

MINUTES OF THE House COMMITTEE ON Federal and State Affairs

The meeting was called to order by Rep. Neal D. Whitaker at
Chairperson

1:30 ~~am~~ p.m. on February 16, 1983 in room 526-S of the Capitol.

All members were present except:
Reps. Roe, Grotewiel, and Runnels, who were excused.

Committee staff present:
Russ Mills, Legislative Research
Mary Torrence, Revisor of Statute's Office
Nora Crouch, Committee Secretary

Conferees appearing before the committee:
Representative Sandy Duncan
Larry Tenopir, State Fire Marshal's Office
Art Griggs, Counsel, Department of Administration
Don Cain, Topeka, Kansas
Representative Dean Shelor
William Price, Topeka, Kansas
Jo An Klesath, Kansas Association of Public Employees
Tom Kennedy, Director, Alcoholic Beverage Control

Chairman Whitaker called the meeting to order and announced that HB 2191, HB 2192, and HB 2196 were on hearing status.

Rep. Sandy Duncan appeared to explain the provisions of HB 2191. It is basically clean up language to remove some inconsistencies from the law. He stated that the Fire Marshal had a proposed amendment regarding the cost of copies that the Joint Committee has no problem with.

Larry Tenopir, Counsel, State Fire Marshal's Office, appeared on HB 2191 stating they have no problem with the bill as written but when the bill was introduced it caused them to read the statute carefully and discover a potential problem with the cost involved in making the requested copies. Mr. Tenopir presented the Committee with the proposed amendment. (See Attachment A) The amendment would simply allow them to pass on the cost of making copies to the people requesting them.

Rep. Sandy Duncan appeared to explain the provisions of HB 2192 stating the bill contains some technical amendments to the filing act. Rep. Duncan walked the Committee through the changes and explained the reasoning for them. Most of the changes were requested by the Revisor's office.

Art Griggs, Counsel for the Department of Administration, appeared on HB 2192 regarding the impact statement required by each agency. Some agencies do a poor job in preparing their fiscal impact statement. Mr. Griggs explained the other proposed changes that pertain to the DOA and proposed changes on Lines 138 through 147. (See Attachment B)

Don Cain, Topeka, Kansas, appeared in support of HB 2196 stating he was a state employee for 25 years and doesn't believe the interests of the state are being served when a state employee can resign from their job one day and the next represent a company dealing with the state. The former state employee takes from his job some degree of expertise that is beneficial to the new company and possibly detrimental to the state.

Rep. Dean Shelor appeared to explain the provisions of HB 2196 stating that this legislation was introduced several years ago and he still sees a need for it. It is basically the same as federal legislation and sets about closing the revolving door syndrom. This abuse occurs and it could put the state in a bad light.

CONTINUATION SHEET

MINUTES OF THE House COMMITTEE ON Federal and State Affairs,
 room 526-S, Statehouse, at 1:30 ~~xxx~~ a.m./p.m. on February 16, 1983.

William Price, Topeka, Kansas, appeared in opposition to HB 2196 stating he is a state employee who should be able to continue caring about the issues he feels strongly about.

Jo Ann Klesath, Executive Director, Kansas Association of Public Employees, appeared in opposition to HB 2196 stating that her primary job is to lobby on behalf of state employees. She is a former state employee and her experiences have helped her in her current job. Should she leave her post it would be very beneficial for someone replacing her to have had state employment experience. Former state employees who are now retired work for KAPE and their work history is very valuable to the Association. They oppose the bill as it is written.

Tom Kennedy, Director, Alcoholic Beverage Control, appeared to give the agency's position on HB 2145 and HB 2328. He stated that HB 2145 increases the age of consumption from 18 to 21 and ABC is neither a proponent or an opponent on this bill. This is strictly a legislative decision and as an administrator he is bound to carry out the dictates of the legislature.

On HB 2328 the ABC is neither a proponent nor an opponent. There are 39 sections to this bill and it is a very complex issue. He presented the Committee with a memorandum on the history of cereal malt beverages and the problems with certain sections of the bill that ABC foresees. (See Attachment C)

Rep. Ott moved, Rep. Barr seconding, that the minutes of the February 7, 1983, meeting be approved. The motion carried.

The meeting adjourned.



Kansas State Fire Marshal Department

109 West Ninth, Suite 203

Topeka, Kansas 66612

Phone (913) 296-3401

PROPOSED AMENDMENT TO H.B. 2191

The state fire marshal may assess the cost of any copy of a nationally recognized code adopted by reference to the person requesting the copy. All monies received from the distribution of copies of the codes shall be remitted to the state treasurer. The state treasurer shall deposit the entire amount in the state treasury and credit the amount to the fire marshal fee fund.

