

Approved 2/17/83  
Date

MINUTES OF THE SENATE COMMITTEE ON FEDERAL AND STATE AFFAIRS

The meeting was called to order by Senator Edward F. Reilly, Jr. at  
Chairperson

11:00 a.m. ~~p.m.~~ on February 9, 1983 in room 254-E of the Capitol.

All members were present except: Senator Daniels, who was excused.

Committee staff present: Russell Mills, Legislative Research  
Fred Carman, Assistant Revisor of Statutes  
Emalene Correll, Legislative Research  
June Windscheffel, Committee Secretary

Conferees appearing before the committee: General Thomas J. Kennedy, Director, Alcoholic  
Beverage Control Division  
Paul Flower, Kansas Real Estate Commission

The Chairman introduced Paul Flower, and asked that the Committee turn its attention to a proposal by the Real Estate Commission, a proposal for consideration to be introduced as a committee bill. Mr. Flower distributed the proposal, (Attachment #1) and made his presentation.

Senator Morris moved that the proposed draft submitted by Mr. Flower be introduced as a committee bill. 2d by Senator Pomeroy. The motion carried. Senator Francisco asked that he be recorded as voting "no."

The Chairman asked for a report from the sub-committee composed of Senator Pomeroy, Chairman; and Senators Roitz and Francisco. Senator Pomeroy reported that the sub-committee was charged to look into two items in No. 6 (Should restrictions on business operations in the liquor industry that appear to be designed to protect the industry, not the public, be eliminated?) of the Memorandum from General Kennedy. They held a meeting on Friday, February 4, 1983. There were representatives from all interested groups except there was no representative from the liquor store owners. Other than that the sectors of the liquor industry were represented. General Kennedy gave out a copy of the rules and regulations. Frequent reference was made that General Kennedy has been looking into changing the rules and regulations. It was the suggestion of the sub-committee not to introduce any legislation, that there will be an opportunity to review the rules and regulations next year. Nothing of an emergency nature to require action this session. A bill is already in which will be a vehicle with regard to the advertising and with regard to the other aspects the subcommittee thought that the other revision process of rules and regulations should be followed. The bill discussed was doubly referred since it deals with similar suggestions.

Senator Pomeroy moved that the committee approve the oral report of the sub-committee. 2d by Senator Roitz. Motion carried.

General Kennedy appeared before the committee. Senator Reilly asked if there were other matters to be addressed. General Kennedy distributed a Memorandum, dated February 3, 1983 (Attachment #2), re: concerns or proposals for legislative action, Item Number 8. The General asked that the committee refer back to Item 8, and stated the original wording was somewhat confusing and should have read: "Discrimination in sales from breweris to Kansas beer distributors and from Kansas beer distributors to Kansas retail liquor stores is unlawful."

Senator Pomeroy moved that a committee bill be introduced providing for prices being quoted at f.o.b. the brewery. 2d by Senator Meyers. Motion carried.

CONTINUATION SHEET

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Minutes of the SENATE Committee on FEDERAL AND STATE AFFAIRS, 19 83

Senator Gannon moved to recommend that a bill be drafted to provide that Supplier Refund coupons be authorized in Kansas. Motion failed for lack of a second.

Senator Gannon moved that a bill be drafted to authorize the purchase of four litres of out of state liquor for family and personal use. Motion failed for lack of a second.

Senator Morris moved that the Minutes of February 8, 1983, be approved. 2d by Senator Pomeroy. Motion carried.

The Chairman announced that the Attorney General is very concerned about the bingo issue and wants to appear before the committee: it is a major concern of the state's chief law enforcement officer. He feels this is a real problem which the legislature has brought about.

The Chairman announced that the committee will not meet on Thursday, due to Senator Doyen's funeral. The committee will meet on Friday.

The meeting adjourned at 12:00 noon.

