

MINUTES OF THE HOUSE COMMITTEE ON FEDERAL & STATE AFFAIRS

The meeting was called to order by Representative Robert H. Miller at _____
Chairperson

1:30 a.m./p.m. on February 1, 1984 in room 526S of the Capitol.

All members were present except:
Representative Aylward - E
Representative Brady - E
Representative Peterson

Committee staff present:

Russ Mills, Research Department
Mary Torrence, Revisor of Statutes

Conferees appearing before the committee:

Representative Sandy Duncan
Tom Kennedy, Alcoholic Beverage Control
Richard Hodson, Alcoholic Beverage Control
Harley Duncan, Secretary of Revenue
Tuck Duncan, Kansas Wine & Spirits
Richard Ryan, Research Department
Mike Harder, Department of Administration
Ray Hauke
Murray Rhoades, Land Survey Advisory Committee

The meeting was called to order by Chairman Miller.

Representative Hensley made a motion, seconded by Representative Sallee, to approve the minutes of the January 31 meeting. The motion carried.

HB2779 - Concerning the Secretary of Revenue; relating to the adoption and promulgation of rules and regulations concerning alcoholic beverages.

Representative Sandy Duncan explained the bill. Under current law there is no uniform promulgating authority for rules and regulations.

Tom Kennedy, Director of Alcoholic Beverage Control Division, explained that the purpose of this bill is to clarify the question of who has authority to promulgate rules and regulations relating to alcoholic liquor under the Liquor Control Act and to consolidate that authority in the person of the Secretary of Revenue. See attachment A.

Richard Hodson, Attorney for ABC, explained the revisions they felt necessary for HB2779 to maintain the status quo by codifying current agency practices, continuing to recognize the ABC Division's semi-autonomous status and utilize the Director's considerable expertise in the area of alcoholic beverage control. See attachment A.

Harley Duncan, Secretary of Revenue, gave testimony in support of the bill. Mr. Duncan discussed tax issues of concern to the department. He explained that Sec. 17 on page 18 seemed to be extraneous language; and that Sec. 2 would be very costly. There are other vehicles which could be used to let retail liquor stores know of changes.

Tuck Duncan, Kansas Wine & Spirits, gave testimony in opposition to the proposed legislation which would eliminate the involvement of the ABC Board of Review in the process of affirming or rejecting rules and regulations promulgated by the Director of the ABC and the Secretary of the Department of Revenue. The committee should at least maintain Step 10 of Mr. Kennedy's handout. Attachment B.

Hearings were concluded on HB2779.

CONTINUATION SHEET

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HB2630 - relating to alcoholic liquors levying of taxes.

Richard Ryan, Research Department, gave a brief history of why this bill was introduced. The heart of this bill is in line 91 which states that the state treasurer shall credit 10% of moneys collected from taxes imposed upon alcohol and spirits to go to the community alcohol and drug abuse programs. In an amendment to the farm winery bill last year, legislation was added which inadvertently put 100% of moneys collected from taxes on wine and strong beer into alcohol programs.

There was discussion about what would happen to the moneys collected and the effect this bill, if passed, would have on the Governor's budget in this area.

Secretary Robert Harder, Social & Rehabilitation Services, gave testimony in opposition to the bill. He told the committee he could support the bill if New. Sec 2 were deleted. If this section were deleted and the implementation date of the act was changed to the publication in the statute book, the alcohol and drug abuse services could receive these dollars this year and the fund would return to normal in the future. See attachment B.

Ray Hauke explained to the committee that the problem with New Sec. 2 will occur in fiscal year 1985. The current budget is alright. The state general fund balance is the same at the end of 1985. If New Sec 2 stays in the bill it would leave a \$500,000 gap in the budget for FY1985.

Tuck Duncan, Kansas Wine & Spirits, gave testimony objecting to earmarking funds. Programs begin to rely on that money.

Hearings were concluded on HB2630.

HB2603 - Concerning land surveys

Murray Rhoades, Land Survey Advisory Committee, gave testimony in support of the bill with an amendment in line 22 which would add after "land surveyor shall file a copy of the" the words report of the completed survey. These reports need to have some confidentiality.

Hearings were concluded on HB2603.

Representative Ott made a motion, seconded by Representative Sughrue, to adopt the amendment on line 22 of HB2603. The motion carried.

Representative Smith made a motion, seconded by Representative Ott, to recommend passage of HB2603 as amended. The motion carried.

The meeting was adjourned.

A

MEMORANDUM

TO: Honorable Robert H. Miller
 Chairman, House Federal and State Affairs Committee

FROM: THOMAS J. KENNEDY, Director, ABC Division

RE: House Bill 2779

DATE: February 1, 1984

PURPOSE

The purpose of House Bill 2779 is to clarify the question of who has authority to promulgate regulations relating to alcoholic liquor under the liquor control act; and to consolidate that authority in the person of the Secretary of Revenue.

PERSPECTIVE

The Alcoholic Beverage Control Division was created by statute in 1949 at the time that the Liquor Control Act went into effect. Under the provisions of K.S.A. 41-210 and 211, regulations were to be promulgated by the State Director of Alcoholic Beverage Control, with the approval of the Alcoholic Beverage Control Board of Review.

In 1972, the Alcoholic Beverage Control Division was placed under, and made a part of, the Department of Revenue. At that time, K.S.A. 41-210 was amended to confer the authority to adopt rules and regulations on the Secretary of Revenue, upon the prior approval of the ABC Board of Review.

K.S.A. 41-211 continued to refer to rules and regulations "...established by the director...". Also, K.S.A. 41-1118, passed in 1961 and not amended since then, gives the Alcoholic Beverage Control Board of Review authority "...to adopt and promulgate such rules and regulations as may be necessary to carry out the intent and purposes of this act...".

K.S.A. 41-1119, also passed in 1961, gives to the Director, with the approval of the ABC Board of Review, authority to promulgate rules and regulations "...necessary for the administration and enforcement of the sale prices determined and fixed under the provisions of this act."

In essence, the current statutory scheme confers broad authority to promulgate rules and regulations upon the Secretary of Revenue, upon the Alcoholic Beverage Control Board of Review, and upon the Director of the Alcoholic Beverage Control Division.

Atch. A

Prior to 1983, the process for adopting rules and regulations in the ABC Division consisted of the following steps:

- Step 1: The Director of ABC gathered information for rules and regulation changes based on new laws enacted, ABC knowledge and input from industry and other interested parties.
- Step 2: The Attorney for the ABC Division, an Assistant Attorney General, drafted copies of proposed rule and regulation changes.
- Step 3: The Director, staff and other interested parties to include ABC Board of Review, reviewed the draft of the regulations and determined changes to be made, if any, and which regulations would be temporary as well as permanent.
- Step 4: The attorney for the ABC Division prepared final draft of proposed rules and regulations.
- Step 5: The Secretary of Revenue was briefed by the Director of ABC on proposed rule and regulation changes.
- Step 6: The proposed rule and regulation changes were submitted to the Secretary of Administration no later than September 15 to obtain approval as to organization, style, orthography and grammar.
- Step 7: After approval by the Secretary of Administration, the rules and regulations were submitted to the Attorney General to obtain approval as to legality.
- Step 8: After approval by the Secretary of Administration and the Attorney General, notice had to be given of public hearing 15 days prior to hearing date. This was published in the Kansas Register and a copy of the hearing notice and fiscal impact statement was forwarded to the Revisor of Statutes. Copies of proposed rule changes were mailed to interested parties.
- Step 9: A public hearing was held on the rules and regulations proposed. The Director of ABC conducted the meeting for and in the name of the Secretary of Revenue. The ABC Board of Review was invited to attend the public hearing so as to hear all comments concerning the proposed rule and regulation changes.

