

Alcoholic Beverage Control
109 SW 9th Street, 5th Floor
PO Box 3506
Topeka KS 66601-3506
Mark A. Burghart, Secretary



Phone: 785-296-7015
Fax: 785-296-7185
Kdor_abc.email@ks.gov
www.ksrevenue.org
Laura Kelly, Governor

MEMORANDUM

TO: Rep. John Barker, Chairman, House Committee on Federal and State Affairs

FROM: Debbi Beavers, Director, Alcoholic Beverage Control Division

DATE: February 19, 2021

SUBJECT: Proponent Testimony on House Bill 2212

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to testify in favor of this bill.

The ABC has brought forth this bill as a result of the United States Supreme Court's decision in *Tennessee Wine & Spirits Retailers Assn. v. Russell F. Thomas, Executive Director of the Tennessee Alcoholic Beverage Commission* case and the subsequent Kansas Attorney General Opinion No. 2020-11.

Tennessee law required an applicant to be a resident of the state for two years to obtain a retailer license. The law also required the licensee to be a resident of Tennessee for ten years to renew the license. The Tennessee Attorney General had issued an opinion finding the residency requirement to be unconstitutional. As a result, the Tennessee ABC was following the Attorney General's opinion and not enforcing the residency requirement when issuing licenses. When a non-resident applicant applied for a retailer's license, the Tennessee Wine & Spirits Retailers Assn. then sued the Tennessee ABC to enforce the residency requirement and prevent the license from being issued. Ultimately, after several appeals, the United States Supreme Court ruled that residency requirements were unconstitutional and violated the Dormant Commerce Clause by favoring in-state over out-of-state interests with no justifying legitimate purpose.

The Kansas ABC followed the Tennessee case closely, knowing the same issues could happen here.

Kansas law requires basically every type of liquor license to have some type of residency requirement. The intent (as with most states) was to allow local knowledge and control of licensees by only issuing licenses to established, upstanding local residents and entities. This also ensured easy access to the licensee for jurisdiction purposes making sure that the Kansas ABC can serve citations, orders, etc. on a licensee in Kansas. However, as the Supreme Court's opinion in the Tennessee case illustrates, these reasons are no longer considered sufficient or "justified" when maintaining an exclusionary practice that favors in-state interests.

Within the past few months, Kansas Attorney General's Opinion 2020-11 was published, which opined that residency requirements in Kansas were similarly unconstitutional.

In order to prevent this situation in Kansas, this bill does the following:

1. Removes any residency requirement language throughout the liquor control act, the club and drinking establishment act and the cereal malt beverage act.
2. Requires the appointment of a process agent, who is a United States citizen and resident of Kansas, if the applicant is not a resident of this state.
3. Changes "shall" to "may" for the director's duty to get fingerprints from out of state applicants.
4. Removes the requirement for an out-of-state entity to domesticate their company.

The ABC believes this bill is necessary and is taking a proactive approach. What happened in Tennessee demonstrates the importance of this bill. Without this change, the Kansas ABC could be sued in two ways:

- a. If an application is denied because of non-residency; or
- b. If the ABC does not enforce the residency requirement and issues licenses to non-residents.

The ABC is aware of concern within the industry that this legislation could open the door for other changes in liquor laws. We respectfully request that this bill be kept as written.

Thank you, Mr. Chairman.