58-3035. DEFINITIONS. As used in this act, unless the context otherwise requires:

(a) "Advance listing fee" means any fee charged for services and paid in advance of the rendering of such services, including without limitation any fees charged for listing, advertising or offering for sale or lease any property, but excluding any fees paid solely for advertisement in a newspaper of general circulation.

(b) "Associate broker" means an individual who has a broker's license and who is employed by another broker or is associated with another broker as an independent contractor and participates in any activity described in subsection (c).

(c) "Broker" means an individual, other than a salesperson, who, for compensation, engages in any of the following activities as an employee of, or on behalf of, the owner of real estate:

- (1) Sells, exchanges, purchases or leases real estate.
- (2) Offers to sell, exchange, purchase or lease real estate.
- (3) Negotiates or offers, attempts or agrees to negotiate the sale, exchange, purchase or leasing of real estate.
- (4) Lists or offers, attempts or agrees to list real estate for sale, lease or exchange.
- (5) Auctions or offers, attempts or agrees to auction real estate.
- (6) Buys, sells, offers to buy or sell or otherwise deals in options on real estate.
- (7) Advertises or represents that such individual engages in the business of buying, selling, exchanging or leasing real estate.
- (8) Assists or directs in the procuring of prospects calculated to result in the sale, exchange or lease of real estate.
- (9) Assists in or directs the negotiation of any transaction calculated or intended to result in the sale, exchange or lease of real estate.

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(10) Engages in the business of charging an advance listing fee in connection with any contract by which such individual undertakes to promote the sale or lease of real estate either through its listing in a publication issued for such purpose or for referral of information concerning such real estate to brokers, or both.

(11) Assists in or directs the procurement of or arrangement for mortgage financing on real estate, while not acting in the capacity of a mortgagee or a mortgagee's agent who is authorized to make real estate loans under state or federal authority.

(12) Provides lists of real estate as being available for sale or lease.

(d) "Commission" means the Kansas real estate commission.

(e) "Lease" means rent or lease for nonresidential use.

(f) "Licensee" means any person licensed under this act as a broker, associate broker or salesperson.

(g) "Office" means a broker's place of business, where records may be maintained and licenses displayed, whether or not it is the broker's principal place of business.

(h) "Person" means any individual or any foreign or domestic corporation or partnership.

(i) "Real estate" means any interest or estate in land, including any leasehold or condominium, whether corporeal, incorporeal, freehold or non-freehold and whether the real estate is situated in this state or elsewhere, but does not include oil and gas leases, royalties and other mineral interests.

(j) "Salesperson" means any individual, other than associate broker, who is employed by a broker or is associated with a broker as an independent contractor and participates in any activity described in subsection (c).

(k) *"Regular employee" means an employee whose services for his employer are of a recurring nature, which the employee is expected to perform from time to time pursuant to his original engagement.*

58-3037. EXEMPTIONS. The provisions of this act shall not apply to:

(a) ~~Any person who directly performs any of the acts within the scope of this act with reference to such person's own property.~~ *Any person, partnership or corporation who as an owner or lessor shall perform any acts described in subsection (c) of K.S.A. 1982 Supp. 58-3035 with reference to property owned or leased by them, or to the regular employees thereof, with respect to the property so owned or leased, where such acts are performed in the regular course of or as an incident to the management, sale or other disposition of such property and the investment therein; provided, that such regular employees shall not perform any of the acts described in subsection (c) of K.S.A. 1982 Supp. 58-3035 in connection with a vocation of selling or leasing any real estate or the improvements thereon.*

(b) Any person who directly performs any of the acts within the scope of this act with reference to property that such person is authorized to transfer in any way by a power of attorney from the owner, provided that such person receives no commission or other compensation, direct or indirect, for performing any such act.

(c) Services rendered by an attorney licensed to practice in this state in performing such attorney's professional duties as an attorney.

(d) Any person acting as receiver, trustee in bankruptcy, administrator, executor or guardian, or while acting under a court order or under the authority of a will or a trust instrument or as a witness in any judicial proceeding or other proceeding conducted by the state or any governmental subdivision or agency.