- Step 10: Following the public hearing, the ABC Board of Review approved or disapproved proposed rules and regulations. Changes to the regulations, as a result of the public hearing, were included in the Board's approval.
- Step 11: Following the public hearing and the ABC Board of Review's approval, the proposed rules and regulations were presented to the Secretary of Revenue for adoption or rejection. The adopted rules and regulations were then forwarded by the Secretary of Revenue to the Revisor of Statutes.

(SEE ENCLOSURE #1 FOR SCHEMATIC OF PROCESS)

The above system worked well until 1983 when it was noted that the current regulatory scheme required that the Secretary of Revenue promulgate and adopt certain regulations, the ABC Board of Review others and the Director of ABC still others. This then is why we are here today. The statutes need to be corrected.

COMMENTS AND/OR RECOMMENDATIONS

As a preliminary comment, we have thoroughly reviewed HB 2779 and we have discussed the bill with the Secretary of Revenue.

As to the purpose and intent of this bill as outlined in HB 2779, we agree with the proposal, however, we have some proposed changes. We have discussed these changes with the Secretary of Revenue and he has concurred. In addition, we have visited with Senator Merrill Werts and Representative Sandy Duncan, Chairman and Vice-Chairman of the Joint Committee on Rules and Regulations about these changes.

These changes we feel would accomplish the goal of the Secretary of Revenue adopting proposed rule and regulation changes while at the same time permitting the Director of ABC to propose such rules and regulations as necessary to carryout the intent and purposes of the act.

I have asked our attorney, Mr. Richard Hodson, who is also an Assistant Attorney General, to draft these proposed changes to HB 2779 which he has done and at this time, Mr. Chairman, I would like to call on him to brief you on these proposals.

REMARKS BY MR. HODSON

Mr. Chairman
Distinguished Members of the House Federal and State
Affairs Committee
Ladies and Gentlemen:

Clearly, there is a need to change the existing laws regarding rules and regulations that supplement the liquor laws. Current statutes conferring rulemaking authority upon the Director of the ABC Division, the Board of Review, and the Secretary of Revenue have created much confusion as to who is the proper authority to adopt rules and regulations. HB 2779 seeks to clarify and streamline this process by centralizing rulemaking authority in the Secretary of Revenue. The need for change is apparent, and the concept of a single authority for all rulemaking is a good one. However, HB 2779 as proposed, also constitutes a major organization and policy change that needs to be given your very serious consideration.

The Alcoholic Beverage Control Division is now a part of the Department of Revenue. However, it remains in many ways a semi-autonomous agency.

1. The Director is still vested with broad discretionary authority under grants in statutes such as K.S.A. 41-210 and K.S.A. 41-714.
2. The Alcoholic Beverage Control Board of Review is a policymaking body. It hears appeals from decisions of the Director, but it also sets minimum percentage markups for retail sales and approves or rejects proposed regulations.
3. The Division has its own attorney assigned from the Attorney General's office. Other divisions within the Department of Revenue utilize Revenue's legal section.
4. The Division has its own enforcement arm with law enforcement status and authority to enforce the law.

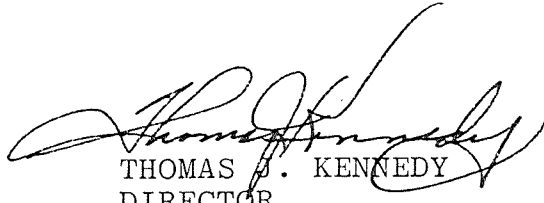
H.B. 2779, by putting all rulemaking authority in the hands of the Secretary of Revenue, seriously erodes this semi-autonomous status. The proposed alternative to HB 2779 submitted by the Alcoholic Beverage Control Division and the Department of Revenue (See Enclosure #3 attached) seeks to keep the Director and the Board of Review in the process. This will maintain the status quo by codifying current agency practices, continuing to recognize the ABC Division's semi-autonomous status, and utilizing the Director's considerable expertise in the area of alcoholic beverage control.

The Director deals every day with the liquor laws, the licensing and enforcement processes, and the industry. For that reason he is familiar with what regulations are needed. Thus, under the proposed alternative, the Director proposes regulations and conducts the public hearings. The Board of Review continues to play an active role in the process. The Secretary of Revenue, as the final person in charge and the one who is finally responsible for what is done, is given final adoption authority on all

rules and regulations. Under the proposed amendments to K.S.A. 41-210, the Secretary will have final authority to accept or reject what is submitted to him. As a practical matter, he should also be able to make recommendations to the Director for proposed regulations if he chooses to do so. By referring back to K.S.A. 41-210 in all the other statutes that describe rulemaking, the one procedure is adopted throughout the Liquor Control Act and Private Club Licensing Act.

This proposed alternative, in my opinion, accomplishes the objectives of H.B. 2779 without making major policy or organizational shifts. Recommend your favorable consideration of this proposal.

