

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 28, 1985 in room 526S of the Capitol.

All members were present except:

Representative Hensley

Committee staff present:

Lynda Hutfles, Secretary
Mary Torrence, Revisor's Office
Russ Mills, Research

Conferees appearing before the committee:

The meeting was called to order by Chairman Miller. A correction in the minutes of the February 27 meeting was made. The list of bills listed under SB127 was deleted.

Representative Eckert made a motion, seconded by Representative Sallee, to approve the minutes of the February 27 meeting as corrected. The motion carried.

SB127 - Restriction of driver's license after 2nd conviction of DUI

Representative Barr made a motion, seconded by Representative VanCrum, to amend SB127 in Section 3 concerning urine tests. See attachment A. The motion carried.

Representative VanCrum made a motion, seconded by Representative Walker, to report SB127 favorably as amended. The motion carried.

The Chairman announced that some background and historical information on liquor by the drink would distributed to the committee member in the afternoon. See attachment A & B.

SB126 - Suspension or revocation of minor's driver's license for alcoholic beverage violations

Representative Sallee made a motion, seconded by Representative Peterson, to reconsider committee action on SB126. The motion carried.

Representative VanCrum made a substitute motion, seconded by Representative Eckert, to amend subsection (d) of New Sec. 2 which would provide that violation of subsection b, which deals with possession and consuming would carry the same penalty as obtaining or purchasing if it was consumed or possessed on premise. The penalty for consuming or possessing off premise would remain the same. The motion carried.

Representative VanCrum made a motion, seconded by Representative Eckert, to amend the cereal malt beverage section of SB126 to provide for the same penalties as the alcoholic liquor section. The motion carried.

Representative Sallee made a motion, seconded by Representative VanCrum, to report SB126 favorable as amended. The motion carried.

The meeting was adjourned.

GUEST LIST

FEDERAL & STATE AFFAIRS COMMITTEE

DATE: 2-28-85

(PLEASE PRINT)

| NAME | ADDRESS | WHO YOU REPRESENT |
|------------------------------|--------------------------------------|--|
| Marty Clemmons | Topeka, Kansas | Washburn University |
| Deb Allen | Topeka | " " |
| Julie Leblanc | Topeka, KS | " " |
| Kayce Spencer | Topeka, KS. | " " |
| RICK HENDERSON | Berryton, KS | W.U. |
| Linda Deperbrock | Overland Park KS | KSNA / |
| Ruth Harrell | Kansas City | KSNA |
| Rita Deeds, RN | Little River, KS. | Hospital Dist. #1 of Rice Co. |
| Maria Leblanc | Parsons, KS. | LCC, Parsons, KS. |
| Damera Baldwin R | 114 N 2 nd Burlington, KS | Coffey Co Hosp. / KSNA Dist #11 |
| Sharon Slater RN | Yates Center KS | Coffey Co. Hosp. - KSNA |
| Diana Thomsen R | Hartford, Ko. | Coffey Co. Hosp. - KSNA |
| D. Faulk | 5953 Christina Topeka | Stormont-Unit Student Nurses |
| Nancy Kruse | 2101 Turbury Town Rd - Topeka | Stormont-Unit School of Nursing ^{SWANS} |
| Angela Deperbrock | Topeka, KS. | " " |
| Jandi Freeman | Topeka KS | " " |
| Kathy Wedel | Lyons, Kansas | Bethel College |
| Julie Baughman | Newton, Kansas | Bethel College |
| Karla Stauffer | Newton | Bethel College |
| Peggy J. Brown | Hillsboro | Bethel College |
| Sgt. BILL JACOBS | TOPEKA | KANSAS HIGHWAY PATROL |
| Evelyn Mathews | Newton | KSNA / United Meth. Church |
| MAUREEN WEDDEL | HALSTEAD | KSNA |
| Carolee Newfeld | Hillsboro | KSNA |
| Jeanne Gray | Halstead | KSNA Dist #4 |

