

Approved

Date

Stephen R. Cloud 4-22
83

MINUTES OF THE HOUSE COMMITTEE ON GOVERNMENTAL ORGANIZATION

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

1:16 ~~am~~/p.m. on April 20, 1983 in room 522-S of the Capitol.

All members were present except:

Committee staff present:

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

Conferees appearing before the committee:

Elizabeth Carlson - Executive Secretary, Board of Healing Arts
Jerry Slaughter - Kansas Medical Society
Harold Riehm - Kansas Osteopathic Association
Sherman Parks - Kansas Chiropractic Association
Mike Dutton - State Insurance Department
Wayne Probasko - Kansas Podiatry Association
Rebecca Kupper - Kansas Hospital Association
Written testimony on SCR 1613: Richard Taylor - Kansans For Life At Its Best
Mark Boranyak, Executive Director - Kansas
Beer Wholesalers Assn., Inc.
Bill Strukel, ABC Division, Dept. of Revenue
Tuck Duncan - Kansas Wine and Spirits Wholesalers Association

The meeting was called to order by Rep. Cloud, Chairman.
He stated that the hearing on SB 41 would start and the remaining
Committee members would come as soon as they could.

SB 41 - An Act concerning the State Board of Healing Arts

The following people spoke in support of SB 41, citing various
reasons and giving their comments: Elizabeth Carlson, Harold Riehm,
Jerry Slaughter, Sherman Parks, Mike Dutton, Wayne Probasko and
Rebecca Kupper. As there were no more conferees, the Chairman stated
this constituted the public hearing on SB 41.

The Committee took out SCR 1613, A Senate Concurrent Resolution
concerning trade practices for alcoholic beverages.

Bill Strukel, Division of Alcoholic Beverage Control, passed
out copies of a Memorandum from the Director of the ABC Division,
Thomas J. Kennedy and stated the Division's objection to the adoption
of SCR 1613.

Tuck Duncan, Kansas Wine and Spirits Wholesalers Association,
spoke in opposition to the Division's stand and said that the
wholesalers favor the adoption of SCR 1613.

Rep. Sandy Duncan gave the reasons why SCR 1613 was written.
He said that we are all working in a double negative. The Rules and
Regulations Committee reviews these regulations and, only as a last
resort, introduces legislation. This usually gets a reply and hopefully
gets the agency together with the industry in question to work out a
satisfactory solution to problems. It is also a message to the agency
to "start over." If the Committee votes "yes", this will put the old
regulations back in. If "no", the regulations will go into effect May 1
as the agency has proposed.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON GOVERNMENTAL ORGANIZATION,
room 522-S, Statehouse, at 1:16 ~~xxx~~/p.m. on April 20, 1983

The Chairman reiterated to the Committee and Rep. Duncan that if SCR 1613 is killed, the rules and regulations would go into effect that the agency supports; if passed, it would strike the new language the agency submitted and would go back to the original regulations of one year ago.

Rep. Duncan commented that the agency will probably go through the process that other agencies go through in cleaning up their regulations.

After further comments from Mr. Strukel, Chairman Cloud stated that final action would be taken on SCR 1613 tomorrow. The Post Audit Report on Department of Revenue, Driver Regulatory Program will be heard.

The meeting was adjourned at 2:12.

Legis. Div.

MEMORANDUM

TO: Honorable Stephen Cloud
Chairman, House Governmental Organization Committee

FROM: THOMAS J. KENNEDY, Director, ABC Division

RE: Senate Concurrent Resolution No. 1613

DATE: April 20, 1983

PURPOSE

A Senate Concurrent Resolution concerning trade practices for alcoholic beverages, which would reject Kansas administrative regulations 14-1-1, 14-10-1 and 14-10-2.

PERSPECTIVE

The reasons SCR 1613 was introduced by the Joint Committee on Rules and Regulations was to make minor editorial changes and to seek the legislature's input regarding current trade practices.

We recommended the following to correct the concerns of the Joint Committee, which we recognized also at the time of the hearing:

- a. On line 31, the words "per calendar year" should be deleted.
- b. On line 37, the words "per calendar year" should be deleted.
- c. On line 53, the words "per calendar year" should be deleted.
- d. On lines 46 and 47, that the words "which is in use at any one time" should be deleted and the words "per calendar" to include "year" be added.

The reason for this recommendation is that the above language will then parallel the Federal Bureau of Alcohol, Tobacco and Firearms Regulations.

However, the Senate Federal and State Affairs Committee decided to eliminate the amended regulations 14-1-1a, 14-10-1a and 14-10-1b.

This would leave the old regulations 14-1-1 and 14-10-1 in effect and that is the matter before you today.

I will first say that the new rules which we are discussing here, to become effective May 1, 1983, were handled as are all other rules. We notified the industry of these rule changes and they had ample opportunity to be heard at the public rules hearing and they were. The Board of Review, after the Attorney General declared the proposed rules as being constitutional, passed these rules. These new rules were promulgated in order for this office to enforce K.S.A. 41-703, which prohibits a manufacturer, distributor or wholesaler, directly or indirectly, from furnishing any interior decorations or signs for inside or outside use in a retail liquor store. Another statute applicable is K.S.A. 41-702, which states in part that it shall be unlawful for any retailer to accept or receive anything of value, directly or indirectly, from a manufacturer, distributor or wholesaler. It is our opinion and the opinion of the Attorney General's office that the present rule, which merely states that a distributor must receive some consideration from the retailer for the product display material or point-of-sale material, is not working. And today manufacturers, through the distributors, are providing items which have an intrinsic worth or value and have a primary value. For example, redwood benches, chairs with mirrors on them, bookcases and other wooden items, some of which have an actual value of maybe even forty or fifty dollars.

K.S.A. 41-703 makes it illegal for a distributor to "sell, supply, furnish, give or pay for, or loan or lease, any furnishing, fixture, or equipment" to a retailer. K.A.R. 14-10-1 defines product displays as items that bear "conspicuous and substantial" advertising matter. The furniture items that were "sold" to retailers by distributors do bear some advertising matter. However, does this alone take the item out of the prohibition in K.S.A. 41-703 regarding furniture? We at the Alcoholic Beverage Control Division think not.

If the Legislature is desirous of changing K.S.A. 41-702 and 41-703 to authorize the actual gifts of such items, we feel you would then legalize the existing trade practices. But until that time, we feel that the present system which authorizes a retailer to pay one penny, a nickel, or pay a pittance for an item which does in fact have intrinsic worth and value and is a thing of value, is a subterfuge and directly circumvents the intent and spirit of the State Laws.

Had the industry not abused our present rules 14-10-1 and 14-10-2 and collected from the retailer the actual wholesaler's or manufacturer's cost of the product, excluding transportation and installation costs, we would not have had the problems which exist today.

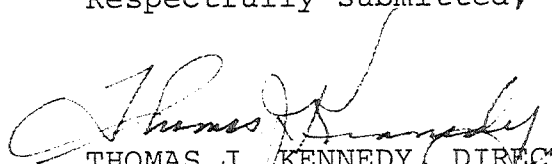
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COMMENTS AND/OR RECOMMENDATIONS

Senate Concurrent Resolution 1613 was amended in Senate Committee for reasons that are not clear to us to reject these new regulations. We feel that these new regulations are the best available response to the problems suggested earlier with our current regulations. The new regulations reflect the Alcoholic Beverage Control Division's best efforts to coordinate Kansas regulations with the Federal Bureau of Alcohol, Tobacco and Firearms' regulations, while upholding the spirit and the letter of Kansas laws.

It is our opinion that rule 14-1-1, which is a definition rule and 14-10-1a and 14-10-1b not be rejected. With the above in mind, we are hopeful that Senate Concurrent Resolution No. 1613, as amended by the Senate Committee, not be adopted.

Respectfully submitted,


THOMAS J. KENNEDY, DIRECTOR
Alcoholic Beverage Control Division

TJK:bf

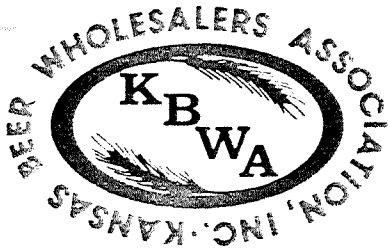
SCR 1613 Hearing
House Governmental Organization Committee

Richard Taylor
KANSANS FOR LIFE AT ITS BEST!

Product displays and point of sale material have one purpose - to promote and encourage impulse buying. Liquor profiteers want customers to buy more than they intended to buy when entering the store.

Famous lawyer Clarence Darrow actively opposed prohibition, but a few years after repeal wrote, "I cannot recall a situation that so tended to invite consumption of liquor. It seems as if I had never seen such display. There is nowhere any effort to place restrictions on sale. I do not believe legislation should encourage the consumption of alcohol. This is being done to an alarming extent."

Persons who believe legislation should not encourage the consumption of alcohol support amendments to SCR 1613 which will do away with product displays and point of sale material.



April 20, 1983

M E M O R A N D U M

TO: The members of the House Governmental Organization Committee
FROM: Mark Boranyak, Executive Director
SUBJECT: SCR 1613 (Point of Sale)

First of all, I would like to apologize for not personally appearing before the committee in support of SCR 1613, as amended by the Senate Federal and State Affairs Committee and subsequently passed by the Senate. My plans were always to testify in support of the measure as amended. However, to be perfectly honest with you I left my pocket calendar at the office, a document I refer to in keeping daily appointments. In other words, I had planned to testify in support of SCR 1613 as amended, but forgot the date of the hearing as other developments arose today.

The Kansas beer wholesaling industry does support SCR 1613 as amended and my absence should not be taken as a sign we support the position taken by the Alcoholic Beverage Control Division.

MB/km