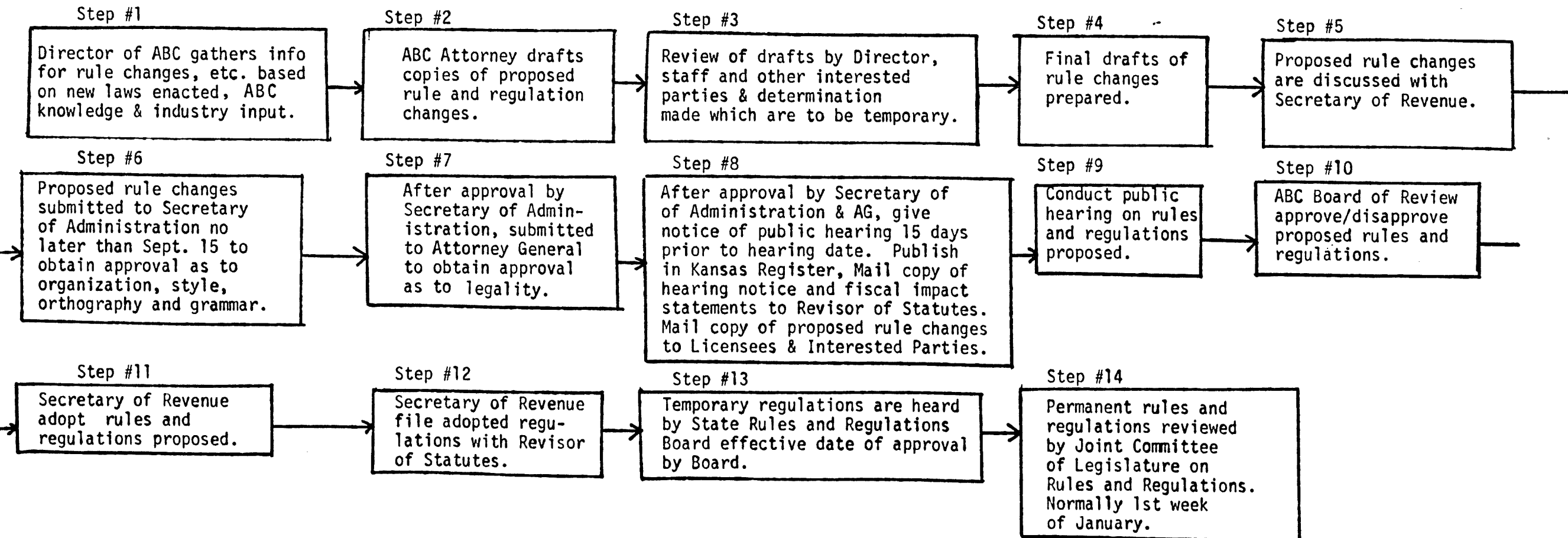
Respectfully submitted,



THOMAS J. KENNEDY
DIRECTOR
Alcoholic Beverage Control Division

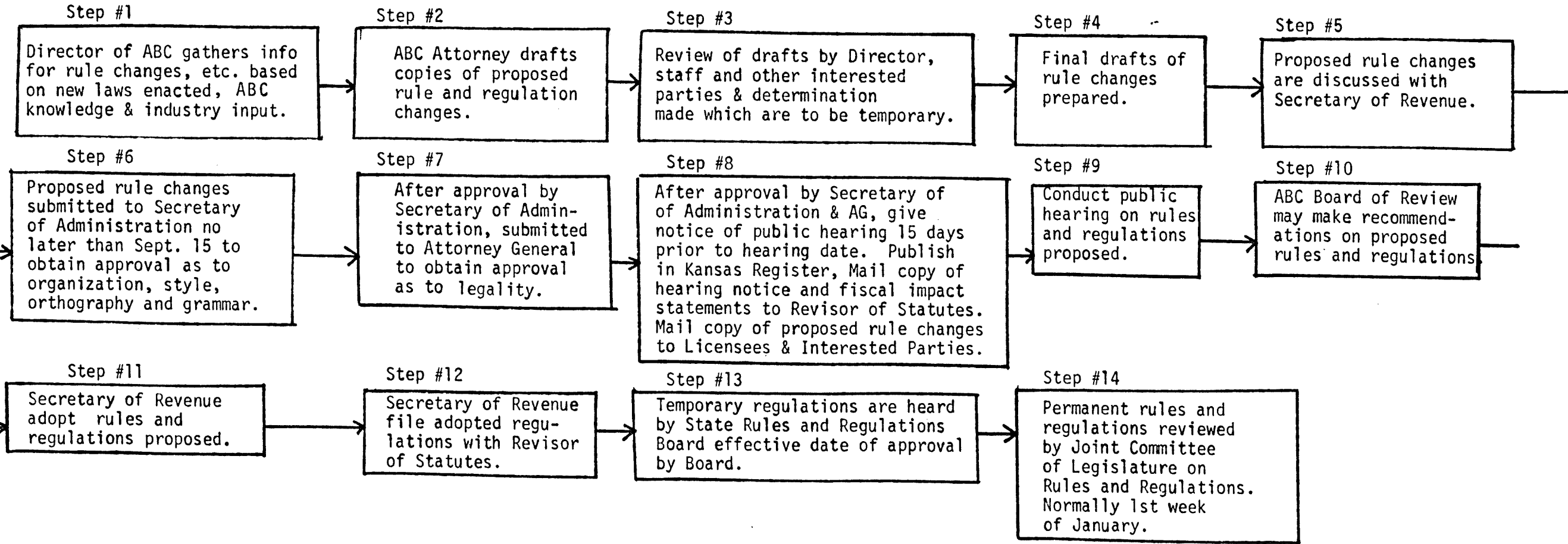
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PROCESS FOR ADOPTING RULES AND REGULATIONS
ALCOHOLIC BEVERAGE CONTROL DIVISION
DEPARTMENT OF REVENUE



"PROPOSED"

PROCESS FOR ADOPTING RULES AND REGULATIONS
ALCOHOLIC BEVERAGE CONTROL DIVISION
DEPARTMENT OF REVENUE



Step #1

Director of ABC gathers info for rule changes, etc. based on new laws enacted, ABC knowledge & industry input.

Step #2

ABC Attorney drafts copies of proposed rule and regulation changes.

Step #3

Review of drafts by Director, staff and other interested parties & determination made which are to be temporary.

Step #4

Final drafts of rule changes prepared.

Step #5

Proposed rule changes are discussed with Secretary of Revenue.

Step #6

Proposed rule changes submitted to Secretary of Administration no later than Sept. 15 to obtain approval as to organization, style, orthography and grammar.

Step #7

After approval by Secretary of Administration, submitted to Attorney General to obtain approval as to legality.

Step #8

After approval by Secretary of Administration & AG, give notice of public hearing 15 days prior to hearing date. Publish in Kansas Register, Mail copy of hearing notice and fiscal impact statements to Revisor of Statutes. Mail copy of proposed rule changes to Licensees & Interested Parties.

Step #9

Conduct public hearing on rules and regulations proposed.

Step #10

ABC Board of Review may make recommendations on proposed rules and regulations.

Step #11

Secretary of Revenue adopt rules and regulations proposed.

Step #12

Secretary of Revenue file adopted regulations with Revisor of Statutes.

Step #13

Temporary regulations are heard by State Rules and Regulations Board effective date of approval by Board.

Step #14

Permanent rules and regulations reviewed by Joint Committee of Legislature on Rules and Regulations. Normally 1st week of January.

Sec. 1. K.S.A. 41-209 is hereby amended to read as follows: 41-209.

The director shall have the following powers, functions and duties:

(1) To receive applications for, and to issue and revoke licenses to manufacturers, distributors, nonbeverage users and retailers in accordance with the provisions of this act;

(2) To fix by regulations adopted pursuant to the procedures in K.S.A. 41-210 the standards of manufacture of alcoholic liquors and beer regardless of its alcoholic content nor inconsistent with federal laws in order to insure the use of proper ingredients and methods in the manufacture and distribution thereof; and to establish rules, not inconsistent with federal laws, for the proper labeling of contents or barrels, casks or other bulk containers or bottles of alcoholic liquor and beer, regardless of its alcoholic content, manufactured or sold in this state;

(3) To call upon other administrative departments of the state, county and city governments, sheriffs, city police departments, city marshals, peace officers and upon prosecuting officers for such information and assistance as he or she may deem necessary in the performance of the duties imposed upon the director by this act;

~~(4) To submit to the governor annual and biennial reports of such official acts and recommendations in the manner prescribed in K.S.A. 75-3044 to 75-3048 and amendments thereto;~~

(5) (4) To inspect or cause to be inspected, any premises where alcoholic liquors are manufactured, distributed or sold;

~~(6)~~ (5) In the conduct of any hearing authorized to be held by the director to examine, or cause to be examined, under oath, any person, and to examine or cause to be examined books and records of any licensee; to hear testimony and take proof material for his or her information in the discharge of such duties hereunder; to administer or cause to be administered oaths; and for any such purposes to issue subpoenas to require the attendance of witnesses and the production of books which shall be effective in any part of this state; and any district court or any judge of the district court, either in term time or vacation, may by order duly entered, require the attendance of witnesses and the production of relevant books subpoenaed by the director, and the court or judge may compel obedience to its or his or her order by proceedings for contempt; and

~~(7)~~ (6) To collect, receive, account for and turn over to the state treasurer Secretary of Revenue all registration and license fees and taxes provided for in this act and all other moneys received by the director by virtue of his or her office;

~~(8)~~ (7) Such other powers, functions and duties as are or may be imposed or conferred upon the director by law.

