

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. ~~xxxx~~ on March 4, 1985 in room 254-E of the Capitol.

All members were present. ~~except~~

## Committee staff present:

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

## Conferees appearing before the committee:

The Minutes of February 26, 1985, were distributed to the Committee. Senator Morris moved that the Minutes be approved. 2d by Senator Strick. Motion carried.

The Chairman called the Committee's attention to a proposal that Senator Vidricksen wants to consider. It is 5 RS 1086, Attachment #1, of these Minutes. Senator Vidricksen stated that it concerns revamping the advisory board on food service and lodging. He said it changes the appointment process. Senator Morris moved that the proposed legislation be introduced as a Committee bill. 2d by Senator Vidricksen. Motion carried.

SB46 - Concerning drinking age and other regulation of alcoholic beverages.

The Chairman called the Committee's attention to SB46 which was in front of them. Copies of the Subcommittee Report, dated March 1, 1985, were also distributed. It is Attachment #2, of these Minutes. The Chairman also distributed copies of Memoranda from R.E. "Tuck" Duncan, which are Attachment #3 of these Minutes. Senator Vidrickson, Chairman of the Subcommittee on SB46, said that the charge to the Subcommittee was that the Subcommittee look at the bill and make recommendations back to the entire Senate Committee on Federal and State Affairs. He said that this is the Committee's Report, and if there are any questions he will be happy to answer them. Senator Reilly thanked the Subcommittee, which was composed of Chairman Vidricksen and Members Anderson and Hoferer. Senator Vidricksen said the fiscal note on SB46 Was \$427,000. There was discussion by the Committee, following which Senator Arasmith moved the acceptance of the Subcommittee Report. 2d by Senator Martin. Motion carried. Subcommittee report is adopted.

Senator Reilly stated that he would distribute copies of an article concerning a referendum which the Colorado Legislature has placed on the ballot to allow the people to decide the issue of raising the legal drinking age. Attachment #4.

Senator Vidricksen stated that the requested Attorney General's opinion should be available on Tuesday or Wednesday.

The meeting was adjourned.

*Unrevised*  
*3/4/85*  
*Attachment #1*

SENATE BILL NO. \_\_\_\_\_

By

AN ACT establishing the advisory committee on food service and lodging; providing for the duties thereof; and repealing K.S.A. 75-5629.

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

Section 1. (a) There is hereby established an advisory committee on food service and lodging, which shall consult with and advise the secretary of health and environment on matters relating to food service and lodging standards, the licensing and regulation of persons and premises subject to such standards, the administration of the food service and lodging act and on such other matters as may be designated by the secretary of health and environment. The advisory committee shall consist of seven members as follows: One member who is engaged in the food service business to be appointed by the president of the senate; one member who is engaged in the motel or hotel business to be appointed by the minority leader of the senate; one member who is engaged in the food service business to be appointed by the speaker of the house of representatives; one member who is engaged in the food service business operated in connection with a grocery store to be appointed by the minority leader of the house of representatives; one member who is engaged in the vending machine business and two members who are representative of the general public, to be appointed by the governor.

(b) Members shall be appointed for terms of four years and until a successor is appointed and qualified. Upon the expiration of any member's term of office, the appointing authority which appointed that member shall appoint a successor of like qualifications for a term of four years. Whenever a vacancy occurs in the membership of the advisory committee for

any other reason, the appointing authority which appointed that member shall appoint a successor of like qualifications for the remainder of the unexpired term.

(c) The advisory committee shall elect annually a chairperson and vice-chairperson from its own membership. Regular meetings of the advisory committee shall be held quarterly at times and places designated by the advisory committee, and special meetings of the advisory committee may be called by the chairperson or by a majority of the members of the advisory committee. No action may be taken by the advisory committee without the affirmative vote of at least four members.

(d) Meetings of the advisory committee shall be opened to the public. Notice of every meeting of the advisory committee shall be given to each member of the advisory committee by the secretary of health and environment, and the secretary shall provide to the advisory committee with all necessary clerical services. The advisory committee shall keep records and minutes of its business and of its official actions, and such records and minutes shall be filed with the secretary of health and environment and open to public inspection.