(e) Any officer or employee of the federal or state government, or any political subdivision or agency thereof, when performing the official duties of the officer or employee.

(f) Any multiple listing service wholly owned by a nonprofit organization

or association of brokers.

(g) Any nonprofit referral system or organization of brokers formed for the purpose of referral of prospects for the sale or listing of real estate.

(h) Railroads or other public utilities regulated by the state of Kansas, or their subsidiaries, affiliated corporations, officers or regular employees, unless performance of any of the acts described in subsection (c) of K.S.A. 1980 1982 Supp. 58-3035 is in connection with the sale, purchase, lease or other disposition of real estate or investment therein unrelated to the principal business activity of such railroad or other public utility or affiliated or subsidiary corporation thereof.

~~(i) The sale or lease of real estate by an employee of a corporation which owns or leases such real estate, if such employee owns not less than five percent (5%) of the stock of such corporation.~~

~~(j)~~ The sale or lease of new homes by a person, partnership, association or domestic corporation who constructed such homes, but the provisions of this act shall apply to the sale or lease of any such homes by any employee of such person, partnership or association or by any employee of such corporation who owns less than five percent (5%) of the stock of such corporation.

~~(k)~~ (j) The lease of real estate for agricultural purposes.

58-3041. RESTRICTED LICENSE. (a) The commission may at any time issue a restricted license to a person:

(1) Who is or has been licensed but who has been found by the commission after a hearing to have violated any provision of this act or rules and regulations adopted hereunder; or

(2) Who is applying for an original license under this act and has met the examination and ~~experience~~ *education* requirements but has been found by the commission after a hearing to have failed to make a satisfactory showing that he or she meets all other applicable requirements.

(b) A restricted license issued pursuant to this section may be restricted, as the commission determines advisable in the public interest, as follows:

(1) By term;

(2) To employment by or association with a particular broker as an independent contractor;

(3) To a particular type of transaction; or

(4) By other conditions deemed advisable by the commission, including the filing of a surety bond in such amount as may be required by the commission for the protection of persons with whom the licensee may deal.

(c) The holder of a restricted license shall not be entitled to automatic renewal of such license, such renewal being in the discretion of the commission.

58-3045. EXPIRATION OF LICENSE; RENEWAL. (a) Each license issued or renewed by the commission shall expire on a date determined in accordance with a schedule established by rules and regulations of the commission, which date shall not be more than two (2) years from the date of issuance or renewal. Except as otherwise provided by this act, applicants for issuance or renewal of a license must satisfy all applicable requirements prior to issuance or renewal of the license.

(b) Each license shall be renewable upon filing, prior to the expiration date of the license, of a renewed application. Such application shall be made on a form provided by the commission and accompanied by the required renewal fee and evidence of compliance with the requirements of K.S.A. 1980 Supp. 58-3046 1982 Supp. 58-3046a .

In each case in which a license is issued or renewed for a period of other than one year, the commission shall compute to the nearest whole month the required fee, based on annual renewal fee provided for by K.S.A. 1980 Supp. 58-3063. Failure to remit the required fee when due will automatically cancel the license, except that any licensee who fails to pay the required renewal fee when due may have the licensee's license reinstated and renewed by the payment of the required renewal fee and a late fee of fifty dollars (\$50), if such fees are remitted to the commission not later than six months following the expiration date of such license.

(c) An application for renewal filed in compliance with the requirements of subsection (b) shall entitle the applicant to continue operating under the applicant's existing license after its specified expiration date, unless such license has been suspended or revoked and has not been reinstated or unless such license is restricted, until such time as the commission determines whether the application fulfills such requirements.



(d) If the commission determines that the applicant has not complied with the requirements for renewal of the applicant's license, it shall advise the applicant of an extended period for compliance under K.S.A. 1980 Supp. 58-3046 1982 Supp. 58-3046a or advise the applicant that the applicant's right to operate under the prior license will expire twenty-five (25) days from the date such notice is mailed or on the date the license would normally expire, whichever is later. The commission, in its discretion, may extend the expiration date whenever a hearing is requested.

K.S.A. 58-3049. DEACTIVATED LICENSE. (a) The license of a broker or salesperson may be deactivated upon request of such broker or salesperson and return of the license to the commission. Such license shall be held in the office of the commission for the period that it remains deactivated.

(b) A license which is deactivated and which is not suspended or revoked may be reinstated at any time during the period for which the license is issued and may be renewed upon application therefor and the payment of the renewal fee. Compliance with K.S.A. 1980 Supp. 58-3046 *1982 Supp. 58-3046a* is ~~not~~ required for renewal of a license which is deactivated. *hours*

(c) No license which is deactivated shall be reinstated without the applicant's compliance with the requirements of K.S.A. 1980 Supp. 58-3046 for the immediately preceding license period and payment of the fee for reinstatement prescribed by K.S.A. 58-3063. Any license that has been deactivated for a continuous period of more than two (2) years shall be reinstated only if the licensee has met the examination requirement for an original applicant. *fee*

(d) A broker whose license is deactivated need not maintain the place of business required by K.S.A. 1980 Supp. 58-3060.

(e) A licensee whose license is deactivated shall not be entitled to act in any capacity for which a license is required until his or her license has been reinstated.

58-3052. HEARING ON COMPLAINT      Except as otherwise provided in this act, the commission shall give a licensee a hearing before censuring the licensee or restricting, revoking or suspending the licensee's license. The hearing shall be held within one hundred twenty (120) days after receipt of a complaint, at a time and place prescribed by the commission. At least ~~thirty (30)~~ *twenty (20)* days prior to the date set for the hearing, the commission shall send notice of the hearing to the licensee by registered *certified* mail to the licensee's last known ~~business address~~ *business or residence address, whichever is applicable*. The notice shall contain a statement of the charges against the licensee and the date and place of the hearing. If the licensee is a salesperson or associate broker, the commission shall also notify the broker by whom the salesperson or associate broker is employed or with whom the salesperson or associate broker is associated by mailing a copy of the notice to the broker's last known business address. If the hearing is not held within one hundred twenty (120) days, the complaint shall be deemed dismissed with prejudice unless the matter has been continued by agreement of the licensee and the commission.

58-3059. SAME; STAY OF SUSPENSION OF COMMISSION ORDER. (a) The filing or pendency of a petition for review shall not in itself stay or suspend the operation of any order of the commission, but, during the pendency of a proceeding, the court in its discretion may stay or suspend such order in whole or in part.

(b) Any order of the court staying or suspending an order of the commission shall be based upon a specific finding by the court from the evidence presented that great and irreparable damage would result to the petitioner in the absence of such stay or suspension.

*(c) No stay or suspension shall be ordered by the court except after at least ten (10) days notice to the director of the commission and after a hearing.*

(d) No stay or suspension shall be entered until the petitioner has filed a bond with sufficient surety to be approved by the court in such reasonable sum as the court may deem necessary to adequately protect the interests of the public.

58-3061. TRUST ACCOUNTS; REQUIREMENTS AND EXEMPTIONS (a) *Unless exempt under subsection (h)*, each broker shall maintain, in the broker's name or the broker's firm name, a separate trust account in this state, *or in an adjoining state with written permission of the commission*, designated as such. ~~in which all~~ All down payments, earnest money deposits, advance listing fees or other trust funds received by the broker or by the broker's associate brokers or salespersons on behalf of a principal or any other person shall be deposited *in said trust account* unless all parties having an interest in the funds have agreed otherwise in writing. The account shall be with an insured bank or savings and loan association.

(b) Each broker shall notify the commission of the name of the bank or savings and loan association in which the trust account is maintained and of the account name.

(c) Each broker shall grant full access to all records pertaining to the broker's trust account to the commission and its duly authorized representatives. A trust account examination shall be made at such time as the commission may direct.

(d) A broker may maintain more than one trust account if the commission is advised of each such account as required in subsection (b) of this section and authorized to examine all such accounts in accordance with subsection (c) of this section.

(e) If a broker maintains a separate trust account for any office, the broker shall maintain a separate bookkeeping system in such office.

(f) A broker shall not be entitled to any part of the earnest money or other money paid to the broker in connection with any real estate transaction as part or all of the broker's commission or fee until the transaction has been consummated or terminated unless

otherwise agreed in writing by all parties to the transaction.

(g) A broker shall make available, for inspection by the commission and its duly authorized representatives, all records relating to the broker's real estate business. Such records shall be kept in a form and for a term prescribed by the commission. Any inspection shall be made at such time as the commission may direct.

*(h) The requirement to maintain a trust account shall not apply to:*

- (1) A broker whose license is on deactivated status;*
- (2) A broker who acts as an associate broker;*
- (3) A broker who is an officer of a corporation or a partner and who is not the supervising broker of an office of the corporation or partnership; or*

*(4) A broker whose real estate activities, in the opinion of the commission, do not necessitate the holding of trust funds.*

*(i) Upon acceptance of an offer and deposit of earnest money in a broker's trust account, such deposit may be disbursed only:*

- (1) Pursuant to written authorization of buyer and seller; or*
- (2) Pursuant to a court order; or*
- (3) When a transaction is closed according to its terms.*

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*PROVIDED HOWEVER, nothing herein shall prohibit the parties to a real estate sales contract from agreeing, in the sales contract, to the following procedure:*

*"Notwithstanding other terms of this contract providing for forfeiture or refund of the earnest money deposit, the parties understand that applicable Kansas real estate laws prohibit the escrow agent from distributing the earnest money, once deposited, without the consent of all parties to this agreement. Buyer and Seller agree that failure by either to respond in writing to a certified letter from broker within 7 days of receipt thereof or failure to make written demand for return or forfeiture of an earnest money deposit within thirty days of notice of cancellation of this agreement shall constitute consent to distribution of the earnest money deposit as suggested in any such certified letter or as demanded by the other party hereto."*

58-3062. PROHIBITED ACTS. (a) No licensee shall:

(1) Intentionally use advertising that is misleading or inaccurate in any material particular or that in any way misrepresents any property, terms, values, policies or services of the business conducted, or uses the trade name, collective membership mark, service mark or logo of any organization owning such name, mark or logo without being authorized to do so.

(2) Fail to account for and remit any money which comes into the licensee's possession and which belongs to others.

(3) Comingle the money or other property of the licensee's principals with the licensee's own money or property, except that nothing herein shall prohibit a licensee from depositing in a trust account a sum not to exceed one hundred dollars (\$100) to pay expenses for the use and maintenance of such account.

(4) Accept, give or charge any rebate or undisclosed commission.

(5) Represent or attempt to represent a broker without the broker's express knowledge and consent.

(6) Act in a dual capacity of agent and undisclosed principal in any transaction.

(7) Guarantee or authorize any person to guarantee future profits that may result from the resale of real property.

(8) Place a sign on any property offering it for sale or lease without the written consent of the owner or the owner's authorized agent.

(9) Offer real estate for sale or lease without the knowledge and consent of the owner or the owner's authorized agent or on terms other than those authorized by the owner or the owner's authorized agent.



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(10) Induce any party to a contract of listing, sale or lease to break such contract.

(11) Negotiate a sale, exchange or lease of real estate directly with an owner or lessor if the licensee knows that such owner or lessor has, with regard to the property, a written outstanding contract granting an exclusive agency or an exclusive right to sell or lease to another broker.

(12) Offer or give prizes, gifts or gratuities which are contingent upon a client's listing, purchasing or leasing property.

(13) Fail to include a fixed date of expiration in any written listing agreement or fail to furnish a copy of the agreement to the principal within a reasonable time.

(14) Enter into a listing agreement on real property in which the broker's commission is based upon the difference between the gross sales price and the net proceeds to the owner.

(15) Fail to see that financial obligations and commitments regarding real estate are in writing, expressing the exact agreement of the parties or to provide copies thereof to all parties involved.

(16) Procure a signature to a purchase contract which has no definite purchase price, method of payment, description of property or method of determining the closing date.

(17) Fail to deliver within a reasonable time a completed copy of any purchase agreement or offer to buy or sell real estate to the purchaser and to the seller.

(18) Engage in fraud or make any substantial misrepresentation.

(19) Act for more than one party in a transaction without the knowledge of all parties for whom the licensee acts.

(20) Represent to any lender, guaranteeing agency or any other interested party, either verbally or through the preparation of false documents, an amount in excess of the true and actual sale price of the real estate or terms differing from those actually agreed upon.

(21) Fail to make known to any purchaser any interest the licensee has in the property the licensee is selling or leasing.

(22) Fail to make clear to the party for whom the licensee is acting, or fail to divulge to all parties, any compensation arrangement with more than one party.

(23) Fail to inform both the buyer, at the time an offer is made, and the seller, at the time an offer is presented, that certain closing costs must be paid and the approximate amount of such costs.

(24) Fail without just cause to surrender any document or instrument to the rightful owner.

(25) Accept anything other than cash as earnest money unless that fact is communicated to the owner prior to the owner's acceptance of the offer to purchase, and such fact is shown in the earnest money receipt.

(26) Fail to deposit any check or cash received as an earnest money deposit within five (5) business days after the purchase agreement is signed by all parties, unless otherwise specifically provided by written agreement of all parties to the purchase agreement.

(27) Fail to respond to a request by the commission or the director to produce any document, book or record in the licensee's possession or under the licensee's control that concerns, directly or indirectly, any real estate transaction or the licensee's real estate business.

(28) Fail to submit a written bona fide offer to the seller when such offer is received prior to the seller's accepting an offer in writing and before the broker has knowledge of such acceptance.

(29) Refuse to appear or testify under oath at any hearing held by the commission.

(30) Demonstrate incompetency to act as a broker, associate broker or salesperson.

(31) Fail to disclose, or ascertain and disclose, to any person with whom the licensee is dealing, any material information which relates to the property with which the licensee is dealing and which such licensee knew or should have known.

(b) No salesperson or associate broker shall:

(1) Accept a commission or other valuable consideration from anyone other than the salesperson's or associate broker's employing broker or the broker with whom the salesperson or associate broker is associated.

(2) Fail to place, as soon after receipt as practicable, any deposit money or other funds entrusted to the salesperson or associate broker in the custody of the broker whom the salesperson or associate broker represents.

(c) No broker shall:

(1) Pay a commission or compensation to any person for performing the services of an associate broker or salesperson unless such person is licensed under this act and employed by or associated with the broker, except that nothing herein shall prohibit the payment of a referral fee to a person who is properly licensed as a broker or salesperson in another jurisdiction.

(2) Fail to deliver to the seller in every real estate transaction at the time the transaction is closed, a complete,

detailed closing statement showing all of the receipts and disbursements handled by the broker for the seller, or fail to deliver to the buyer a complete statement showing all money received in the transaction from such buyer and how and for what the same was disbursed, or fail to retain true copies of such statements in the broker's files, except that the furnishing of such statements to the seller and buyer by an escrow agent shall relieve the broker's responsibility to the seller and the buyer.

(3) Fail to properly supervise the activities of an associated or employed salesperson or associate broker.

(4) Lend the broker's license to a salesperson, or permit a salesperson to operate as a broker.

(5) Fail to return or release an earnest money deposit, except by court order or upon written agreement of the buyer and seller, when the transaction is terminated or consummated.

(6) After an offer has been accepted, disburse an earnest money deposit, except by court order or upon written agreement of the buyer and seller, when the transaction has not been terminated or consummated.

(7) (5) Fail to provide to the principal a written report every thirty (30) days, along with a final report, itemizing disbursements made by the broker from advance listing fees.