(d) It is intended by this act, that the director of alcoholic beverage control shall be clothed with broad discretionary powers to govern the traffic in alcoholic liquors, and to enforce strictly all the provisions of this act in the interest of sanitation, purity of products, truthful representation and honest dealings in such manner as generally will promote the public health and selfare. All valid rules and regulations adopted under the provisions of this act shall be absolutely binding upon all licensees and enforceable by the director of alcoholic beverage control through the power of suspension or cancellation of licenses. (L. 1949, ch. 242, §15; L. 1965, ch. 506 §23; L. 1972, ch. 342, §119; July 1.)

Section ~~23~~ K.S.A. 41-211 is hereby amended to read as follows: 41-211. The rules and regulations established by the director pursuant to the procedures in K.S.A. 41-210 shall include rules and regulations:

- (1) Prescribing the nature, form and capacity of all containers used for alcoholic liquors;
- (2) prescribing the nature of and the representations to be shown upon the labels attached to the containers and requiring that the labels attached to all original containers or packages of alcoholic liquors sold or offered for sale in this state shall set forth in plain and legible print in the English language the quantity of such liquors, exclusive of the package or cask containing them, in either metric or English measurement, except that no original package of alcoholic liquor sold or offered for sale in the original package in this state shall contain less than ~~two hundred (200)~~ 200 milliliters (6.8 fluid ounces);
- (3) prescribing administrative procedures for the issuance of licenses and the investigation of license applications and providing for advisory recommendations from governing bodies of cities as to retailers' licenses and for hearings on applications;
- (4) prescribing conditions for the issuance of duplicate licenses in lieu of those lost or destroyed;
- (5) prescribing those violations of the rules and regulations for which licenses shall be suspended or revoked;
- (6) establishing standards of purity, sanitation and honest advertising and representations;
- (7) establishing the form of revenue stamps and the methods of affixing the same to the containers and prescribing such design, character, color combination, color changes, sizes and material therefor, including a decalomania revenue stamp, as afford the best security to the state;
- (8) requiring the destruction of stamps upon containers which have been opened;
- (9) in the case of manufacturers and distributors of alcoholic liquors, requiring the labels attached to all containers of such liquors which are intended for sale in this state to set forth, in plain legible print in the English language, the name and kind of alcoholic liquors contained therein, together with their alcoholic content, and if a blended product (except wine) to so state, except that, if the director deems it unnecessary to show the alcoholic content of beer on labels of containers of beer, the alcoholic content shall not be required to be shown thereon; and
- (10) providing for such other details as are necessary or convenient to the administration and enforcement of this act.

Be it enacted by the Legislature of the State of Kansas:

Section 3.2 K.S.A. 41-210 is hereby amended to read as follows: 41-210.

(a) The secretary of revenue director of alcoholic beverage control shall adopt propose such rules and regulations as shall be necessary to carry out the intent and purposes of this act. All such rules and regulations shall have the prior approval of be submitted to the state alcoholic beverage control board of review, which approval shall be given only after the public hearing thereon on those proposed rules and regulations as required by law has been held: Provided, That every such rule or regulation which applies to or affects a retail licensee shall be mailed to each and every holder of a retailer's license. The alcoholic beverage control board of review may make such recommendations on the proposed rules and regulations as the board deems to be proper.

(b) Upon completion of the procedures set out in (a) above, the director shall submit the proposed rules and regulations to the Secretary of Revenue who shall, if he approves them, adopt those rules and regulations.

(c) Every rule or regulation which applies to or affects a retail licensee shall be mailed to each and every holder of a retailer's license. The failure to mail any such rule or regulation to any retailer or the failure of any retailer to receive any such rule or regulation so mailed shall not invalidate any such rule and regulation.

Sec. 3.4 K.S.A. 41-302 is hereby amended to read as follows: 41-302. The question of licensing the retail sale of alcoholic liquors by the package shall be submitted by the governing body of any city at any regular general city election occurring in such city after the year 1950 whenever a petition requesting such submission has been filed with the city clerk of any such city as hereinafter provided. The question of licensing the retail sale of alcoholic liquor by the package may be submitted at the general city election in 1949, or at a special election by the governing body of any city of the first or second class wherein a majority of the qualified electors of such city of the first or second class who voted on the proposition to amend section 10 of article 15 of the constitution of the state of Kansas at the general election held in November, 1948, shall have voted against the adoption of such proposition if said governing body shall adopt a resolution calling such special election or submitting such question at the general city election in 1949, but no such resolution calling a special election shall be adopted after May 15, 1949, and shall be submitted at a special election by the governing body of any city of the first or second class, if a petition requesting such submission is filed with the city clerk of any such city of the first, or second class on or before May 15, 1949.

The question of licensing the retail sale of alcoholic liquor by the package shall be submitted at a special election by the governing body of any city of the third class located in a township wherein a majority of the qualified electors of such township who voted on the proposition to amend section 10 of article 15 of the constitution of the state of Kansas at the general election

held in November, 1948, shall have voted against the adoption of such proposition, if a petition requesting such submission is filed with the city clerk of any such city of the third class on or before May 15, 1949. Such question shall not be submitted at any regular general city election in any city more often than once in any four years. In cities of the first and second class, any such petition shall be signed by such number of electors of such city as shall at least equal thirty percent (30%) 30% of the total vote cast in such city at the last general election for the office of secretary of state; and in cities of the third class, any such petition shall be signed by such number of electors of such city as shall at least equal forty percent (40%) 40% of the total vote cast at the last general city election held in such third-class city of the third class for candidates for the city office for which the greatest number of total votes were cast. Each sheet of each petition shall contain not more than thirty (30) signatures of electors with their personal signatures, addresses, and the date of signatures, all in their own handwriting. If the signer resides within a city where the electors are required to be registered, the signatures shall be the same as it appears upon the registration records. At the top of each sheet shall be stated the proposition to be submitted and, if the proposition is to be submitted at a general city election, the date of the general city election at which it is proposed to be submitted comply with the provisions of K.S.A. 25-3601 to 25-3607, inclusive, and amendments thereto. No signature on such petition shall be valid unless appended to the petition within the last ninety (90) 90 days prior to the date of filing the petition with the city clerk. At the bottom of each sheet of such petition shall be the affidavit of the person who circulated same, stating that the signatures to the petition were made in his presence; that he has reasonable cause to believe that they are qualified electors of the particular city, and that they are the persons they represent themselves to be.

If the question is to be submitted at a general city election, Such petition shall be filed not less than ~~forty (40)~~ 40 nor more than ~~sixty (60)~~ 60 days prior to the date of the election. After any such petition has been filed no signature shall be withdrawn and no signature shall be added. The governing body of the city shall have the power to determine the sufficiency of any such petition. ~~Whoever signs any~~ Any person who signs a proposal or petition contemplated under this section, ~~knowing that he and who knowingly~~ is not a qualified elector in the place where such proposal or petition is made, or who aids, or abets any other persons in doing any of the acts mentioned, or ~~whoever any person who~~ bribes, gives or pays any money or thing of value to any person directly or indirectly, to induce ~~him~~ such person to sign such proposal or petition shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by fine of not ~~exceeding three hundred dollars (\$300)~~ more than \$300 or by imprisonment ~~not exceeding ninety (90)~~ of not more than 90 days, or by both such fine and imprisonment in the discretion of the court.

Upon the ballot the proposition shall be stated as follows:
 "Shall the sale of alcoholic liquors by the package YES
 be licensed in (here insert the name of the city)?" NO

Voters desiring to vote in favor of the sale of alcoholic liquors by the package shall place a cross in the square opposite the word "Yes" and those desiring to vote against the sale of alcoholic liquor by the package shall place a cross in the square opposite the word "No."