An Equal Opportunity Employer

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NATIONAL CODES WHICH HAVE BEEN
PARTIALLY OR FULLY ADOPTED BY REFERENCE
AS REGULATIONS OF THE STATE FIRE MARSHAL

(National Fire Protection Association is
abbreviated as NFPA)

NFPA 10	Portable Fire Extinguishers	5.25
NFPA 17	Dry Chemical Extinguishing Systems	4.50
NFPA 30	Flammable Combustible Liquids Code	6.00
NFPA 58	Liquefied Petroleum Gases, Storage & Handling	6.50
NFPA 96	Vapor Removal from Cooking Equipment	4.50
NFPA 101-80	Life Safety Code	7.00
NFPA 385	Tank Vehicles for Flammable & Combustible Liquids	5.00
NFPA 495	Code for Explosive Materials	4.50

0118 copy of (1) the fiscal or financial impact statement required by
 0119 subsection (b) of this section and (2) any document which is
 0120 adopted by reference by the rule or regulation. A copy of any
 0121 document adopted by reference in a rule and regulation shall be
 0122 available from the state agency which adopted the rule and
 0123 regulation upon request by any person interested therein. The
 0124 state agency shall, under the direction of the revisor of statutes,
 0125 number each section with a distinguishing number and, in mak-
 0126 ing a compilation of the rules and regulations, the sections shall
 0127 be arranged therein in numerical order. A decimal system of
 0128 numbering shall be prohibited.

0129 (b) At the time of drafting any proposed rule and regulation or
 0130 amendment to any existing rule and regulation, the state agency
 0131 shall prepare a statement of the fiscal or financial effect or impact
 0132 of such proposed rule and regulation or amendment upon all
 0133 governmental agencies or units and private businesses which will
 0134 be subject thereto and upon the general public, and if such
 0135 proposed rule and regulation is mandated by federal law as a
 0136 requirement for participating in or implementing a federally
 0137 subsidized or assisted program, the state agency shall so specify
 0138 as a part of the fiscal or financial impact statement. The state

agency shall reevaluate and when necessary update such state-
 0139 ment at the time of Prior to giving notice of hearing on a proposed
 0140 rule and regulation and at the time of filing a rule and regulation
 0141 with the revisor of statutes. If a public hearing was held prior to
 0142 the adoption of the rule and regulation, a state agency at the time
 0143 of filing a rule and regulation with the revisor of statutes shall
 0144 include as a part of the fiscal or financial impact statement a
 0145 statement specifying the time and place ~~at which the hearing was~~
 0146 ~~held and the attendance at the hearing.~~ the state agency shall
 0147 ~~submit the fiscal or financial impact statement to the secretary of~~
 0148 ~~administration for approval of the accuracy of the fiscal and~~
 0149 ~~financial data contained in the statement and that the statement~~
 0150 ~~complies with the other requirements of this subsection (b). If no~~
 0151 ~~hearing is held prior to the adoption of the proposed rule and~~
 0152 ~~regulation, the state agency prior to adoption shall submit the~~
 0153 ~~fiscal or financial impact statement to the secretary of adminis-]~~
 0154

Reinsert Language Shown in Strike-
Type; Delete the Bracketed "Prior to".

Atch. B

0155 ~~Verification for approval of the accuracy of the fiscal and financial data~~
 0156 ~~contained in the statement and that the statement complies with~~
 0157 ~~the other requirements of this subsection (b). Every fiscal or~~
 0158 ~~financial impact statement approved by the secretary of admin-~~
 0159 ~~istration under this subsection (b) shall be stamped as approved~~
 0160 ~~and the date of such approval shall be indicated therein. The state~~
 0161 ~~agency may reevaluate and when necessary amend the fiscal or~~
 0162 ~~financial impact statement at any time prior to filing the proposed~~
 0163 ~~rule and regulation with the revisor of statutes. An amended fiscal~~
 0164 ~~or financial impact statement shall be submitted to the secretary~~
 0165 ~~of administration for approval on the same basis as any other~~
 0166 ~~fiscal or financial impact statement under this subsection (b). A~~
 0167 copy of ~~such~~ the current fiscal or financial impact statement shall
 0168 be available from the state agency upon request by any party
 0169 interested therein. X

0170 (c) If a public hearing was held prior to the adoption of a rule
 0171 and regulation, a state agency at the time of filing the rule and
 0172 regulation with the revisor of statutes shall include as a part of the
 0173 filing a statement specifying the time and place at which the
 0174 hearing was held and the attendance at the hearing.

0175 Sec. 3. K.S.A. 1982 Supp. 77-420 is hereby amended to read
 0176 as follows: 77-420. (a) Every rule and regulation proposed to be
 0177 adopted by any state agency, before being submitted to the
 0178 attorney general under this section, shall be submitted to the
 0179 secretary of administration for approval of its organization, style,
 0180 orthography and grammar subject to such requirements as to
 0181 organization, style, orthography and grammar as the secretary
 0182 may adopt. Every rule and regulation submitted to the secretary
 0183 of administration under this subsection (a) shall be accompanied
 0184 by a copy of ~~the fiscal or financial impact statement and by a copy~~
 0185 ~~of~~ any document which is adopted by reference by the rule and
 0186 regulation. Every rule and regulation approved by the secretary
 0187 of administration under this subsection (a) shall be stamped as
 0188 approved and the date of such approval shall be indicated
 0189 therein. No rule and regulation proposed to be adopted by any
 0190 state agency as a permanent rule and regulation shall be submit-
 0191 ted to the secretary of administration for approval of its organi-

Upon request of the (1) state rules and regulations board, (2) the joint committee on administrative rules and regulations, or (3) the chairperson of such committee or board, the director of the budget shall review the fiscal or financial impact statement prepared by any state agency and shall prepare a supplemental or revised statement. Such statement shall, if possible, include a reliable estimate in dollars of the anticipated change in revenues and expenditures of the state. It also shall include a statement, if determinable or reasonably foreseeable, of the immediate and long-range financial effect of the regulation on private businesses and the general public. If, after careful investigation, it is determined that no dollar estimate is possible, the statement shall set forth the reasons why no dollar estimate can be given. Every state agency is directed to cooperate with the division of the budget in the preparation of any statement pursuant to this subsection when, and to the extent, requested by the director of the budget.

0192 zation, style, orthography and grammar after October 15 in any
0193 year.

0194 (b) Every rule and regulation proposed by any state agency
0195 which has been approved by the secretary of administration as
0196 provided in subsection (a) of this section before being adopted or
0197 filed shall be submitted to the attorney general for an opinion as
0198 to the legality of the same, and the attorney general shall
0199 promptly furnish an opinion as to the legality of the proposed
0200 rule and regulation so submitted. Every rule and regulation
0201 submitted to the attorney general under this subsection (b) shall
0202 be accompanied by a copy of any document which is adopted by
0203 reference by the rule and regulation. Every rule and regulation
0204 approved by the attorney general under this subsection (b) shall
0205 be stamped as approved and the date of such approval shall be
0206 indicated therein.

0207 (c) No rule and regulation shall be filed with the revisor of
0208 statutes unless:

0209 (1) The organization, style, orthography and grammar have
0210 been approved by the secretary of administration;

0211 (2) the rule and regulation has been approved in writing by
0212 the attorney general as to legality;

0213 (3) the attorney general finds that the making of such rule and
0214 regulation is within the authority conferred by law on the state
0215 agency submitting the same;

0216 (4) the rule and regulation has been formally adopted by the
0217 state agency after it has been approved by the secretary of ad-
0218 ministration and the attorney general and is accompanied by a
0219 certified or other formal statement of adoption when adoption is
0220 by an executive officer of a state agency, or by a certified copy of
0221 the roll call vote required for its adoption by K.S.A. 1982 Supp.
0222 77-421 and any amendments thereto when adoption is by a board,
0223 commission, authority, or other similar body; and

0224 (5) the rule and regulation to be filed is accompanied by a
0225 copy of the fiscal or financial impact statement ~~approved by the~~
0226 ~~secretary of administration~~ as required provided by K.S.A. 1982
0227 Supp. 77-416 and amendments thereto.

