

SESSION OF 2017

**SUPPLEMENTAL NOTE ON SUBSTITUTE FOR HOUSE
BILL NO. 2277**

As Recommended by House Committee on
Local Government

Brief*

HB 2277 would allow a city or county to establish a common consumption area by ordinance or resolution, designate the boundaries of the area, and prescribe the times during which alcoholic liquor may be consumed.

Definition

The bill would define a “common consumption area” as an indoor or outdoor area, clearly marked using a physical barrier, not otherwise subject to a license issued pursuant to the Kansas Liquor Control Act or the Club and Drinking Establishment Act where the possession and consumption of alcoholic liquor is allowed pursuant to a common consumption area permit.

Notification

The bill would require a city or county to immediately notify the Director of Alcoholic Beverage Control (ABC), Department of Revenue, if an ordinance or a resolution is adopted establishing a common consumption area, and submit a copy of the ordinance or resolution.

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

Common Consumption Area Permit Overview

The Director of ABC would be allowed to issue a common consumption area permit, which allows for the consumption of alcohol in any area designated by such permit, to the city or county, or any one person who is a Kansas resident or an organization whose principal place of business is in Kansas and has been approved by the respective city or county, in accordance with the rules and regulations adopted by the Secretary of Revenue. Applications for a common consumption area permit would be submitted to the Director of ABC and would be subject to the following requirements:

- A copy of any ordinance or resolution establishing a common consumption area must be submitted;
- A non-refundable permit fee of \$100 must accompany the application, and all such fees must be remitted to the State Treasurer and deposited in the State General Fund; and
- Permits are to be issued for a period not to exceed one year, and are not transferable or assignable.

The bill would allow any licensee adjacent to or located within a common consumption area to request permission, using forms prescribed by the Director of ABC, to participate in a common consumption area for the duration of the common consumption area permit. If permission is received, the licensee may allow its legal patrons to remove alcoholic liquor purchased from the licensee into the common consumption area if the beverage is served in a container that displays the licensee's trade name, logo, or other identifying mark unique to the licensee.

Liability

The bill would specify that each licensee within a common consumption area shall be liable for violations that

occur on their premises, and each common consumption area permit holder shall be liable for violations that occur off the licensee's premises but within the common consumption area identified by the permit. Additionally, no permit holder shall allow a person to remove any open container from the boundaries of the common consumption area.

The bill would also allow an individual to consume alcohol in an area designated by a city or county on public streets, alleys, roads, sidewalks, or highways located within a common consumption area, and prohibit alcohol consumption in vehicles located in common consumption areas. Finally, the bill would allow for the consumption of alcohol within a common consumption area located on public or private property.

Background

The bill was introduced by the House Committee on Local Government at the request of a representative of the City of Lenexa. In the House Committee hearing, a representative of the City of Lenexa and a representative of the League of Kansas Municipalities (LKM) testified in support of the bill. Written-only proponent testimony was submitted by the Lenexa Chamber of Commerce and a Lenexa business owner. Proponents stated creating a place for citizens to enjoy others' company and to participate in civic, cultural, and social life is part of Lenexa's Vision 2030 plan and the City intends to accomplish these goals by constructing the Lenexa Public Market, an economic hub for the community that will contain a common consumption area. Additionally, the LKM representative stated the common consumption area is a new concept that will require a limited change to law pertaining to controlling alcohol sales to achieve the necessary flexibility to establish such areas.

The Director of ABC and a representative of the Kansas Licensed Beverage Association (KLBA) provided neutral testimony on the bill. Each representative expressed

concerns pertaining to responsibility and liability with regard to violations of liquor laws. Additionally, the Director of ABC requested clarification be provided in the bill regarding violations, or ABC be given the authority to adopt rules and regulations for common consumption areas.

No opponent testimony was provided.

In the House Committee hearing, the Chairperson appointed a subcommittee to review possible amendments to the bill. The subcommittee directed stakeholders to work together to find a possible solution to the liability concerns raised during the committee hearing.

As introduced, the bill would have placed the language authorizing common consumption areas in an existing statute dealing with removal of unconsumed liquor from the premises of an individual club licensee. The House Committee recommended the creation of a substitute bill that would amend law relating to consumption of alcoholic liquor and allow for the establishment of common consumption areas by cities and counties, with considerable additional detail regarding the interrelationship of the common consumption area permit holder and individually licensed establishments. The definition of "common consumption area" in the substitute bill also differs from that in the original bill; among other changes, the definition in the substitute bill would clearly distinguish that the common consumption area could not be otherwise subject to a license issued under the Kansas Liquor Control Act or the Club and Drinking Establishment Act. The definition in the original bill would have allowed the establishment of common consumption areas within buildings and associated outdoor seating areas, and would have allowed patrons of licensed premises to remove alcohol from the licensed premises and consume it in the common consumption area.

According to the fiscal note prepared by the Division of the Budget on the bill, as introduced, LKM and the Kansas Association of Counties state there would be no fiscal effect on Kansas cities or counties.