Upon the filing of a sufficient petition or upon the adoption of a proper resolution as herein provided, the governing body shall call any election required by this section and notice of such election shall be given in like manner as now provided by law for the notice of bond elections in such city. The provisions of the laws of this state relating to election officers, voting places, election places and blanks, preparation and form of ballots, information to voters, delivery of ballots, calling of elections, conduct of elections, manner of voting, counting of votes, records and certificates of election, and recounts of votes, so far as applicable, shall apply to voting on the proposition under the provisions of this act; and.

The majority of those voting on the proposition shall be mandatory upon the director insofar as licensing the sale of such liquors therein by the package is concerned. In the absence of any vote on the question of licensing the sale of such liquors in cities of the first and second class wherein a majority of the qualified electors of such city who voted on the proposition to amend section 10 of article 15 of the constitution of the state of Kansas at the general election held in November, 1948, shall have voted in favor of the adoption of such proposition and in cities of the third class located in townships wherein a majority of the qualified electors voted in favor of such constitutional amendment and in the absence of any further vote in cities of the first, second or third class in which a majority of the qualified electors of such city shall have voted at any special or general city election in favor of the licensing of the sale of alcoholic liquor by the package, the director shall continue to issue licenses to sell the same by the package therein for periods of one year, subject to all the terms and conditions of this act.

If a majority of the electors voting at any such election shall vote against licensing the sale of alcoholic liquors by the package, the holder of any valid existing retailer's license for prem-

ises in such city shall have the right to continue to operate under ~~his such~~ license for a period not to exceed ~~ninety~~ 90 days after the result of such election is canvassed or until the expiration of ~~his such~~ license, whichever period of time is the shorter; ~~and~~. In the event that such period of time expires before the expiration of the term for which the retailer's license was issued, then such licensee shall be entitled to a refund of that portion of the license period which is unavailable to ~~him such licensee~~ in accordance with the rules and regulations ~~which shall be~~ established by the ~~director~~ secretary of revenue.

For the purpose of determining as provided in K.S.A. 41-301 and amendments thereto and in this section of ~~this act~~ whether a majority of the qualified electors of a township in which a ~~third-class~~ city of the third class is located ~~voting~~ voted against the adoption of the liquor amendment at the general election held in November, 1948, if any city of the third class is located in two or more townships, the total vote for and against ~~said the~~ amendment in all the townships in which such city is located shall be used to determine whether such ~~third-class~~ city is located in a township in which a majority of the qualified electors voted against ~~said the~~ amendment.

Section ~~4~~⁵ K.S.A. 1983, Supp. 41-320, is hereby amended to read as follows:

41-320. (a) All proceedings for the suspension and revocation of licenses of manufacturers, distributors, retailers, farm wineries and nonbeverage users shall be before the director, and the proceedings shall be in accordance with rules and regulations adopted by ~~the director~~ pursuant to the procedures in K.S.A. 41-210 and not inconsistent with law. Except as provided in subsection (b), no license shall be suspended or revoked except after a hearing by the director with reasonable notice to the licensee and an opportunity to appear and defend.

(b) When proceedings for the suspension or revocation of a distributor's license are filed and the distributor has been issued more than one license for distributing places of business in this state, any order of the director suspending or revoking the license at any one place of business shall suspend or revoke all licenses issued to the distributor. When one person is the holder of stock in two or more corporations licensed as distributors under the provisions of this act, any order of the director suspending or revoking the license of any such corporation shall operate as a suspension or revocation of the license of all corporations licensed as distributors in which the person is a stockholder.

Section ~~5~~⁶ K.S.A. 41-321 is hereby amended to read as follows: 41-321. Whenever the director shall refuse an application for any license or shall suspend or revoke any license, he the director shall prepare an order so providing which shall be signed by the director or some person designated by ~~him~~ the director, and the seal of the director shall be affixed thereto and ~~said~~. The order shall

state the reason or reasons for such refusal, suspension or revocation. Said The order shall be mailed, by registered certified mail, by the director to the applicant at the address as shown on the application or to the licensee at the address of the premises licensed, as the case may be.

Any such applicant or licensee aggrieved by any such order of the director may appeal from such order to the alcoholic beverage control board of review by filing a notice of appeal with the secretary of said the board. Such notice of appeal must either be mailed to the secretary by registered certified mail or filed with said the secretary within ~~fifteen-(15)~~ 15 days after the date the order to be appealed from was mailed as hereinbefore provided or, if such appeal is taken because the director has failed to enter his the order on an application for a license, within ~~fifteen-(15)~~ 15 days after the date an application for a license is deemed to have been refused as provided in K.S.A. 41-219 and amendments thereto. The notice of appeal shall be on a form which shall be prescribed and furnished by the board. Whenever any such notice of appeal is filed, the secretary of the board ~~forthwith~~ shall notify in writing, the director of such appeal. The secretary at least ~~ten-(10)~~ 10 days before the time fixed for the hearing shall also notify said the director and the applicant or licensee of the time when, and place where said, the appeal will be heard by the board, such notice to the applicant or licensee to be made by registered certified mail. Said The hearing shall be held within at least ~~thirty (30)~~ 30 days after the date of the filing of the notice of appeal unless the person appealing shall consent to a later hearing. At the time and place so fixed for the hearing, the board shall proceed to hear the appeal.

The board shall ~~adopt~~ may recommend for adoption ^{PURSUANT} to the procedures in K.S.A. 41-210 such rules and regulations as it shall deem necessary to govern the procedure in such hearings and which will provide for a fair hearing of all appeals. X

At any such hearing the applicant or licensee, and the director may be present in person or by agent or counsel and present evidence and argument. The board shall have the power to adjourn any hearing, but no such adjournment shall be for more than ~~five (5)~~ 5 days unless consented to by the person appealing. Within ~~five (5)~~ 5 days after the hearing is concluded, the board shall render its written opinion, decision and order on such appeal. A copy of such opinion, decision and order shall be mailed by the secretary of the board by registered

certified mail to the applicant or licensee, and a copy shall be also delivered or mailed by ~~him~~ the secretary of the board to the director. Such order and decision shall be final and binding on the director and the applicant or licensee unless appealed as provided in K.S.A. 41-323 and amendments thereto. The filing of a notice of an appeal or pendency of an appeal shall suspend the order from which the appeal is taken.

Section ~~5.7~~ K.S.A. 41-326 is hereby amended to read as follows: 41-326. A license shall be purely a personal privilege, good valid for not to exceed one year after issuance, unless sooner suspended or revoked as ~~in this act provided~~, and shall not constitute property, nor shall it be subject to attachment, garnishment or execution, nor shall it be alienable or transferable, voluntarily or involuntarily, or subject to being encumbered or hypothecated. Such A license shall not descend by the laws of testate or intestate devolution, but ~~it~~ shall cease and expire upon the death of the licensee: Provided, That except that executors, administrators or representatives of the estate of any deceased licensee and the trustee of any insolvent or bankrupt licensee, when such estate consists in part of alcoholic liquor, may continue the business of the sale, distribution or manufacture of alcoholic liquor under order of the appropriate court, and may exercise the privilege of the deceased ~~or~~, insolvent or bankrupt licensee after the death of such decedent, or after such insolvency or bankruptcy, until the expiration of such license but not longer than one year after the death, bankruptcy or insolvency of such licensee.