0228 Sec. 4. K.S.A. 1982 Supp. 77-421 is hereby amended to read

0229 as follows: 77-421. (a) Prior to the adoption of any permanent rule
0230 and regulation or any temporary rule and regulation which is
0231 required to be adopted as a temporary rule and regulation in order
0232 to comply with the requirements of the statute authorizing the
0233 same and after any such rule and regulation has been approved by
0234 the secretary of administration and the attorney general, the
0235 adopting state agency shall give at least 15 days' notice of its
0236 intended action in the Kansas register and to the revisor of
0237 statutes. The notice shall be mailed to the revisor of statutes and
0238 published in the Kansas register and shall contain a summary of
0239 the substance of the proposed rules and regulations and the
0240 address where a complete copy of the proposed rules and regula-
0241 tions may be obtained. Such notice shall state the time and place
0242 of the public hearing to be held thereon and the manner in which
0243 interested parties may present their views thereon. ~~Such~~ The
0244 notice shall be accompanied by a copy of the fiscal or financial
0245 impact statement ~~approved by the secretary of administration as~~
0246 ~~provided~~ by K.S.A. 77-416 and amendments thereto which is
0247 applicable to all proposed rules and regulations which will be
0248 considered at such public hearing, and the notice shall state that a
0249 copy of the fiscal or financial impact statement may be obtained
0250 from the state agency and shall provide the address of the state
0251 agency from which such fiscal or financial impact statement may
0252 be obtained. Publication of such notice in the Kansas register
0253 shall constitute notice to all parties affected by the rules and
0254 regulations. Nothing in this section shall be construed to require
0255 publication in the Kansas register of the fiscal or financial impact
0256 statement.

0257 (b) On the date of the hearing, all interested parties shall be
0258 given reasonable opportunity to present their views or arguments
0259 on adoption of the rule and regulation, either orally or in writing.
0260 When requested to do so, the state agency shall prepare a concise
0261 statement of the principal reasons for adopting the rule and
0262 regulation or amendment thereto. Whenever a state agency is
0263 required by any other statute to give notice and hold a hearing
0264 before adopting, amending, reviving or revoking a rule and regu-

required

MEMORANDUM

TO: Honorable Neal Whitaker, Chairman
House Federal and State Affairs Committee

FROM: THOMAS J. KENNEDY, Director, ABC Division

RE: House Bill 2328

DATE: February 14, 1983

PURPOSE

House Bill 2328 is an act which concerns alcoholic beverages; relating to alcoholic content, age of consumption and days of sale of certain beverages; amending K.S.A. 8-260, 8-1327, 21-3610a, 41-102, 41-103, 41-208, 41-209, 41-211, 41-304, 41-306, 41-308, 41-310, 41-317, 41-401, 41-402, 41-410, 41-501, 41-701, 41-708, 41-709, 41-713, 41-901, 41-2701, 41-2707, 41-2708, 41-2716, 41-2721, 79-3817, 79-3839 and 79-4101 and K.S.A. 1982 Supp. 41-311, 41-2704, 41-2705, 79-3606 and 79-41a01 and repealing the existing sections; also repealing K.S.A. 41-307 and K.S.A. 1982 Supp. 41-409.

PERSPECTIVE

History and Background:

Congressional relegalization of 3.2 percent beer and wine and the ratification of the Twenty-First Amendment to the United States Constitution, in 1933, marked the end of the thirteen years of national prohibition.

Beer was re-legalized by Congress under the Cullen-Harrison Act, which declared it a nonintoxicating beverage and provided for its sale on April 7, 1933, in all states where it was not prohibited by law.

Under this Act, the sale of beer became legal on April 7, 1933, in the District of Columbia and the 20 states where state laws did not prohibit its sale. During the next four years, the remaining states changed their laws to permit its sale, with Alabama and Kansas, in 1937, as the last to join the legal sale ranks.

Meanwhile, Congress had adopted a resolution submitting the Twenty-First Amendment to the states for ratification. This required the approval of 36 states to accomplish the direct repeal of the Eighteenth (Prohibition) Amendment.

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Michigan was the first state to ratify the Twenty-First Amendment. The final ratification was accomplished on November 7, 1933, when Kentucky, Ohio, Pennsylvania and Utah gave their approval.

The Twenty-First Amendment legalized spiritous, vinous and malt beverages, above 3.2 percent in all states where these beverages were not prohibited by state law, and today their sale is legal throughout the nation except in Mississippi, where legal content is limited to 4 percent.

The following states re-legalized beer on April 7, 1933, under the Cullen-Harrison Act:

California	Maryland	New Jersey	Washington
Colorado	Massachusetts	New York	Wisconsin
Delaware	Minnesota	Ohio	District of
Illinois	Missouri	Oregon	Columbia
Indiana	Montana	Rhode Island	
Kentucky	Nevada	Vermont	

Other state legalization dates for beer were:

Alabama	March 22, 1937	New Hampshire	May 2, 1933
Arizona	June 16, 1933	New Mexico	June 9, 1933
Arkansas	August 23, 1933	North Carolina	April 28, 1933
Connecticut	April 20, 1933	North Dakota	July 1, 1933
Florida	May 8, 1933	Oklahoma	July 12, 1933
Georgia	May 23, 1935	Pennsylvania	May 3, 1933
Idaho	June 21, 1933	South Carolina	April 14, 1933
Iowa	April 15, 1933	South Dakota	August 5, 1933
Kansas	May 1, 1937	Tennessee	May 1, 1933
Louisiana	April 15, 1933	Texas	September 15, 1933
Maine	June 30, 1933	Utah	January 1, 1934
Michigan	April 27, 1933	Virginia	September 3, 1933
Mississippi	February 26, 1934	West Virginia	April 13, 1933
Nebraska	May 8, 1933	Wyoming	May 19, 1933

