 of SB 253 creates a third-party delivery service permit (permit) to be issued by the Director of Alcoholic Beverage Control (Director). A company must hold a valid permit to be authorized to delivery alcoholic liquor or CMB to a consumer on behalf of a licensee. The fee for each annual permit would be \$1,500. Each individual delivering product for the permit holder must be at least 21 years of age, hold a valid driver’s license, be the covered driver under a primary automobile insurance policy that meets the minimum coverage requirements under state law, and complete the training and certification program for such deliveries as approved by the Director. Each permit holder must use age verification technology or a Director-approved alternative method for verifying an individual’s age.

Section 2 amends the Kansas Liquor Control Act to authorize retailers licensed under the Act to deliver alcoholic liquor and CMB to consumers. Prior to delivery, the retailer must finalize payment from the consumer and fulfill and package the order from the retailer’s own inventory. All deliveries must occur on the same calendar day the produce is removed from the retailer’s premises for delivery, during those times when the retailer is permitted to sell the

product, within this state and within 25 miles of the retailer's license premises. A delivery can only be completed if the individual accepting delivery at the specified address is at least 21, can provide valid photographic identification, and is not noticeably intoxicated. Additionally, SB 253 prohibits deliveries to any locker, mailbox, or other designated storage space, or by any place of worship, daycare, elementary or secondary school, public or private college, or any business that is licensed to sell alcoholic liquor or CMB.

Section 2 also authorizes the retailer to contract with a third-party delivery service permit holder to make deliveries on behalf of the retailer. The third-party delivery service may also provide other delivery-related services, such as receiving and processing orders, however, the retailer must retain sole discretion on completing any transaction, the transaction must be between the consumer and the retailer, and the retailer must receive full payment or credit for the order placed. A third-party delivery service may not falsely use a retailer's likeness to suggest endorsement or inflate the price of the product.

Section 3 amends the Club and Drinking Establishment Act (CDE Act) to authorize clubs and drinking establishments licensed under the Act to deliver alcoholic liquor and CMB to consumers. The requirements and restrictions under the CDE Act provisions are nearly the same as under Section 2 of SB 253. The substantive difference being that under the CDE Act the licensees are limited to the container limitations under K.S.A. 41-2653 since they are selling liquor by the drink, rather than in the unopened original container.

Section 4 amends the Kansas Cereal Malt Beverage Act (KCMB Act) to authorize retailer licensed under the Act to deliver CMB and beer with an AVB of not more than 6% to consumers. The requirements and restrictions under the KCMB Act provisions are nearly the same as under Section 2 of SB 253.

The Director and ABC employees are authorized under all three acts to review and audit the records of any third-party delivery service permit holder to determine compliance with the act and rules and regulations. The Director may impose a \$1,000 civil fine for violations of the delivery statutes. Such fine may be imposed on the licensee, the permit holder, or both.

Sections 5 through 9 of the bill make conforming amendments to current alcoholic beverage statutes.

If enacted, SB 253 would become effective on July 1, 2023.