

Approved Stephen R. Cloud 3-22-83
Date

MINUTES OF THE HOUSE COMMITTEE ON GOVERNMENTAL ORGANIZATION

The meeting was called to order by Rep. Stephen R. Cloud at
Chairperson

9:08 a.m./~~pm~~ on March 15, 19 83 in room 522-S of the Capitol.

All members were present except:

Rep. Louis - Excused
Rep. Ediger - Absent

Committee staff present:

Carolyn Rampey - Research Dept.
Russ Mills - Research Dept.
Avis Swartzman - Revisor
Jackie Breymeyer - Secretary

Conferees appearing before the committee:

Tom Kennedy - ABC Director
Bill Strukel - ABC Division, Chief Law Enforcement Officer
"Tuck" Duncan - Kansas Wine and Spirits Wholesalers
Tom Green - Kansas Retail Liquor Dealers Association
Jack Milligan - Kansas Association of Private Clubs
Reverend Taylor - Kansans For Life At Its Best
John Crofoot - Independent Businessman, Western Associates

The meeting of the House Governmental Organization Committee was called to order at 9:08 a.m. The minutes of the March 3 meeting were approved. The Chairman stated that HCR 5031, HCR 5032 and HCR 5035 would be taken up today. He asked the Revisor, Avis Swartzman, to explain HCR 5031.

HCR 5031 - Alcoholic beverage control, retailer licensees, deliveries

Tom Kennedy, ABC Director, passed out written copies of testimony and commented on this resolution. He ended by saying that he is neither a proponent nor an opponent of this resolution. (See Attachment I) Mr. Kennedy also introduced Richard Hodson, a new attorney in the division who replaces Tom Coleman.

Jack Milligan, Kansas Association of Private Clubs, spoke in favor of HCR 5031. He said his organization is very much in support of this resolution. (See Attachment II)

Tom Green, Kansas Retail Liquor Dealers Association, spoke in favor of the resolution but thinks language should be added as to delivery charges as this will become a competitive thing.

Bill Strukel, ABC division, chief law enforcement officer, added a few comments about the concern the division has with the warehousing of liquor.

As there were no more conferees, the Chairman stated that this constituted the hearing on HCR 5031. The Committee turned its attention to HCR 5032.

HCR 5032 - modifying regulations of the director of the ABC division, relating to retail licensees

Avis Swartzman, Revisor, explained HCR 5032.

Tom Kennedy commented on his written testimony, explaining what each K.A.R. does and stated that if HB 2530 is passed, HCR 5032 would go into effect at the same time to amend the current regulations. (See Attachment III)

Tom Green stated that he concurred with the director's comments. He added that as regards small advertising goods, they have no specific purpose and add another cost item to the retailer. He said that an item such as match books might have to be provided in large quantities to obtain business. He told of a Board of Director's meeting held Sunday in which the retailers voiced unanimous opposition to the amendments to K.S.A. 41-308.

John Crofoot, speaking as an independent businessman, stated he finds no objection to HCR 5032. He said that it is just a matter of business to have items such as ball point pens, calendars, etc.

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON GOVERNMENTAL ORGANIZATION,
room 522-S, Statehouse, at 9:08 a.m. ~~XXX~~ on March 15, 1983.

The Chairman stated that this constituted the public hearing on HCR 5032.

HCR 5035 - modifying regulation of ABC director, deliveries by manufacturers and distributors

Avis Swartzman, Revisor explained HCR 5035

Tom Kennedy stated that this resolution presents no problems. Deliveries are still limited to the legal hours the retailer is open for business. The Saturday delivery poses no enforcement problem. *Atch. IV*

Tom Green stated that the 2:00 time or the Saturday delivery was not a benefit to retailers. His association does not want to increase the cost involved in competition.

"Tuck" Duncan, Kansas Wine and Spirits Wholesalers, would like to see 14 days as opposed to 8 days. He cited the high cost of gas and other escalating costs. He stated that the wholesalers bear the burden but reap none of the benefits of cost.

Mr. Kennedy commented that regarding retailers and wholesalers, urban and rural groups, each party concerned wants something different that will be of benefit to a particular group.

Reverend Taylor, Kansans For Life At Its Best, stated that he thought what Mr. Green said about who wants this resolution was refreshing. Many changes have been floating around in liquor laws this year. He is all for the profit motive and free enterprise but not for alcohol. He wanted to go on the record as concurring with Mr. Green. Chairman Cloud stated that this constituted the hearing on HCR 5035.

The Chairman reminded the Committee that they had copies of the March 9 minutes. He told the Committee to watch the Calendar for a Thursday change as there is the possibility of a meeting. The meeting was adjourned at 10:11 a.m.

CONFEREES

HCR 5031, HCR 5032 and HCR 5035 - Concerning Alcoholic Beverages
 BILL NO. _____

SUBJECT

DATE OF HEARING 3/15/83

SPONSOR GOVERNMENTAL ORGANIZATION COMMITTEE

DATE NOTIFIED	NAME	ORGANIZATION	ADDRESS	PHONE	TESTIFY?
3/11/83	5031 Tom Kennedy	ABC	State Off. Bldg	3946	
3/11/83	5032 5035 Bill Strukel	ABC	" " "	3946	
3/14/83	Mark Boranyak	Ks Beer Wholesalers	Merchants Bank Bldg.	232-1230	NO
3/11/83	5035 Tuck Duncan	Ks Wine & Spirits Wholesalers	City Hall	295-3883	
3/11/83	Rev. Taylor	Ks. For Life At Its Best	218½ W. 6th	235-1866	NO
3/11/83	5031 Jack Milligan	Ks. Assoc. of Private Clubs	400 KS Ave.	232-0225	
3/11/83	yes 5031 5035 5032 Tom Green	KS Retail Liquor Dealers Association	Suite 310 Columbian Bldg.	232-5320	
	Harriat Lange	KS Assoc. of Broadcasters	724 KS Ave	235-1307	NO
	5032 yes John Crowfoot				yes

MEMORANDUM

Attachment I

TO: Honorable Stephen R. Cloud
Chairman, House Governmental Organization Committee

FROM: THOMAS J. KENNEDY, Director, ABC Division

RE: House Concurrent Resolution 5031

DATE: March 15, 1983

PURPOSE

House Concurrent Resolution 5031, if adopted in its present form, modifies K.A.R. 14-3-7 and K.A.R. 1982 Supp. 14-3-38, relating to deliveries of alcoholic liquor by retail licensees.

PERSPECTIVE

House Concurrent Resolution 5031, modifies K.A.R. 14-3-7 to read: "Sales of alcoholic liquor by a retail licensee shall be made only on and within the licensed premises, and deliveries of alcoholic liquor sold by a retail licensee shall be made only within the premises, except that a retail licensee may deliver alcoholic liquor from the licensed premises to a licensed private club and may accept payment for the sale of the alcoholic liquor at the point of delivery to the licensed private club."

House Concurrent Resolution 5031 also modifies K.A.R. 14-3-38 to read: "No retailer licensee or spouse of licensee shall be employed in the capacity of an officer, a manager, or in connection with the mixing, serving, selling and dispensing of alcoholic liquor in a club which is licensed by the director. Employees of retail licensees may not purchase any alcoholic liquor for a licensed private club.

This concurrent resolution deletes the words "or receive an order to deliver" from the last sentence of the regulation. This change would imply that an employee of a retail liquor store could deliver alcoholic liquors to the private club even though the retailer or their spouse could not under the provisions of K.S.A. 41-308, 41-2623(d) and K.A.R. 14-18-17. This amendment may also legitimize an existing trade practice by authorizing store employees to receive over the phone or in person, club orders. We interpret K.S.A. 41-308 as presently written to prohibit licensees or their employees from delivering to private clubs.

Atch. I

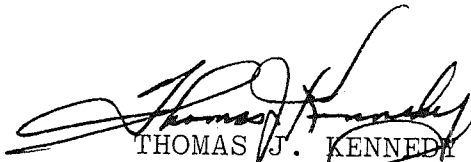
COMMENTS AND/OR RECOMMENDATIONS

1. K.S.A. 41-308 states that: "A retailer's license shall allow the licensee to sell and offer for sale at retail and deliver in the original package as therein prescribed, only in the premises specified in such license, alcoholic liquor including beer containing more than 3.2% alcohol by weight for use or consumption off of and away from the premises specified in such license, but not for resale in any form except to a club licensed pursuant to Article 26 of Chapter 41 of Kansas Statutes Annotated."

Comment: Modifying K.A.R. 14-3-7 to permit a retail liquor store licensee to deliver alcoholic liquors to a private club licensed premises and then collect payment from the club for some is not legal under present statutes. If K.S.A. 41-308 is amended as provided in HB 2530, then the modification of K.A.R. 14-3-7 as proposed would be legal.

2. The Director of Alcoholic Beverage Control is neither a proponent nor an opponent of this resolution.

Respectfully submitted,


THOMAS J. KENNEDY
DIRECTOR

TJK:cjk



Kansas Association of Private Clubs

(913) 357-7642 • 117 W. 10TH ST. • TOPEKA, KS 66612

Attachment II

HCR 5031
MARCH 15, 1983
HOUSE GOVERNMENTAL ORGANIZATION COMMITTEE

Mr. Chairman, Members of the Committee. I am Jack Milligan and I appear this morning in behalf of the Kansas Association of Private Clubs and in support of HCR 5031.

HCR 5031 would permit retail liquor dealers to deliver to private clubs, therefore, eliminating an unnecessary prohibition.

Private clubs and liquor retailers develop normal business relationships just as any two segments of the business community do. The ability to deliver a product to entities who provide direct sale of the product to the public is a convenience the private club industry has long desired.

Thank you. I will be happy to respond to any questions the committee members might have.

Jack Milligan
Executive Director
Kansas Association of Private Clubs

Atch. II

MEMORANDUM

Attachment III

TO: Honorable Stephen R. Cloud
Chairman, House Governmental Organization Committee

FROM: THOMAS J. KENNEDY, Director, ABC Division

RE: House Concurrent Resolution 5032

DATE: March 15, 1983

PURPOSE

House Concurrent Resolution 5032, if adopted in its present form, relates to retailers of alcoholic liquor and modifies K.A.R. 14-3-8, 14-3-11, 14-3-15, 14-3-20 and K.A.R. 1982 Supp. 14-8-11.

PERSPECTIVE

1. House Concurrent Resolution 5032 modifies K.A.R. 14-3-8 to read: "Except as provided in K.S.A. 41-308, and amendments thereto, no retail license shall engage, directly or indirectly, in any conspiracy, transaction or agreement having as its object the sale or resale, away from or off the licensed premises, of any alcoholic liquor owned, sold or delivered by such retail licensee, nor shall any such licensee sell or deliver any alcoholic liquor to any person with knowledge of or with reasonable cause to believe, that the person to whom such liquor is sold or delivered has acquired the same for the purpose of peddling or reselling the same."

2. House Concurrent Resolution 5032 modifies K.A.R. 14-3-11 to read: "All alcoholic liquor of a retail licensee shall be stored and maintained in the licensed premises of the licensee in a safe manner, and no such liquors shall be stored in the licensed premises after the sale thereof, except that alcoholic liquor may be stored and maintained in the licensed premises after sale to a licensed private club prior to delivery thereto. No alcoholic liquor of a retail licensee shall be stored in any place other than the licensed retail premises except upon written authority of the director, except as provided in K.S.A. 41-308 and amendments thereto or unless authorized in writing by the director, no alcoholic liquor of a retail licensee shall be transported from the licensed retail premises to any other place."

3. House Concurrent Resolution 5032 modifies K.A.R. 14-3-15 to read: "Except as provided in K.S.A. 41-308 and amendments thereto no retail licensee shall, directly or indirectly, offer or furnish any gifts, prizes, coupons, premiums, rebates, or similar inducements with the sale of any alcoholic liquor. No retail licensee shall directly or indirectly offer, furnish, or sell any beer at less than cost plus enforcement tax."

Attch. III

4. House Concurrent Resolution 5032 modifies K.A.R. 14-3-20 to read: "No retail licensee, and no agent or employee thereof, shall permit any other person to use the licensed premises for the purpose of carrying on, within such licensed premises, any business activity of such other person in any of its phases, including but not by way of limitation, solicitation, sale, service, delivery of storage, except as provided in K.S.A. 41-308, and amendments thereto, no retail licensee, and no agent or employee thereof, shall carry on any type of business other than the sale of alcoholic liquor on the retail premises."

5. House Concurrent Resolution 5032 modifies K.A.R. 14-8-11 to read: "No licensee shall advertise any alcoholic liquor nor place of business over the radio, television, public address system, or by means of motion pictures, still slides or film strips. A retail licensee may provide shirts or jackets for bowling, baseball or other athletic teams so long as the advertising to be placed on the garments consists solely of the name and address of the liquor store as it appears on the retail license. Any manufacturer, supplier or distributor may advertise wine or beer over the radio, television, public address system, or by means of motion pictures, still slides or film strips."

COMMENTS AND/OR RECOMMENDATIONS

1. The proposed amendment to K.A.R. 14-3-8 does not change the regulation at all under the current version of K.S.A. 41-308. If K.S.A. 41-308 were to be amended such as to allow retail licensees to deliver to private clubs, the proposed amendment would avoid differences between statutes and regulations; as such it will save the agency the trouble of doing that.

2. (a) The proposed amendment to K.A.R. 14-3-11, tying it to K.S.A. 41-308 seeks to accomplish the same purpose as the amendment to K.A.R. 14-3-8. If K.S.A. 41-308 were to be amended such as to allow retail licensees to deliver to private clubs, the proposed amendment would avoid differences between statutes and regulations; as such it will save the agency the trouble of doing that.

(b) The proposed amendment to K.A.R. 14-3-11 allowing retail licensees to warehouse or store alcoholic liquor that has already been sold to a private club presents distinct enforcement difficulties. A retail licensee's inventory would be very difficult to verify or to control if he is allowed to warehouse items that have already been sold. It would also effect sales in that larger stores would be able to warehouse more merchandise than smaller stores, thus giving the larger store an unfair competitive advantage. Also, disagreements between the retail licensees and clubs would occur as to how much of the club's order has, or has not been picked up, how much was in the order, etc.

We feel that any customer to include private clubs should be required to remove their merchandise from the retail store premises where purchased. Sales receipts to cover the date and time of actual transactions could be a problem for auditing of store and private clubs and could possibly conflict with Federal guidelines for wholesalers, the retailer who sells to private clubs.

3. The proposed amendment to K.A.R. 14-3-15 does not change the regulation at all under the current version of K.S.A. 41-308. If K.S.A. 41-308 is amended by this or future sessions of the legislature, the regulation will automatically be in agreement with such changes.

4. The proposed amendment to K.A.R. 14-3-20 would authorize the sale or the giving away of non-alcoholic liquor items by retail licensees if K.S.A. 41-308 is amended to authorize the sale or giving away of such items. House Bill 2530, which is before this session of the Kansas Legislature, would make such a change. Under the current version of K.S.A. 41-308, the proposed amendment to K.A.R. 14-3-20 would be applicable.

5. The proposed amendment to K.A.R. 14-8-11 would allow the sale or giving away of advertising items by retail licensees, if such sale or giving away were to be authorized by K.S.A. 41-308. Currently, under K.S.A. 41-308, no such sale or giving away of advertising items is allowed.

The changes in current regulations as reflected in House Concurrent Resolution 5032, are designed to reflect House Bill 2530 as it would amend K.S.A. 41-308. If House Bill 2530 is passed by the state legislature, the use of a concurrent resolution to amend the current regulations to coincide with changes in the law, would go into effect at the same time that the statute, itself, is changed.

The Director of Alcoholic Beverage Control Division is neither a proponent nor an opponent of House Concurrent Resolution 5032.

Respectfully submitted,



THOMAS J. KENNEDY, DIRECTOR
Alcoholic Beverage Control Division

MEMORANDUM

Attachment IV

TO: Honorable Stephen R. Cloud
Chairman, House Governmental Organization Committee

FROM: THOMAS J. KENNEDY, Director
ABC Division

RE: House Concurrent Resolution 5035

DATE: March 15, 1983

PURPOSE

House Concurrent Resolution 5035, if enacted, is a resolution concerning the delivery of alcoholic liquors by licensed manufacturers or distributors of the same; modifying Kansas Administrative Regulation 14-4-14.

PERSPECTIVE

House Concurrent Resolution 5035, if enacted in its present form, amends K.A.R. 14-4-14 in the following ways:

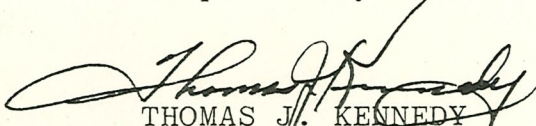
1. It eliminates the provision in (a) that states "all orders from licensed retailers for alcoholic liquor shall be received in the office of a licensed distributor prior to 2:00 P.M."
2. The distinction between alcoholic liquor and beer delivery limitations is eliminated.
3. The restriction regarding what days liquor can be delivered to licensed retailers is changed to prohibit deliveries on Sundays only. The regulation currently prohibits deliveries on Saturdays or Sundays.

COMMENTS AND/OR RECOMMENDATIONS

The Director of Alcoholic Beverage Control is neither a proponent nor an opponent of this resolution. The following are some comments:

1. With the changes as proposed in this resolution, deliveries of alcoholic liquor and beer are still limited to the legal hours that a retail licensee can be open for business. This poses no enforcement problems.
2. Any alcoholic liquor, including beer, can be delivered during business hours Monday through Saturday. No alcoholic liquor or beer can be delivered on Sunday. This change simplifies the regulations and presents no problems.

Respectfully submitted,


THOMAS J. KENNEDY
DIRECTOR