In November 1948, the people of Kansas voted to amend Section 10, Article 15, of the Constitution of the State of Kansas. As a result of this election, the state legislature enacted the Kansas Liquor Control Act which provides for the regulation of all phases of the control of manufacture, distribution, sale, possession and traffic in alcoholic liquor and the manufacture of beer except 3.2% and less.

In 1965, the legislative session passed the Kansas Club licensing Act, K.S.A. 41-2601 et. seq., as amended, which placed private clubs under the jurisdiction of the Director of Alcoholic Beverage Control.

In 1978, the legislature enacted Senate Bill 952 which transferred the licensing and policing of sixty-eight (68) cereal malt beverage distributors from the Director of Taxation to the Director of Alcoholic Beverage Control. The Director of Alcoholic Beverage Control has continuously licensed and policed strong beer distributors in Kansas since 1949.

The 1982 Legislature enacted Senate Bill 865 which provides that any sales of cereal malt beverage made in private clubs must be for on premise consumption only; and that cereal malt beverages may be sold in a private club at any time when alcoholic liquor is allowed by law to be served on the premises.

Further the 1982 Legislature enacted Senate Bill 866 which relates to agreements for distribution of beer and cereal malt beverages to wholesalers and prohibits "dual franchises" for strong beer and cereal malt beverage (3.2%) alcohol by weight.

After having reviewed and studied House Bill 2328, the following are our comments as we understand the bill at this time if enacted:

Section 1, amending K.S.A. 8-260:

Good Section. Concerns illegal use of driver's license for purposes of purchasing alcoholic liquors or CMB.

Section 2, amending K.S.A. 8-1327:

Good Section. Concerns illegal use of identification card for purposes of purchasing alcoholic liquors or CMB.

Section 3, K.S.A. 21-3610a:

The age for purchasing CMB is changed to 19 years from 18 years.

Section 4, KSA 41-102:

This section of the liquor control act:

- a. Redefines alcoholic liquor to include cereal malt beverage.
- b. Redefines beer to mean a beverage containing more than 4.5% alcohol by weight instead of more than 3.2% alcohol by weight.
- c. Points out that cereal malt beverage has the meaning provided by KSA 41-2701 and amendments thereto. That is, cereal malt beverage means any fermented but undistilled liquor brewed or made from malt or from a mixture of malt or malt substitute, but does not include any such liquor which is more than 4.5% alcohol by weight. The only change is in the percent from 3.2% to 4.5% alcohol by weight.

- d. For the purchase of alcoholic or CMB in a retail liquor store, a minor means any person under 21 years of age, no change except our present strong beer is now cereal malt beverage.
- e. Retailer is defined as a person who sells at retail or offers for sale at retail, alcoholic liquor or cereal malt beverage. A retailer does not include any retailer licensed pursuant to Article 27 of Chapter 41 of K.S.A. or any club licensed pursuant to Article 26 of Chapter 41 of K.S.A. Retailers as defined in Article 27 of Chapter 41 are grocery stores, taverns, etc.

Section 5, amending K.S.A. 41-103:

This section provides for sale of CMB in retail liquor stores.

Section 6, amending K.S.A. 41-208:

This section updates language of statute changing beer regardless of its alcoholic content to cereal malt beverage.

Section 7, amending K.S.A. 41-209:

No Comments.

Section 8, amending K.S.A. 41-211:

Provides for standards of manufacture of alcoholic liquors and cereal malt beverage, not inconsistent with the federal law, and provides for establishing rules and regulations for labeling, etc. both previously found in K.S.A. 41-209.

Section 9, amending K.S.A. 41-304:

This section of the liquor control act provides for four types of licenses: (1) manufacturers license; (2) alcoholic liquor distributors license (except beer); (3) retailers license; and (4) non-beverage users license. It eliminates the beer distributors license and provides that beer (more than 4.5% alcohol by weight) will be included under the alcoholic liquor distributors license.

COMMENT:

1. The elimination of the beer distributors license (presently 79 in the state), will result in a loss to the state of approximately \$12,000. (79 x \$150=\$11,850)
2. Breweries, for the most part, give all their brands to a distributor for a specific territory. With the elimination of beer distributors, a brewery with products over 4.5% alcohol by weight, will be forced to sell that product to an alcoholic liquor distributor for distribution if they wish to sell the product in Kansas.