(e) All vouchers for expenditures and all payrolls of the advisory committee shall be approved by the chairperson of the advisory committee and by the secretary of health and environment or a person or persons designated by the secretary. Members of the advisory committee attending meetings of the advisory committee, or attending a subcommittee meeting thereof authorized by such committee, shall be paid compensation, subsistence allowances, mileage and other expenses as provided in K.S.A. 75-3223 and amendments thereto.

(f) The advisory committee on food service and lodging established under this section shall be the successor in every way to the powers, duties and functions of the advisory committee on food service and lodging standards in which the same were vested prior to the effective date of this act. Whenever the advisory committee on food service and lodging standards, or

words of like effect, is referred to or designated by statute, contract or other document, such reference shall be deemed to apply to the advisory committee on food service and lodging.

Sec. 2. K.S.A. 75-5629 is hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its publication in the statute book.



Attachment #23  
3/4/85

M E M O R A N D U M

March 1, 1985

TO: Chairman and Members, SB 46 Subcommittee  
Chairman and Members, Senate Federal and State Affairs  
Committee

FROM: R.E. "Tuck" Duncan  
Executive Secretary, KSWA

RE: Subcommittee Report Regarding Senate Bill 46

In anticipation of the Subcommittee's report to the Federal and State Affairs Committee of the Senate regarding Senate Bill 46, the Kansas Wine and Spirits Wholesalers Association would like to offer the following observations. Previously, the Association has provided to this Committee a memorandum dated January 23, 1985 regarding legislative initiatives proposed in conjunction with the issue of raising the drinking age for cereal malt beverages in Kansas. I have attached hereto, for convenience, a copy of that memorandum, and will not repeat all the matters addressed therein. However, in light of the recommendations of the Subcommittee to the full Committee on these issues, some additional commentary is appropriate.

The Subcommittee addressed seven basic subject areas, and I will review those in the order in which the Subcommittee addressed those issues:

1. Raising of age of consumption for cereal malt beverages to 21: Traditionally, the KSWA has taken no position regarding the question of raising the drinking age to 21 for cereal malt beverages, and we take no position on that question alone. The Subcommittee has recommended that the age be raised in one step effective September 1, 1986, and we leave to you the advisability of that action.

2. Redefinition of all beer as cereal malt beverages: The Subcommittee has indicated that it has no recommendation inasmuch as the office of Attorney General has not rendered its opinion on our contention that the proposed legislation is unconstitutional if it excludes from the definition of "alcoholic liquor" a beverage that is in fact intoxicating and inasmuch as which was understood to be alcoholic by the people of Kansas when they ratified the open saloon prohibition in the Kansas constitution and when the amendments allow the sale of that beverage to the general public for consumption on the premises where sold. We

concur that receipt of the Attorney General's opinion is most important, and would hope that the full Committee would take no action until such time as the Attorney General has spoken.

3. Wholesaler Licensing: The Subcommittee has made no recommendation on this proposal, and apparently concluded that the issues of redefinition of all beer as cereal malt beverage and wholesaler licensing need to be addressed together. However, if the Committee will refer to the arguments we have set forth on this issue on page 2 of the attached memorandum, there are many reasons why the different segments of the industry should not be "merged". The differences in regulation, operations, economic impacts on the market, and the potentially adverse effects to the retail tier, collectively support the maintenance of the wholesaling system in its current posture.

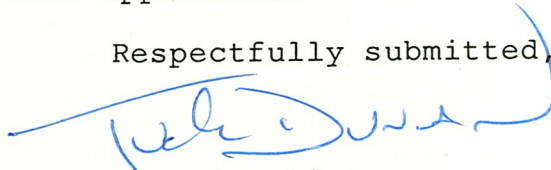
4. Taxation: The Subcommittee indicates that without action on the previous two items, there is no necessity to make a recommendation on the equalization of tax on all retail sales of cereal malt beverage and beer to consumers. One item not addressed by the Subcommittee would be the fiscal note to municipalities should such proposal be adopted. However, the Subcommittee has recommended that the drink tax of 10% collected in private clubs be applied to the sale of cereal malt beverages in private clubs. We agree that there should be parity in taxation at all levels; but do oppose the Subcommittee's recommendation that the funds collected therefrom be earmarked for specific programs. Monies so collected should be deposited to the state general fund and then appropriated based upon need and priority.

5. Days of sales, hours of operations, sales by minors: Previously we have indicated that there may be reason for the legislature to consider uniformity in this area. The Subcommittee has recommended that persons between the ages of 18 and 21 be allowed to sell cereal malt beverages in establishments which sell more than 50% food. This is solely a legislative decision and we have no formal position on this matter. The Subcommittee has recommended several major changes in sales on Sundays and election days. The Subcommittee recommends that beer be available for sale on Sundays after 1:00 P.M. in taverns, clubs, grocery stores, and retail liquor stores. Alternatively, the Subcommittee has recommended that there be no sales of any cereal malt beverage products or alcoholic liquors on election days at any establishment until the poles close. With regard to the Sunday sales of beer in retail liquor stores, we respectfully suggest that if uniformity is to be the guide, then there is no rational reason for denying consumers the opportunity to purchase the broad range of products available in retail liquor stores on Sundays, if indeed they may enter a retail liquor store that day to purchase Kansas strong beer. Further, the Subcommittee has recommended that taverns be allowed to extend their hours until 1:30 A.M. of the Attorney General's opinion is most important, and would hope that the full Committee would take no action until such time as the Attorney General has spoken.

on Friday and Saturday, but that the licensed private club be closed at 1:30 A.M. instead of 3:00 A.M. as is current law. This too, is a matter of legislative policy upon which we have no position.

In summary: On pages 5 and 6 of the attached memorandum we have addressed questions relating to enforcement and made certain general observations. We believe that the matters addressed therein are still pertinent to the current discussions, and would ask that you review them as well. We appreciate the opportunity to have provided the Committee with additional comments on this very important subject area and would be pleased to discuss all of these items with you at any time. Your attention to and consideration to these matters is most appreciated.

Respectfully submitted,



R.E. "Tuck" Duncan  
Executive Secretary  
Kansas Wine and Spirits Whole-  
salers Association



M E M O R A N D U M  
JANUARY 23, 1985

TO: Senate Federal and State Affairs Committee

From: R.E. "Tuck" Duncan, Executive Secretary  
Kansas Wine and Spirits Wholesalers Association

RE: Legislative initiatives proposed in conjunction with the issue of raising the drinking age for cereal malt beverages to 21 in Kansas. Senate Bill 46.

The purpose of this memorandum is to address certain legislative initiatives that have been proposed for consideration in conjunction with the question of whether or not Kansas should enact a 21 year old drinking age for consumption of cereal malt beverages.

As you are aware, 21 is the current age for consumption of strong beer, spirits and wines in Kansas. Traditionally, the Kansas Wine and Spirits Association has taken no position regarding the question of raising the drinking age to 21 for cereal malt beverages (beer of 3.2% alcohol or less by weight). Again we take no position on that question alone. The members of the association do not sell cereal malt beverages, and thus leave to you the advisability of that action.

Other proposals, however, have been made in conjunction with the prospect of such a raise in the drinking age which will effect all other segments of the alcoholic beverage distribution industry, retail industry and private club industry. For the reasons as set forth herein, many of these proposals are not in the best interests of Kansas, her consumers, and the orderly market which has developed over years of "fine tuning" the laws, rules and regulations which govern alcoholic beverages.

These proposals include (1) redefining all beer as cereal malt beverages, (2) changing the scope of licenses for wholesalers, (3) taxation, (4) days of sales and hours of operation, and (5) enforcement activities.

**REDEFINITION OF ALL BEER AS CEREAL MALT BEVERAGES:** This proposal is legally unconstitutional. When the legislature enacted the cereal malt beverage laws in 1937 the Kansas Constitution prohibited the sale of "intoxicating liquors". CMB was determined in 1937 not to be an intoxicant. All other products since the constitutional amendment to allow the sale of



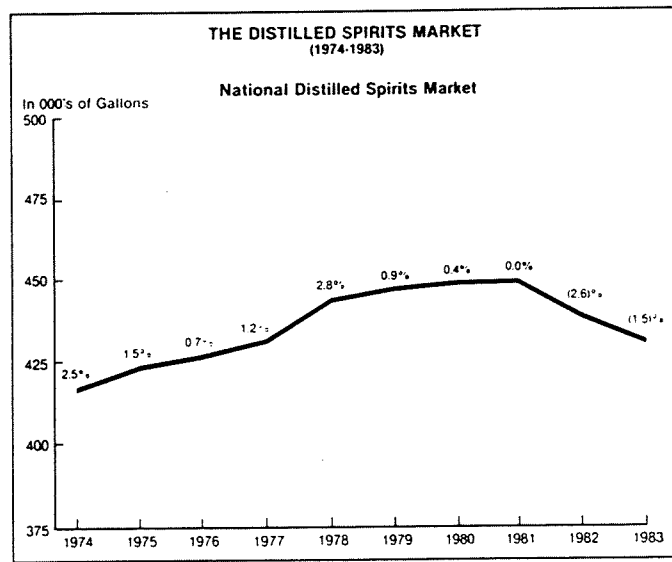
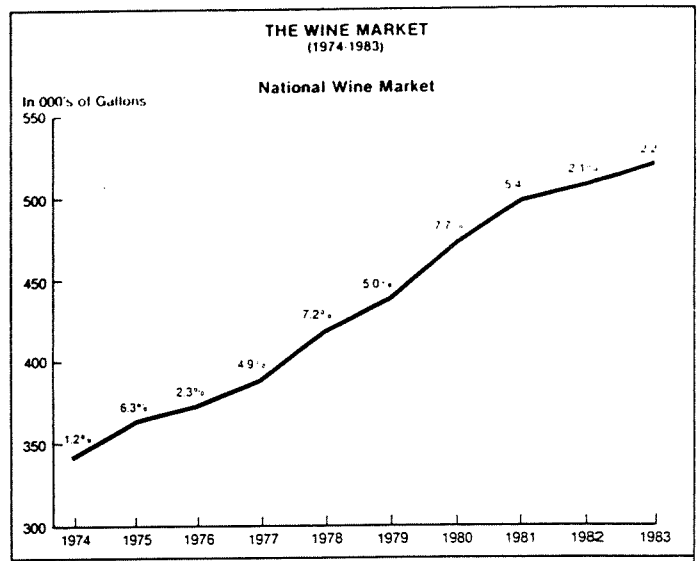
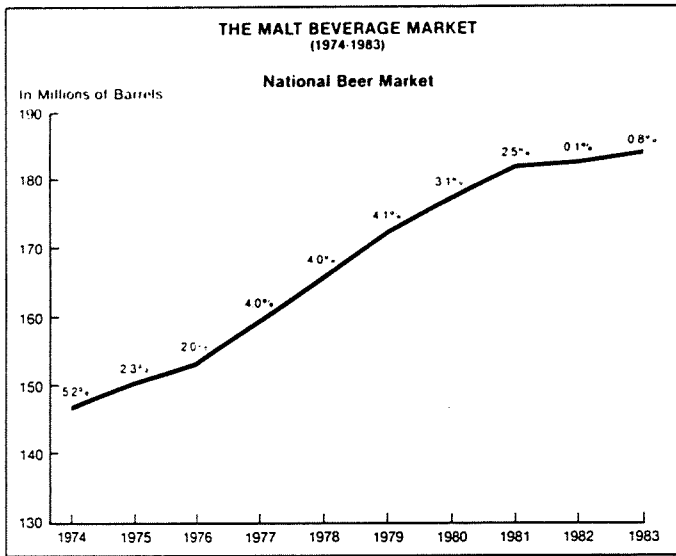
intoxicating liquors (including strong beer) are by definition intoxicants. Therefore, proposed legislation is unconstitutional if it excludes from the definition of "alcoholic liquor" a beverage that is in fact intoxicating and which was understood to be alcoholic by the people of Kansas when they ratified the open saloon prohibition in the Kansas Constitution and when the amendments allow the sale of that beverage to the general public for consumption on the premises where sold.

**WHOLESALE LICENSING:** It is proposed that cereal malt beverage/beer distributors be allowed to sell wine and spirits and conversely that wine/spirits wholesalers be allowed to sell cereal malt beverages. These industries should not be "merged." As a matter of public policy these industries are regulated separately because of the nature of the products they sell. The distribution of cereal malt beverages and spirits are not compatible in a single operation, and may cause a disruption to the orderly market. Cereal Malt Beverages have traditionally been sold "off the truck" while spirits and wine products are "pre-sold." These different practices require different operational methods. Further, cereal malt beverages are sold directly to private clubs, while wine and spirits are not. The Kansas Retail Liquor Dealer has been the source of supply for the private club (acting as a wholesaler under federal law) and that should remain. The market territories are different, and cannot be easily consolidated. While it may be true that some spirits wholesalers sell certain beers (less than 2% of the beer market), these are primarily imports which are "pre-sold" and cannot be sold through C.M.B. retail outlets. Finally, this proposed change will aggravate the pale and stagnant economic condition of spirits and wine wholesalers.

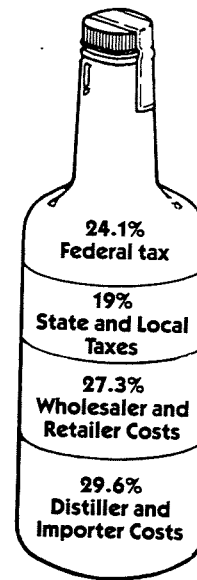
The charts which follow reflect that while the products that CMB/Beer wholesalers have sold have increased in sales, the products that spirits and wine wholesalers sell have remained constant or declined. The "merging" of the two different industries will reduce existing market opportunities for wine and spirits wholesalers to their detriment only to the benefit of others at a time when taxes on spirits will increase by \$2.00 a proof gal. and when sales are anticipated to further decrease. A review of state tax collections in recent fiscal years will confirm this contention.

Source: Kansas Tax Facts, 1984 Supplement  
 [Excerpt] TABLE II - STATE TAX REVENUE  
In Thousands

	FY1984	FY1983	FY1982
Cereal Malt Beverage	5,125	4,979	5,077
Liquor Gallonage	12,173	12,288	12,837



**TAXATION:** Recently the Kansas Legislature increased enforcement taxes on products sold in retail liquor stores from 4% to 8%, and as referenced earlier, the Congress has enacted a \$2.00 per proof gal. tax increase on spirits effective October 1, 1985. Both of these taxes have or will increase the price of spirits products on the shelf. No major revisions in the tax structure should be made until the economic effect of the current increases is determined. To take any action in this area is premature. Any review of taxes should be made with an eye toward parity of taxation among all types of products. Such a review cannot be accomplished absent an in-dept economic study, which is not now available. Retail excise taxes may have reached their point of diminished returns when we consider that the retail trade experienced a reduction in sales from FY1983 of \$222.8 million to \$206.5 million in FY1984 for a reduction of \$16.3 million. [Source: ABC Sales and Revenue Report].



**ESTIMATED EFFECT OF \$2.00 FET INCREASE ON SELECTED BRAND RETAIL PRICES**  
(750 ml. bottle size)

Brand	Estimated Current Retail Price	Estimated Retail Price with FET Increase	Estimated Changes Percent
BACARDI SILVER	\$ 6.60	\$ 7.19	8.9%
SEAGRAM'S 7 CROWN	6.79	7.39	8.8
SMIRNOFF	6.49	7.05	9.1
JOHNNIE WALKER BLACK	15.70	16.55	5.4
BAILEYS	12.99	13.19	1.5
CANADIAN MIST	6.19	6.69	8.1
JACK DANIEL'S BLACK	9.65	10.29	6.6
SEAGRAM'S V.O.	8.99	9.55	6.2
DEWAR'S	10.76	11.35	5.5
GRAND MARNIER	21.25	21.69	2.1
KAHLUA	12.21	12.60	3.2
STOLICHNAYA	9.99	10.55	5.6
HENNESSY V.S.	15.87	16.39	3.1
KAMCHATKA	\$ 4.57	\$ 5.19	13.6%

Source: IMPACT DATABANK estimates © 1984

**DAYS OF SALES, HOURS OF OPERATIONS, SALES BY MINORS:** The question of days of sales, and hours of operations is a policy determination for the legislature upon which we have no opinion. There may be reason for the legislature to consider uniformity in this area.



**ENFORCEMENT:** The legislative proposals set forth above will have an effect on enforcement of the finely balanced system Kansas now has under the three-tier system of distribution. Any change means increased enforcement to ensure an orderly transition. Enforcement priorities should be established, such as (1) improving collection of existing taxes, (2) ensuring that licensing requirements are met, and (3) preventing sales to minors. When the administrative agencies and the legislature are satisfied that these tasks are being accomplished with the existing available resources, then new tasks might be assigned. We support the Alcoholic Beverage Control's requests for increased manpower, including an education officer, and improved conditions of employment for agents and other personnel. When those issues have been addressed, then the legislature will be postured to determine whether the additional burdens that will accompany the major structural changes that have been proposed can be handled adequately.

**GENERAL OBSERVATIONS:** You may be told that the structural changes that are being proposed will allow for efficiencies in the wholesale houses. There are no studies before you to support this contention. Whether you sell 1000 cases of two products (500 each) or 1000 cases of a single product, you still need the same square footage to store all 1000 cases, the same truck space to transport those 1000 cases, and the personnel to lift, sort, and deliver those orders for the 1000 cases. The concern seems to be the handling of 2 "labels" and yet spirits wholesalers may handle thousands of "labels." The concepts of wanting to reduce types of products on one hand, and yet increase new products lines on the other are incongruous.

Additionally, we understand that a change in the age is alledged to affect 300,000 persons between 18 and 21. The information we have is that 130,000 persons will be effected. That is as of January 1984 the number of persons in Kansas who could be potentially be excluded from the legal drinking age population are 130,000, not 300,000. [Source: The Liquor Handbook, as reported in Liquor Store Magazine, September 1984.]

Are all these major structural changes necessary because of the desire to reduce consumption by 130,000 18 to 21 year olds? Do we truly appreciate the total economic effect, the potential to further increase consumer prices, as well as the potential to

disrupt the orderly market that Kansas has developed over the past 35 years? We would suggest that these changes are not necessary, and perhaps are contrary to the motivation for raising the drinking age. Kansas liquor retailers, club operators and wine and spirit wholesalers will be adversely effected by these proposals, and they are not required in order to increase the drinking age, if that be the decision of the legislature.

In addition to the foregoing, none of these changes should be made without consideration of questions affecting the state's advertising regulations and trade practice regulations. These are matters which will be effected, and should be addressed by the Alcoholic Beverage Control before structural modifications are seriously considered.

**In summary,** what has been proposed constitutes as great a change as that of the constitutional amendment to allow "liquor-by-the-drink." We sincerely believe that of the two topics, the Legislature should address the latter question first, unencumbered by a variety of other schemes for overhauling the alcoholic beverage distribution industry in Kansas.

We will be pleased to discuss all of these matters with you at anytime. Your attention to and consideration of these matters is most appreciated.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Tuck Duncan", with a long horizontal stroke extending to the left.

R.E. "Tuck" Duncan  
Executive Secretary  
Kansas Wine and Spirits  
Wholesalers Association

\* \* \*

## State voters to decide on legal drinking age

DENVER (UPI)—Colorado voters would be asked to decide whether the state should increase its minimum drinking age from 18 to 21 under a measure approved Wednesday by a legislative committee.

The House Transportation Committee voted 5-4 in favor of a proposal by Rep. