

Approved \_\_\_\_\_

*as corrected*  
Date 3/22/83

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 March 21, 1984 in room 254-E of the Capitol.

All members were present except:

Senator Francisco was excused.

Committee staff present:

Russell Mills, Legislative Research  
Fred Carman, Assistant Revisor of Statutes  
Emalene Correll, Legislative Research  
June Windscheffel

Conferees appearing before the committee:

Thomas J. Kennedy, Director, Alcoholic Beverage Control

HB2779 - relating to alcoholic beverage control rules and regulations adopted by the secretary of revenue.

The Chairman introduced Director Tom Kennedy who appeared as a proponent of HB2779. His Memorandum dated March 21, 1984, is a part of these Minutes as Attachment #1. It states the purpose, perspective, comments and/or recommendations. The ABC does recommend approval. Also a part of the attachment is a chart showing the process for adopting rules and regulations.

The Chairman stated that Tuck Duncan, of the Kansas Wine & Spirits Wholesalers Association, Inc., was unable to appear before the Committee but had asked that his prepared remarks be given the Committee and made a part of these Minutes. They are dated March 21, 1984, and are Attachment #2. The statement requests that the Committee recommend this bill favorably. Also a part of the attachment are Mr. Duncan's remarks in favor of the bill which were presented to the House Federal and State Affairs Committee on February 1, 1984. Senator Morris moved that HB2779 be reported favorably by the Committee. 2d by Senator Daniels. Motion carried.

SB575 - certification of real estate instructors and other matters.

The Committee returned to discussion on SB575. Fred Carman reviewed for the Committee the amendments which they already adopted on the bill. There was much discussion among members and questions were directed to staff and to Mr. Paul Flower, of the Real Estate Commission. Senator Pomeroy moved that SB575 as amended be reported favorably. 2d by Senator Winter. Motion carried.

Substitute for HB2616 - relating to substantially equal programs for female felons.

There was discussion concerning HB2616. Then Senator Meyers moved that Substitute for HB2616 be reported favorably. 2d by Senator Parrish.

The Chairman said that he would request that Michael Barbara or David Barclay, of the Department of Corrections, appear before the Committee with an up-date on the percentages in which they are behind in their diagnostic procedures at the Kansas Reception and Diagnostic Center and to comment on other matters concerning corrections.

Senator Gannon moved that the Minutes of the Meeting of March 16, 1984, be approved. 2d by Senator Roitz.

The meeting was adjourned at 11:50 a.m.

MEMORANDUM

3/21/84  
Attachment #1

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

FROM: THOMAS J. KENNEDY, Director, ABC Division

RE: House Bill 2779, as amended

DATE: March 21, 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 promulgated 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.

Attachment #1

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.

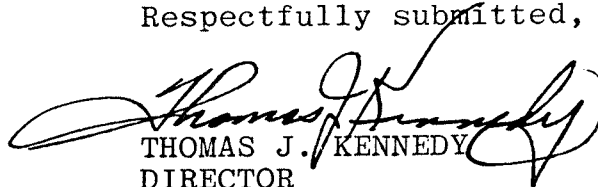
As to the purpose and intent of this bill as outlined in HB 2779, we agree with the proposal, however, we had some proposed changes and they are now included in the amended version of HB 2779. We have discussed these changes with the Secretary of Revenue and he has concurred. In addition, we have visited 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 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.

House Bill 2779 as amended, codifies the practice which we are now using and as reflected at Enclosure #1.

Recommend approval of HB 2779 as amended.

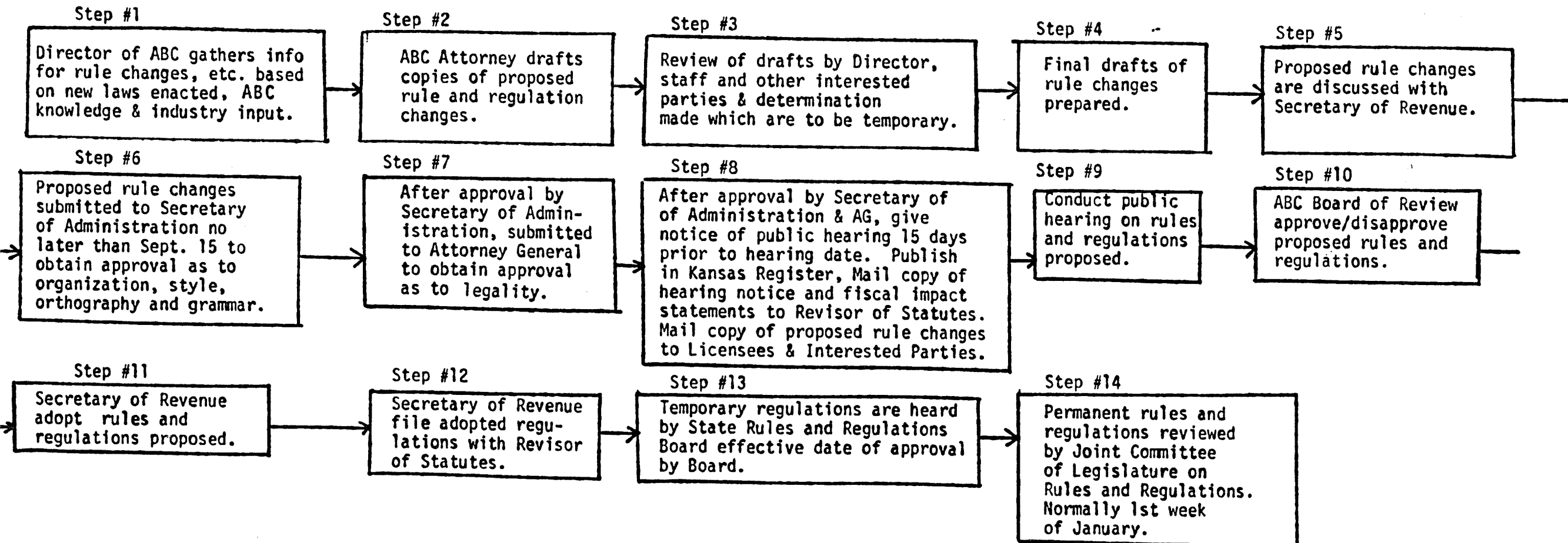
Respectfully submitted,



THOMAS J. KENNEDY  
DIRECTOR

Alcoholic Beverage Control Division

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



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

*Attachment # 2*

March 21, 1984

TO: Senate Federal and State Affairs Committee

From: R.E. "Tuck" Duncan

RE: H.B. 2779

The Kansas Wine and Spirits Wholesalers support H.B. 2779 as amended. The House amended this bill to meet our concerns, that being primarily to allow the A.B.C. Board of Review the opportunity to review and approve regulations. We would request that this committee recommend this bill favorably for passage. Thank you.

  
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Attached: copy of testimony to  
House Committee on Federal and  
State Affairs re: H.B. 2779

*Attachment # 2*

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

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.