Section 10, amending K.S.A. 41-306 of the liquor control act:

Eliminates beer distributors.

COMMENT: K.S.A. 41-306 states that an alcoholic liquor distributor's license shall allow the wholesaler to purchase, importation and storage and sale of alcoholic liquors. K.S.A. 41-102 under definitions states: Distributors means the person importing or causing to be imported into this state or purchasing or causing to be purchased within this state, alcoholic liquor for sale or resale to retailers licensed under this act (Liquor Control Act). Alcoholic liquors pursuant to K.S.A. 41-102 means alcohol, spirits, wine, beer and every liquid or sold, patented or not, containing alcohol, spirits, wine or beer and capable of being consumed as in beverage but shall not include cereal malt beverage.

COMMENT: This will prevent alcoholic liquor distributors from having a cereal malt beverage distributors license and require them to give up all their beer franchises of beer with an alcoholic content of over 3.2% alcohol by weight, but less than 4.5% alcohol by weight.

Section 11, amending K.S.A. 41-308 of the Liquor Control Act:

Changes language to conform with House Bill 2328. Provides that a retail liquor store may store beer and cereal malt beverage in refrigerators, cold storage units, etc. and may sell these chilled products to consumers.

COMMENT: Recommend that spirits, cordials and liqueurs be included for chilling and sale as chilled products to consumers.

Section 12, amending K.S.A. 41-310 of the Liquor Control Act:

This section provides for the amount of the annual license fees and the amount cities or in the case of townships which have a population of more than 11,000, located outside incorporated cities, may charge for an annual occupational or license tax.

Section 13, amending 1982 Supp. 41-311 of the Liquor Control Act:

Merely eliminates reference to beer distributors license and residency requirement.

Section 14, amending K.S.A. 41-317 of the Liquor Control Act:

Merely updates language of statute to conform with bill.

Section 15, amending K.S.A. 41-401 of the Liquor Control Act:

Merely updates language of statute to conform with bill.

Section 16, amending K.S.A. 41-402 of the Liquor Control Act:

Updates language of statute as it pertains to storage of alcoholic liquor except beer in distributors bonded warehouse.

Section 17, amending K.S.A. 41-410 of the Liquor Control Act:

Updates language of statute as it pertains to brand franchise territories agreements and the procedure of terminating them. No problem.

Section 18, amending K.S.A. 41-501 of the Liquor Control Act:

Updates language of statute as it pertains to amount of gallonage tax to be collected on alcoholic liquors, method of collecting and disposition of same. 1/10 of moneys collected from taxes imposed on alcohol and spirits is credited to the Community Alcoholism and intoxication programs fund credited by K.S.A. 41-1126 and amendments thereto. No problem.

Section 19, amending K.S.A. 41-701 of the Liquor Control Act:

Updates language of statute as it pertains to beer distributors selling outside the geographic territory designated in the notice to the director pursuant to K.S.A. 41-409. Also deletes language as it pertains to beer distributor servicing of accounts. No problems.

Section 20, amending K.S.A. 41-708 of the Liquor Control Act:

Merely updates language of statute as it relates to where a retail licensee shall purchase or receive alcoholic liquor or cereal malt beverage.

Section 21, amending K.S.A. 41-709 of the Liquor Control Act:

Updates language of statute as it pertains to who is authorized to receive alcoholic liquor from manufacturer, distributor or wholesaler. No problem.

Section 22, amending K.S.A. 41-713 of the Liquor Control Act:

Provides that it is unlawful for a retail liquor store to sell cereal malt beverage to anyone under 21 years of age. As you know, cereal malt beverage (3.2% beer) is not sold in retail liquor stores, only beer. With the sale of CMB (4.5% beer) in retail liquor stores, this continues the prohibition of selling to anyone under 21 years.

Section 23, amending K.S.A. 41-901 of the Liquor Control Act:

Updates language of statute deleting reference to 3.2% beer and adding cereal malt beverage. No problem.

Section 24, amending K.S.A. 41-2701:

Relates to Cereal Malt Beverage. This statute is updated to provide:

- a. The definition of "cereal malt beverage" is changed. Cereal malt beverages does not include any such liquor which is more than 4.5% alcohol by weight, changed from 3.2% alcohol by weight. No problem.
- b. Retailer under this statute means any person, other than a person licensed as a retailer pursuant to the Kansas Liquor Control Act, who sells or offers for sale cereal malt beverages for use or consumption and not for resale in any form. Refers to retailers such as taverns, grocery stores and other CMB outlets.
- c. The definition provides that cereal malt beverage distributors are the only distributors authorized to sell the new cereal malt beverage. This will:
 - (1) Continue the authority of cereal malt beverage distributors selling to taverns, grocery stores, private clubs, etc.
 - (2) Permit CMB distributors to sell CMB to retail liquor stores. All beer sales to retail liquor stores prior to this bill, had to come from beer distributors.