MEMORANDUM

TO: Honorable Edward F. Reilly, Jr.  
Chairman, Senate Federal and State Affairs Committee

FROM: THOMAS J. KENNEDY, Director, ABC Division

RE: Concerns or proposals for legislative action, Item Number 8.

DATE: February 3, 1983

After having reviewed Item Number 8 of my handout dated January 18, 1983, I can now readily see why our proposal to amend subparagraph (3) of K.S.A. 41-1101 to include beer distributors was somewhat confusing. Item No. 8 which stated "Beer distributor selling outside his designated geographical territory" should have read: "Discrimination in sales from brewerys to Kansas beer distributors and from Kansas beer distributors to Kansas retail liquor stores is unlawful."

K.S.A. 41-1101 states"

"(1) It shall be unlawful for any distributor licensed under this act to purchase any alcoholic liquor at the time it becomes a marketable product, unless such manufacturer shall file with the director a written statement sworn to by such manufacturer agreeing to sell any of the brands or kinds of alcoholic liquor manufactured or distributed by such manufacturer to any distributor licensed in this state and having a franchise to distribute such alcoholic liquor pursuant to K.S.A. 41-410, to make such sales to all such licensed distributors in this state at the same current price and without discrimination and to file price lists showing the current prices in the office of the director as often as may be necessary or required by the director but at least once each three months. If any..."

"(2) It shall be unlawful for any retailer licensed under this act to purchase any alcoholic liquor from any distributor licensed under this act unless such distributor shall file with the director a written statement sworn to by such distributor, agreeing to sell any of the brands or kinds of alcoholic liquor distributed by such distributor and to provide service in connection therewith to any licensed retailer whose licensed premises are located within the geographic territory of such distributor's franchise for such alcoholic liquors, unless written approval to do otherwise is obtained from the director; to make such sales to all such licensed retailers at the same current bottle and case price and without discrimination; and..."

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"(3) The provisions of this section shall not apply to any distributor of beer or any manufacturer or importer of beer..."

#### DISCUSSION

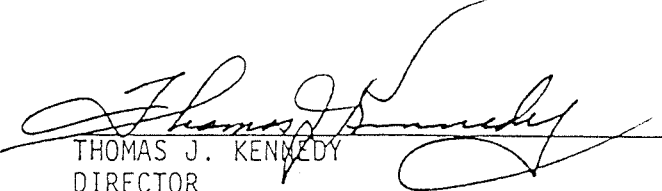
Although we have not had any serious problems with discrimination in sales practices between the brewery and the Kansas distributor, it is certainly possible that one might emerge at any time. For example, if a brewery wanted to freeze out two of their eight distributors, they could do so by merely raising the price from the brewery to those two distributors so that the price would be totally unrealistic, while at the same time offering very low prices to the six distributors they would like to have for the entire market place. In order to insure each beer distributor, many with large investments and who presently hold territory franchise agreements under K.S.A. 41-409 some protection, I feel it is necessary to amend K.S.A. 41-1101 to include beer thereby avoiding this discrimination.

In addition, it is a common practice among beer distributors to sell their products to retailers at the same price. With the enactment of K.S.A. 41-409 in 1982 establishing exclusive franchise territories for each beer distributor, we feel it is time to catch-up with this trade practice and prevent discrimination in prices between the distributor and the retailer, thereby insuring by statute that retailers are treated equally.

#### RECOMMENDATIONS

This concern is not a matter of urgency, however, we feel it should be addressed either this year or next. If you deem it appropriate this year, we recommend:

1. That K.S.A. 41-409 as well as K.S.A. 41-410 be included in sub-paragraph (1) of K.S.A. 41-1101.
2. That sub-paragraph (3) be rewritten to read, "The provisions of this section which require distributors to file price lists showing current bottle and case price in the office of the director shall not apply to any distributor of beer."

  
THOMAS J. KENNEDY  
DIRECTOR