GUEST LIST

FEDERAL & STATE AFFAIRS COMMITTEE

DATE: _____

(PLEASE PRINT)

| NAME | ADDRESS | WHO YOU REPRESENT |
|---------------------------|----------------------|---------------------------------|
| Eggleston | Topeka | Stormont-Vail |
| Jamie M. Stuewe | Topeka | SVSN |
| Maia A. Asher | Ozark, Ks 66070 | SVSN |
| Stephanie Lyone Christian | Mayetta Kansas 66509 | SVSN |
| Elizabeth Plummer, RN | Lyons, Ks. 67554 | Rice Co. Hosp. Dist #1 |
| Jackie Nactonick | Topeka | SVSN |
| Sylva Wullmeier | Lawrence, Ks | SUSN |
| Rosalee Deaver | Topeka | SVSN |
| Bonnie Morris | Topeka | SVSN |
| Symidyett | Kansas City | KU Med Center School of Nurs. |
| Heather Botkin | Blue Rapids, Ks | " " " " " " |
| Manic Housh RN | Sioux Falls Ks 66534 | KSNA, Dist #1 |
| Karen Johnson SW | To Neodesha Ks 66757 | LCC |
| Jacque Switlik | Parsons, Ks | LCC SN |
| Kathy Gifford | Brenola, Ks | LCC SW |
| LEAGENE Newis | Lawrence, Ks | DECCA |
| Juice Seal | Lawrence | Ks. ASAP |
| Rose Dussman | Topeka | Stormont-Vail School of Nursing |
| Terri Kirby | Topeka | Stormont-Vail School of Nursing |
| Donna M. Stanley | TOPEKA | WASHBURN UNIVERSITY |
| Stinda Funk | Topeka | Washington U. Nursing |
| Donna Masten | Topeka | Washington University - Neg. |
| Kenee VandeVeldde | Topeka | " " |
| Kayla Silcox | Topeka | " " |
| Cheryl Thomas | Topeka | " " |
| Faith Jones | Topeka | " " |

Motion papers

PROPOSED AMENDMENT TO SECTION 3

(b) (c) If a law enforcement officer requests ~~the--arrested~~ a person to submit to a chemical test of blood under this section, the withdrawal of blood at the direction of the officer may be performed only by: (1) a person licensed to practice medicine and surgery or a person acting under the supervision of any such licensed person; (2) a registered nurse or a licensed practical nurse; or (3) any qualified medical technician. No person authorized by this subsection to withdraw blood, nor any person assisting in the performance of a blood alcohol test or any hospital where blood is withdrawn or tested that has been directed by any law enforcement officer to withdraw or test blood shall be liable in any civil or criminal action when the act is performed in a reasonable manner according to generally accepted medical practices in the community where performed.

(d) If a law enforcement officer requests a person to submit to a test of urine under this section, the collection of the urine sample shall be supervised by persons of the same sex as the person being tested and shall be conducted out of the view of any person other than the persons supervising the collection of the sample and the person being tested, unless the right to privacy is waived by the person being tested.

(e) No law enforcement officer who is acting pursuant to in accordance with this section shall be liable in any civil or criminal proceeding involving the action.

2/28/85
Attach

MEMORANDUM

February 28, 1985

TO: Representative Robert H. Miller, Chairman
FROM: Kansas Legislative Research Department
RE: The Kansas Private Club Act

Background

On November 2, 1948, the people of Kansas voted to amend the Kansas Constitution to allow the Legislature to regulate, license, and tax the manufacture and sale of intoxicating liquors in the state. The constitutional amendment also declared that "the open saloon shall be and is hereby forever prohibited." This amendment remains the law in Kansas today. Following the approval of the constitutional provision in 1948, the Legislature passed, in 1949, a comprehensive scheme for the control of liquor known as the Kansas Liquor Control Act, now codified at K.S.A. 41-101 et seq. This Act provides for the regulation of all phases and the control of manufacturing, distribution, sale, traffic, and consumption of alcoholic liquor in the state. As originally enacted, the Act not only prohibited the sale of alcoholic liquor by the drink at any place public or private (41-803), but also made it illegal to "consume alcoholic liquor" in "places to which the general public has access" (41-719).