Section 25, amending K.S.A. 1982 Supp. 41-2704:

- a. Permits Sunday sales of cereal malt beverage.
- b. Continues the prohibition of no sales between 12:00 midnight and 6:00 A.M.
- c. The minimum age for a person to consume, purchase or possess CMB has been increased from 18 years to 19 years.

- d. An exception in this statute is the provision that an employee of the licensee who is 18 years of ages may sell or dispense cereal cereal malt beverage on the licensed premises.

COMMENT: They must be 19 to consume, however, they can sell or dispense at 18. This will be very difficult to enforce. Like having a bowl of candy around a child with the admonition not to eat.
We have a recommendation in this matter.

- e. Continues the authority for CMB to be sold in private clubs any time alcoholic liquor is allowed by law to be served on the premises. (9:00 AM till 3:00 AM, Monday through Saturday and 12:00 Noon Sunday till 3:00 AM Monday).

Section 26, amending K.S.A. 1982 Supp. 41-2705:

Changes to this statutes are strictly language changes to comply with new bill. No problems.

New Section 27:

This new section establishes requirement of manufacturer, importer, supplier or distributor of cereal malt beverage to apply in writing for a license to identify exclusive geographic territory where distributor will distribute brand of CMB and procedure for terminating or modifying agreement, bond requirements, payment of gallonage taxes, records to be maintained which are open to inspection, compliance with rules and regulations established and satisfactory evidence that CMB is brewed according to Kansas law. No problem.

Section 28, amending K.S.A. 2707:

No problem. No wholesaler of CMB shall sell or furnish CMB to a retailer of CMB or credit.

Section 29, amending K.S.A. 41-2708:

Establishes criteria for board of county commissioners or the governing body of any city to revoke or suspend the license of a CMB retailer. If the age for dispensing is changed, then the language of this statute should be changed. Provisions of this statute does not apply to private clubs.

Section 30, amending K.S.A. 2716:

Restricts who a wholesaler or distributor can sell, deliver or otherwise dispose of CMB to. No problem.

Section 31, amending K.S.A. 41-2721:

Outlines penalties for an 18 year old who misrepresents age for purposes of obtaining, purchasing, possessing or consuming CMB. No problem. Good statute.

Section 32, amending K.S.A. 1982 Supp. 79-3606:

Updates language of statute. Sales tax will be collected on all sales of cereal malt beverages and malt products as defined by K.S.A. 79-3817 and amendments thereto. No problem.

Section 33, amending K.S.A. 79-3817:

Statute administered by director of taxation. No problem.

Section 34, amending K.S.A. 79-3839:

There is a question on responsibility. Should probably be Director of Alcoholic Beverage Control instead of Director of Taxation.

Section 35, amending K.S.A. 79-4101:

This statute established a 4% enforcement tax upon the gross receipts received from sales of alcoholic liquor at retail within the state. Alcoholic liquor includes cereal malt beverage sold by retail liquor store licensees according to this bill.

COMMENT:

In FY 1982, retail liquor store sales amounted to \$219,352,528. A recent study by the Revenue Department indicated that 45% of all purchases by a retail liquor store licensee was beer. Using an average mark-up on beer of 18% plus, this would indicate that 40 to 42% of retail liquor store sales in FY 82 were beer, over 3.2% alcohol by weight. 40% of \$219,352,528=\$87,741 or 88 million dollars beer sales.

DISCUSSION:

It is estimated that retail liquor stores will sell some cereal malt beverage but will probably lose most, if not, all club sales. If we reduce the 88 million to allow for 8 million sales by retail liquor stores, it is estimated that the enforcement tax collected by the state will be reduced by approximately 4% of 80 million dollars or 3.2 million dollars.

The reason for this is:

- (a) Under this law, private clubs can purchase direct from CMB distributors at wholesale prices (the same price retail liquor store licensees pay distributors).
- (b) CMB distributors will deliver CMB directly to the private club thus eliminating the club from having to pick it up at the retail store.
- (c) CMB distributors will collect no enforcement tax on sales to clubs while retail liquor stores are required to charge 4% enforcement tax on all sales.
- (d) It is recognized that the state will collect 3% sales tax on cereal malt beverage not sold from retail liquor stores. Therefore, the short fall will be approximately 800,000 dollars (80 million x 3% sales tax=2.4 million) 3.2 million less 2.4 million=\$800,000.