A refund shall be made of that portion of the license fee paid for any period in which the licensee shall be prevented from operating under such license in accordance with the provisions of this section. The ~~director shall have power to~~ rules and regulations providing for the authorization of refunds of that portion of the license fees paid for any period in which the licensee shall does not use such license has a result of ~~his having had it canceled at his own request and the~~ cancellation of the license upon the request of the licensee for voluntary reasons. may be adopted pursuant to the procedures in K.S.A. 41-210.

Section ~~7.8~~ K.S.A. 41-407 is hereby amended to read as follows: 41-407.

(a) It shall be unlawful for any person to:

(1) Evade, or attempt to evade, the payment of tax or duty on any alcoholic liquor, in any manner whatever. Upon conviction of violation of this subsection, in addition to the penalty prescribed for the violation of this act, the violator

shall forfeit and pay, as a part of costs in the action, double the amount of the tax or duty so evaded or attempted to be evaded.

(2) Have in his or her such person's possession any cask or package of alcoholic liquor, without having thereon each mark and stamp required therefor by law and any such cask or package not having thereon each such mark or stamp shall be forfeited to the state of Kansas.

(3) Affix or cause to be affixed to or upon any cask or package containing or intended to contain alcoholic liquor, any stamp, photographed label, device or token, regardless of the purpose thereof, which resembles or has the general appearance of any tax or revenue stamp required by the laws of the state of Kansas or by rules and regulations of the director adopted pursuant to the procedures in K.S.A. 41-210 to be affixed to or upon any cask or package containing such liquor.

(b) Nothing contained in this section shall make unlawful the possession and transportation of wine imported solely for use by a church or religious organization for sacramental purposes and uses.

(c) Violation of any provision of this section is a misdemeanor punishable by a fine not exceeding ~~five hundred dollars~~ ~~(\$500)~~ \$500 or imprisonment not exceeding six ~~(6)~~ months, or both, and in proper cases the trial court may order and direct the confiscation of the liquor involved in the violation as part of the judgment of conviction.

Section ~~8.~~⁷ K.S.A. 41-408 is hereby amended to read as follows: 41-408. Any common carrier of merchandise owning or operating any railroad, express company, bus, truck or other transportation lines or routes for the transportation of merchandise in the state of Kansas, upon application and filing of a bond in form and penalty and with such sureties as may be approved by the director, may be designated as a carrier of such alcoholic liquor, for the final release of which liquor, from a bonded warehouse in the state of Kansas, a permit has not been issued. ~~Provided,~~ The consignee shall be some manufacturer or distributor maintaining a bonded warehouse for such liquor within the state of Kansas; ~~And provided further, That.~~ Nothing in this section shall be construed to prevent or restrict any common carrier from transporting in intrastate commerce any such liquor without giving the required bond aforesaid where the consignor is a bonded warehouse of the state of Kansas and the consignee is a licensed retail liquor dealer in this state. Any such liquor arriving at a point of entry in the state of Kansas may be entered, under such rules and regulations as ~~the director~~ may be adopted pursuant to the procedures in K.S.A. 41-210, for transportation in bond to any bonded warehouse in the state of Kansas.

Section ~~5~~¹⁰ K.S.A. 41-501a is hereby amended to read as follows: 41-501a. If any alcoholic liquor which is taxable under the provisions of K.S.A. 41-501 and amendments thereto is transported in interstate commerce into this state or a federal area for delivery to a consignee or person located, residing, or stationed on or at a federal area, such tax shall be paid by said the consignee or person; and. For the purpose of collection and payment of such tax, any and all common, contract or private carriers transporting or delivering any such alcoholic liquor consigned to consignees or persons located, residing, or stationed on or at any federal area shall not deliver such alcoholic liquor unless and until said the consignee or person shall either ~~(i)~~ (a) present to said the carrier written evidence, signed by the director, that the tax imposed by K.S.A. 41-501 and amendments thereto on such alcoholic liquor has been paid, or ~~(ii)~~ (b) shall pay such tax to said the carrier. All such carriers are authorized to collect from such consignee or person the tax imposed by K.S.A. 41-501 and amendments thereto at the time of delivery, and to account for and pay the same to the director, who.

shall adopt and promulgate such Rules and Regulations as shall be necessary to carry out the intent and purposes of this section, ~~and~~ may be adopted pursuant to procedures in K.S.A. 41-210, which rules and regulations may, among other things, include, but shall not be limited to, provisions for the inspection and sealing of cargoes of, and the affixing of tax stamps on containers or of, alcoholic liquor consigned, being transported or delivered to consignees or persons located, residing, or stationed on or at federal areas. X

Section ~~2~~¹¹ K.S.A. 1983 Supp. 41-502 is hereby amended to read as follows: 41-502. Payment of the tax provided for in K.S.A. 41-501 and amendments thereto shall be evidenced by tax stamps or crowns to be affixed to each original package of alcoholic liquor, except wine and brandy, for use in this state. It is the duty of each manufacturer and distributor at wholesale before delivery of any alcoholic liquor, except wine and brandy, to a licensed purchaser to affix a stamp or crown firmly to each original package at the rate of gallonage provided for in such section, in such amounts as the contents of each original package bears to one gallon, subject to all the conditions of K.S.A. 41-401 to 41-409, inclusive, and amendments thereto. The director alcoholic beverage control division may, by rule and regulation adopted pursuant to the procedures in K.S.A. 41-210 require that such tax stamps or crowns be affixed to each original package of alcoholic liquor, except wine and brandy, at the place where such original package is manufactured or filled. The director alcoholic beverage control division may also, by rule and regulation adopted pursuant to the procedures in K.S.A. 41-210 also permit the cancellation of attached stamps

or crowns by the distributor, and may permit credit or replacement to be issued to such distributor for stamps or crowns so canceled or destroyed.

In lieu of the affixture of stamps to each original package as the means of payment or evidencing payment of any of the taxes imposed by K.S.A. 41-501 and amendments thereto, the director of alcoholic beverage control division, with the approval of the alcoholic beverage control board of review, may prescribe, by rules and regulations adopted pursuant to K.S.A. 41-210 and designed to protect the revenue of this state, a method of reporting, paying and collecting such tax on any alcoholic liquors without the use of stamps. Such The rules and regulations may provide that a distributor shall file a bond greater in amount than that now prescribed by law, the exact amount to be fixed by the director as provided in such rules and regulations, conditioned that the distributor will comply with the provisions of the act, and that all taxes, fines and forfeitures which may be assessed against such distributor will be paid.

If the director regulations prescribes a method other than the affixture to original packages of alcoholic liquor of stamps or other visible evidence of the payment of such tax, the tax imposed upon such alcoholic liquor by K.S.A. 41-501 and amendments thereto shall be paid on or before the 15th day of the calendar month next succeeding the month in which the distributor acquires possession of such alcoholic liquors made taxable by the provisions of K.S.A. 41-501 and amendments thereto. The reporting and payment thereof within the time prescribed by this section and in the manner prescribed by the director of alcoholic beverage control regulations shall constitute a compliance with the provisions of K.S.A. 41-501 and amendments thereto. In the event the director alcoholic beverage control division adopts a method of reporting, paying and collecting such tax on alcoholic liquors without the use of stamps, the director alcoholic beverage control division shall, by in accordance with rules and regulations adopted prior to putting such method into effect, require each original container to be marked or identified in some distinctive manner to reflect that such original package was filled and first offered for sale in this state. On and after the effective date of the rules and regulations adopted by the director and approved by the alcoholic beverage control board of review pursuant to K.S.A. 41-210 authorizing the payment of the tax as provided in this section, it shall not be unlawful for the holder of a retailer's license to receive or possess any alcoholic liquor in any original package upon

which stamps evidencing the payment of such tax are not affixed. In the case of wine and brandy, the tax imposed upon such wine and brandy by K.S.A. 41-501 and amendments thereto shall be paid on or before the 15th day of the calendar month next succeeding the month in which the distributor acquires possession of such wine and brandy made taxable by the provisions of said such statute. The recording and payment thereof, within the time prescribed by this section and in the manner prescribed by the ~~director~~ secretary of revenue, shall constitute compliance with the provisions of such statute. Notwithstanding any other provision of this act to the contrary, the affixation of stamps or crowns shall not be required, nor shall it be required that either the original package or shipping container of wine and brandy be marked in a distinctive manner to reflect that such original package or shipping container was filled and first offered for sale in this state.