During the years that followed the enactment of the Liquor Control Act, enforcement of these two prohibitions was burdened by the rapid growth of so-called "private clubs," which were in reality subterfuges conceived to dispense alcoholic liquor to members by the individual drink. The Legislature responded to this law enforcement problem by enacting the Private Club Act in 1965. The express purpose of the Private Club Act was to define and regulate those places where alcoholic liquor might legally be consumed in the state. The consumption of liquor on the premises of such clubs is deemed to be consumption in a place to which the general public has no access. Under the Act, the Director of Alcoholic Beverage Control can issue licenses to class A clubs (those which are not operated for profit) and to class B clubs (those which are operated for profit). The first licenses were issued on July 31, 1965. The consumption of liquor by the drink is authorized by the Act (41-2602) in four places which are specified: (1) upon private property by those occupying the private property as owner or as the lessee

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ATTACH 3

of the owner and by their guests where no charge is made by the owner or lessee for the alcoholic liquor served; (2) at a class A or class B club licensed under the Act; (3) in a lodging room of a hotel, motel, or boarding house by the occupant or guests, provided the occupant is not engaged in the sale of liquor; and (4) in a private dining room of a hotel, motel, or restaurant rented for a special occasion for a private party, where there is no sale of liquor. For other places where consumption of liquor is expressly permitted see K.S.A. 41-719. The Private Club Act was upheld in the Kansas Supreme Court in Tri-State Hotel Co. v. Londerholm, 195 Kan. 748 (1965).

In 1970, the people of Kansas were given the opportunity to amend the Kansas Constitution to exclude the open saloon prohibition. The proposition was rejected on November 3, 1970, by a narrow margin of 346,423 votes against the amendment and 335,094 votes in favor of the amendment. The Private Club Act has been amended over the years but no changes of major significance occurred in the law until 1978 when the Legislature amended the Act to authorize the sale of liquor in conjunction with the serving of food by licensed food service establishments, so-called "restaurant-clubs" which were to require no memberships, dues, or waiting periods. (A detailed discussion of the issues raised by the 1978 amendments can be found in Barkley Clark's article, "Wyatt Earp and the Winelist: Is a Restaurant an 'Open Saloon'," 47 J.B.A.K. 63.) The validity of the new law was soon challenged in the Kansas Supreme Court by the Attorney General. Notwithstanding the pending litigation, 45 counties were submitting the question concerning the licensing of the new "restaurant-clubs" to the voters of the counties at the 1978 general election as prescribed in the county-option provisions of the law. The proposition of having restaurant-clubs was approved in ten counties, with a total statewide vote of 315,208 in favor and 211,963 against the licensing of restaurant-clubs. However, on December 5, 1978 the Supreme Court ruled that the new amendments were an attempt by the Legislature to authorize the establishment of an "open saloon" in violation of the Kansas Constitution and that the Act was void (State ex rel. Schneider v. Kennedy, 225 Kan. 13).

The 1979 Legislature responded to the Court's decision through the enactment of S.B. 467 which authorized both class A and class B clubs to sell liquor by the drink to their members and guests. The bill eliminated liquor pools and liquor pool procedures which had previously been the mechanism that many private clubs used to dispense liquor. The bill permitted class A clubs to continue to enter into reciprocal agreements with each other and extended the reciprocal agreement provisions to any

class B club having gross receipts greater than 50 percent from the sale of food. Under these amendments, any member of a class B club may have access to any other class B club which has signed a reciprocal agreement with the member's club and which meets the 50 percent food sales requirement. The Court, in Schneider, had held that an "open saloon" is any establishment open to the public, without discrimination, where alcoholic beverages are dispensed or sold and served for consumption on the premises. Arguably, class A and class B clubs under the 1979 amendments are not open saloons because they are not open to the public, but instead are open only to the club's members and their guests. The 1979 amendments have not been challenged in court.

Types of Clubs

The Private Club Act authorizes the licensure of two types of private clubs: class A clubs and class B clubs. Class A clubs (41-2601) must be operated by a corporation, partnership, business trust, or association for the exclusive use of the associates (members), their families, and invited and accompanied guests, and must not be operated for profit other than such as would accrue to the entire membership. Licensees must be bona fide nonprofit social, fraternal, or war veterans clubs and must meet the same criteria and standards used to determine the right to exemption from federal income taxes pursuant to Section 501 (c)(7), (8), and (19) of the Internal Revenue Code. Class A clubs have always been allowed to grant reciprocal status to members.

Class B clubs are operated for profit by a corporation, partnership, or individual and are subject to different requirements than class A clubs. Class B clubs are required to screen the applicants for good moral character. In addition, no membership may be granted within 10 days of the application therefor, and each membership must be renewable annually upon payment of an annual fee of at least \$10. The Legislature has granted two exemptions to the "10 dollar/10 day" requirement which allow certain types of class B clubs to grant memberships immediately to members. These two exemptions are for: (1) class B clubs located in hotels and motels which may grant memberships to guests staying at the hotel or motel for the period that they are guests; and (2) class B clubs located on property owned by a municipal airport authority which may grant memberships to air travelers holding an airline ticket for the day the ticket is valid.

The 1979 Legislature enacted legislation which extended the privilege of reciprocal memberships to those class B clubs which are licensed food service establishments and which, as determined by the Director of Alcoholic Beverage Control, derive not less than 50 percent of gross receipts from the sale of food for consumption on the club premises. The reciprocal agreement allows a member of one club to enter any other club with which the member's club has signed a reciprocal agreement. Currently, some 353 clubs have entered into reciprocal agreements with other class B clubs.

On March 1, 1966, there were a total of 467 private clubs in Kansas. As of January 31, 1985, there were 397 class A clubs and 919 class B clubs, for a total of 1,316 clubs. There are only four counties in the state which do not have private clubs: Chase, Haskell, Hodgeman, and Wallace.

License Fees and Taxes

An applicant for a class A club license must pay an annual license fee of \$250; an applicant for a class B club license must pay an annual license fee of \$1,000. In addition, certain localities are authorized to require payment of an annual license fee of not less than \$100 nor more than \$250 for clubs. All moneys received by the Director of ABC from club license fees is remitted to the State Treasurer and 50 percent of the total is credited to the State General Fund. The remaining 50 percent is credited to the Alcoholism Treatment Fund. Moneys in the Alcoholism Treatment Fund are to be utilized by the Secretary of Social and Rehabilitation Services to fund Alcohol and Drug Abuse Services. Receipts to the Alcoholism Treatment Fund have averaged about \$500,000 annually.

Clubs are also required to collect a 10 percent tax on the gross receipts from the sale of alcoholic liquor in private clubs. Collections in fiscal year 1984 totaled \$8.8 million. The private club liquor tax is distributed 25 percent to the State General Fund and 75 percent to the Local Alcoholic Liquor Fund. Money is returned from the Local Alcoholic Liquor Fund to the counties and cities from which the tax was collected, i.e., those with private clubs. Locally, the funds must be allocated one-third to the general fund, one-third to the parks and recreation fund, and one-third to a special alcohol and drug programs fund, except in cities with less than 10,000 population where the latter one-third goes to the county.

Operation of Private Clubs

There are a number of restrictions on the operation of private clubs, both statutory and by regulation. The hours of operation for clubs are set by statute: clubs may allow the consumption of liquor on the premises from 9:00 a.m. to 3:00 a.m. on weekdays and from 12:00 noon to 3:00 a.m. on Sundays. Localities may further restrict these hours. Clubs may not permit the consumption of liquor or cereal malt beverage by a minor nor may they employ any person under the age of 21 in connection with the mixing or serving of alcoholic liquor. As noted above, class B clubs must screen applicants for good moral character and require the payment of at least a \$10 fee and enforce a ten-day waiting period. Club licenses may be suspended or revoked for a number of violations set out in the Private Club Act, including violations of any laws pertaining to alcoholic liquors (including D.U.I.), gambling, or denial of civil rights under the Kansas Acts Against Discrimination.