Section 36, amending K.S.A. 1982 Supp. 79-41a01:

Alcoholic liquor means alcoholic liquor as defined by K.S.A. 41-102 (The Liquor Control Act) or cereal malt beverages as defined by K.S.A. 41-2701 (cereal malt beverage).

This statute will require the 10% gross receipts to be collected by private clubs on all cereal malt beverage sales. Presently, the gross receipts tax is collected only on beer sales, not CMB.

Section 37, (New Section):

This new section provides that any person licensed as a distributor on the day before the effective date of this act (January 1, 1984), may continue to distribute beer of a brand that the distributor has an agreement to distribute, to retailers within the geographical territory where the distributor has agreed to distribute that brand. Until the distributor's license expires or is suspended or revoked, the distributor shall be considered to have an agreement to be the exclusive distributor of cereal malt beverage of that brand with respect to retailers in that geographical territory.

COMMENT:

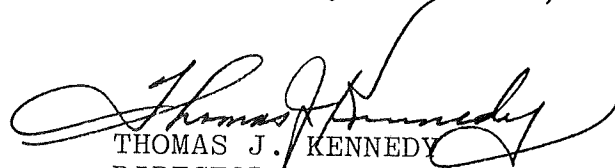
A provision should be added to this new section to provide that nothing in this bill shall constitute "reasonable cause" for a territory franchise agreement to be terminated or modified. This will protect all present licensees.

COMMENTS AND/OR RECOMMENDATIONS

1. As to increasing the age to consume, purchase or possess cereal malt beverage (4.5% alcohol by weight) from 18 years to 19 years, we have no recommendations. (K.S.A. 41-2704). This is strictly a legislative matter.
2. As to Sunday sales, this is strictly a legislative policy decision and we have no recommendations. (K.S.A. 41-2704)
3. As to 18 year olds being permitted to sell or dispense cereal malt beverage; if the purpose is to authorize retail grocery stores to sell for off premise consumption, then there is no problem. However, for on premise consumption, the age for selling and dispensing cereal malt beverage should probably be increased from age 18 if the age is increased for consumption.
4. Consideration should be given to the issuance of beer distributor's licenses to permit cereal malt beverage distributors, who have an agreement to distribute a particular brand, to purchase a beer distributor's license. This will permit that beer distributor to distribute all the products of a particular supplier instead of forcing that beer supplier to sign an agreement with a liquor distributor for the distribution of that beer (over 4.5% alcohol by weight). (K.S.A. 41-306)
5. In that alcoholic liquor distributors are not authorized to handle cereal malt beverage (K.S.A. 41-102 and 41-306), provisions should be made for the handling of import beers. At the present time, we have 65 brands of imported beer handled by mostly alcoholic liquor distributors. If this law is enacted, all import beers with an alcoholic content of 4.5% alcohol by weight or less will be classified as cereal malt beverage and only cereal malt beverage distributors will be authorized to handle them. A further problem is that the alcoholic content is not specified on the label of these import beers, however, they are classified as over 3.2% alcohol by weight, therefore, each brand will need to be tested before they can be sold. Recommend some consideration be given to this problem if you want imported beers to continue in this state.

6. Recommend that spirits, cordials, and liqueurs be included as products that may be chilled and sold to consumers by retail liquor store licensees. (K.S.A. 41-308)
7. Recommend that K.S.A. 79-4101 be amended to provide that cereal malt beverage distributors collect 4% enforcement tax on all sales of cereal malt beverage to licensed private clubs. Retail liquor store licensees are required to collect this 4% enforcement tax on sales to private clubs. (K.S.A. 79-4101). It is recognized that the state will collect 3% sales tax on cereal malt beverages not sold from retail liquor stores. It is estimated the state will probably lose \$800,000 approximately if CMB distributors are exempted from the 4% enforcement tax requirement for sales to clubs.
8. Recommend that a provision be added to new section 37 to provide that nothing in this bill shall constitute "reasonable cause" for a territory franchise agreement to be terminated or modified. This will protect all present licensees.
9. An examination of the constitutionality of redefining alcoholic liquor to cereal malt beverage should be considered.
10. The Director of Alcoholic Beverage Control is neither a proponent nor an opponent of this bill.

Respectfully submitted,



THOMAS J. KENNEDY
DIRECTOR

Alcoholic Beverage Control Division

TJK:cjk