Section ~~41-5~~¹² K.S.A. 41-5-5 is hereby amended to read as follows: 41-505. The Director shall prescribe that the taxes imposed by this act on beer may be collected by means of tax crowns for retail containers of such distinctive designs as ~~he~~ the director shall prescribe, and under such rules and regulations as shall be promulgated by said ~~director~~ adopted pursuant to K.S.A. 41-210. ^{the procedures in} The ~~director~~ alcoholic beverage control division shall devise and enforce by rule and regulation, means whereby the manufacturer of said crowns shall file a bond with corporate surety authorized to do business in this state, with the director in favor of the state of Kansas in an amount approved by the director, conditioned that the said manufacturer will not sell or deliver said crowns to any person except on written approval of the director, and that in all other respects the said manufacturer will faithfully safeguard the handling and distribution of said crowns so that the tax revenues of the state may be fully protected.

Section ~~41-5~~¹³ K.S.A. 41-506 is hereby amended to read as follows: 41-506. The Director shall redeem any unused crowns or stamps that any purchaser thereof presents for redemption within six months after the sale thereof by the director, at the face value thereof. The director shall prepare a voucher showing the net amount of such refund due, and the director of accounts and reports shall draw his a warrant on the state treasurer for the same and against the alcoholic liquor tax refund fund created by K.S.A. 41-507 and amendments thereto. The ~~director~~ alcoholic beverage control division may adopt rules and regulations pursuant to ^{the procedure} K.S.A. 41-210 prescribing the manner of making proof of such claims and may promulgate further also adopt rules and regulations providing for refunds of the face value of crowns or stamps affixed to any alcoholic liquor taxed herein which has become unfit for use and consumption or unsalable where such alcoholic liquor

is returned for any of such reasons to the wholesaler who affixed the crowns or stamps thereto and crowns that may be unfit for use by reason of size, sanitary condition or other reasons; and, Where the director shall find finds such refund proper, the same refund may be made by the issuance of tax credit memoranda to such wholesaler which shall be accepted as credit on subsequent remittances for the purchase of crowns or stamps.

Section ~~§~~¹⁴ K.S.A. 41-706 is hereby amended to read as follows: 41-706. No manufacturer, distributor or wholesaler shall sell or deliver any package containing alcoholic liquor manufactured or distributed by ~~him~~ such manufacturer, distributor or wholesaler, unless the same shall have package has affixed thereto all ~~cancelled~~ canceled revenue stamps, which may be provided by federal law and under the terms of this act, and shall also bear carry thereon a clear and legible label containing the name and kind of alcoholic liquor contained therein, and the alcoholic content thereof, except in the case of beer, and such other information as may be required by federal laws and rules and regulations and by rules and regulations adopted by the ~~director~~ alcoholic beverage control division ^{to procedures} pursuant to K.S.A. 41-210. No package shall be delivered by any manufacturer or distributor or importing distributor unless the same shall be securely sealed so that the contents thereof cannot be removed without breaking the seal so placed thereon by such manufacturer, and no other licensee shall sell, have in ~~his~~ the possession, of the licensee or use any package or container which does not comply with this section or K.S.A. 41-707 and amendments thereto, or does not bear evidence that such package, when delivered to ~~him~~ the licensee, complied herewith with this section.

Section ~~§~~¹⁵ K.S.A. 1983 Supp. 41-714 is hereby amended to read as follows: 41-714. (a) It shall be unlawful for:

- (1) Any person to advertise any alcoholic liquor by means of handbills;
- (2) any person to advertise any alcoholic liquor by means of billboards along public highways, roads and streets or for any owner or occupant of any property to permit any billboard advertising alcoholic liquor to remain on the property;
- (3) any retailer of alcoholic liquor to have any sign on the licensed premises in violation of subsection (b); or
- (4) any licensee to display alcoholic liquor in any window of the licensed premises.

(b) No retailer shall have more than one sign on the licensed premises. The sign shall contain nothing but the license number, the name of the retailer and the

words "Retail Liquor Store." No letter or figure in the sign shall be more than four inches high or three inches wide. If more than one line is used, the lines shall be not more than one inch apart. The sign shall be placed on the corner of a window or on the door.

(c) The provisions of this section shall not be interpreted to prohibit the advertising of a farm winery, but no advertising of a farm winery shall advertise the sale of wines by the winery or the prices of those wines. Any advertising of a farm winery shall be subject to approval by the director prior to its dissemination.

(d) The ~~director~~ alcoholic beverage control division may adopt rules and regulations pursuant to K.S.A. 41-210 ^{the procedures in} as necessary to regulate and control the advertising, in any form, and display of alcoholic liquor, and nothing contained in this section shall be construed as limiting the ~~director's~~ division's power to adopt such rules and regulations not in conflict with this act.

Section ~~B.~~¹⁶ K.S.A. 41-1102 is hereby amended to read as follows: 41-1102. Any licensee who shall quit business or shall have ~~his~~ the license suspended or revoked may sell and dispose of any alcoholic liquor which ~~he~~ the licensee has ~~in~~ his possession of at the time he ~~quits~~ quits business or ~~his license is~~ is suspended or ~~revoked of~~ quitting business or of the suspension or revocation of the license in accordance with rules and regulations ~~which the director shall adopt~~ adopted by the alcoholic beverage control division ^{the procedures in} pursuant to K.S.A. 41-210.

Section ~~B.~~¹⁷ K.S.A. 41-1118 is revoked.

Section ~~B.~~¹⁸ K.S.A. 41-1119 is hereby amended to read as follows: 41-1119. The ~~director,~~ with the approval of the board alcoholic beverage control division may, ^{the procedures in} pursuant to K.S.A. 41-210, adopt and promulgate such rules and regulations as shall be necessary for the administration and enforcement of the sales prices determined and fixed under the provisions of this act.

Section ~~B.~~¹⁹ K.S.A. 41-2607 is hereby amended to read as follows: 41-2607. The license provided herein shall be issued for a term of one year, renewable on expiration. The ~~director~~ alcoholic beverage control division shall make rules and regulations ^{the procedures in} pursuant to K.S.A. 41-210 providing for the authorization of refunds of the license fees paid for any period in which the licensee shall not use such license as the result of ~~his having had it cancelled at his own request~~ the license being canceled at the request of the licensee and for voluntary reasons.

Section ~~B.~~²⁰ K.S.A. 41-2621 is hereby amended to read as follows: 41-2621. A club license shall allow the licensee to operate a club only at the premises specified in such license in accordance with the provisions of this act and the rules and regulations adopted by the ~~director~~ alcoholic beverage control division ^{the procedures in} pursuant to K.S.A. 41-210.

Section 20. K.S.A. 41-2629 is hereby amended to read as follows: 41-2629.

A class B club license shall be purely a personal privilege, good for not to exceed one year after issuance unless sooner suspended or evoked as provided in this act ~~provided~~, and shall not constitute property, nor shall it be subject to attachment, garnishment or execution, nor shall it be alienable or transferable, voluntarily or involuntarily, or subject to being encumbered or hypothecated. Such The class B club license shall not descend by the laws or testate or intestate devolution, but it shall cease or expire upon the death of the licensee subject to the following provision. An executor, administrator or representative of the estate of any deceased class B club licensee or the trustee of any insolvent or bankrupt class B club licensee may continue ~~said~~ the licensee's business on the licensed premises under order of the appropriate court and may exercise the privilege of the deceased, insolvent or bankrupt licensee after the death of such licensee or after such insolvency or bankruptcy until the expiration of such license, but in no case longer than one year after the death, insolvency or bankruptcy of such licensee. A refund shall be made of that portion of the license fee paid for any period in which the licensee shall be prevented from operating under such license in accordance with the provisions of this act, other than that caused by suspension or revocation. ~~The director shall make rules~~ Rules and regulations providing for the authorization of refunds of the license fees paid for any period in which the licensee ~~shall~~ does not use such license as the result of the licensee having had it being canceled at his or her own upon the request of the licensee and for voluntary reasons, be adopted the procedures in pursuant to K.S.A. 41-210.

Section 21. K.S.A. 41-2630 is hereby amended to read as follows: 41-2630.

The attorney general, the attorney for the director, or any county or district attorney of the state, within ~~his~~ their county or district, shall at all times have the power to enjoin any person from operating or maintaining a club within their respective jurisdictions, notwithstanding ~~said~~ the person has a club license, if it ~~shall~~ appear appears that the licensee has violated any provision of this act, or any of the rules and regulations ~~prescribed by the director~~ adopted under this act. Such injunction proceedings shall be the same as is now prescribed for the enjoining of alcoholic liquor nuisances under the Kansas liquor control act.

New Section 23. (a) All of the powers, duties and functions of the director of alcoholic beverage control of the department of revenue and the state alcoholic beverage control board of review relating to the adoption and promulgation of rules and regulations are hereby transferred to and conferred and imposed upon the secretary of revenue.

(b) All rules and regulations of the director of alcoholic beverage control of the department of revenue and the state alcoholic beverage control board of review in existence on the effective date of this act, shall continue to be effective and shall be deemed to be duly adopted rules and regulations of the secretary of revenue, until revised, amended, revoked or nullified pursuant to law.

Section 24. K.S.A. 41-210, 41-211, 41-302, 41-321, 41-326, 41-407, 41-408, 41-501a, 41-505, 41-506, 41-706, 41-1102, 41-1118, 41-1119, 41-2607, 41-2621, 41-2629 and 41-2630 and K.S.A. 1983 Supp. 41-320, 41-502 and 41-714 are hereby repealed.

Section 25. This act shall take effect and be in force from and after its publication in the statute book.

B

K · A · N · S · A · S
WINE & SPIRITS
WHOLESALE ASSOCIATION, INC.

TO: HOUSE FEDERAL AND STATE AFFAIRS COMMITTEE

FROM: R. E. "TUCK" DUNCAN, EXECUTIVE SECRETARY, K.W.S.W.A.

RE: HOUSE BILL NO. 2779

DATE: February 1, 1984

The Kansas Wine and Spirits Wholesalers Association, Inc. respectfully opposes the proposed legislation which would eliminate the involvement of the Alcoholic Beverage Control Board of Review in the process of affirming or rejecting Rules and Regulations promulgated by the Director of the Alcoholic Beverage Control and the Secretary of the Department of Revenue.

Our reasons for opposition to this proposal are varied, but I am limiting my remarks here today to the primary reasons for our concern.

1. The Alcoholic Beverage Control Board of Review is a three (3) member quasi judicial body appointed by the Governor and confirmed by the Senate which has responsibility under current law for hearing Appeals of actions and determinations made by the Director of the Alcoholic Beverage Control in his role as administrator of the Liquor Control Act. Additionally, the A.B.C. Board of Review establishes the minimum mark up percentages, and confirms or rejects rules and regulations promulgated by the Secretary of Revenue or the Alcoholic Beverage Control Director. This board is comprised of individuals with diverse backgrounds representing consumer interests. Therefore, to eliminate this board from the review process would be to eliminate a consumer viewpoint on regulations affecting this industry.

2. Inasmuch as the Alcoholic Beverage Control Board of Review does sit as a quasi judicial appeals panel to review determinations made by the Director of the Alcoholic Beverage Control, and inasmuch as those determinations generally relate to the administration of the Rules and Regulations of the department, we believe it is appropriate that the A.B.C. Board of Review be involved in the policy determinations which set the foundation for their quasi judicial activities.

3. It is not unusual for quasi judicial boards to be involved in the rule making process. For example, the State Board of Tax Appeals, as a collective group, promulgates their Rules and Regulations governing procedures and operations. The Kansas Corporation Commission is actively involved in the development of its' Rules and Regulations affecting industry. Therefore, it would appear appropriate

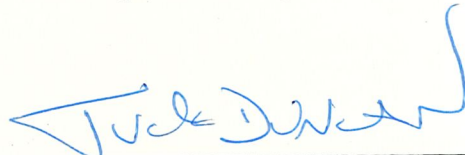
MEMORANDUM

February 1, 1984

Page 2

that a body appointed by the Governor, confirmed by the Senate, which has the consumer's interest in mind, would participate in the rule making process as a "check and balance" to the enforcement authorities. It would appear to the industry that the process is enhanced by their involvement and not adversely impacted by the board's participation.

Therefore, the K.W.S.W.A. respectfully requests that the Committee amend the proposal to afford the Alcoholic Beverage Control Board of Review an opportunity to affirm or reject regulations proposed by the Director of the Alcoholic Beverage Control and/or the Secretary of Revenue in order to allow for full public debate of issues affecting the alcoholic beverage industry.



R.E. "Tuck" Duncan

C

STATE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES
ALCOHOL AND DRUG ABUSE SERVICES

Statement Regarding House Bill 2630

I. Short Title of Bill

Gallongage Tax changes that will return the percentage of tax monies that are transferred to the Community Alcoholism and Intoxication Programs Fund to its previous level.

II. Background

The 1983 legislature amended this statute and the revisor made cleanup changes that inadvertently changed the subsection that provided dollars to the Community Alcoholism and Intoxication Programs Fund. This change amounted to the striking of the words "alcohol and spirits". This meant that 10% of the entire tax (not just "alcohol and spirits" as had been in the past) was credited to this fund. This change produced approximately \$500,000 of additional monies into this fund during FY 84. This bill (New section 2) will also take away this increase of dollars when the bill goes into effect.

III. Discussion

Since the Governors Budget has proposed that ADAS spend these new dollars in FY 84, and that Block Grant monies be carried over and spent in FY 85, if this bill passes ADAS will be \$500,000 short either this or next fiscal year.

IV. SRS Position

If New Section 2 of the bill were deleted and the implementation date of the act was changed to the publication in the statute book (July 1, 1984), ADAS could receive these dollars this year and the fund would return to normal in the future.

Robert C. Harder, Secretary
Office of the Secretary
Social and Rehabilitation Services
296-3271
01-24-84

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STATE DEPT. OF
SOC. REHAB. SERV.
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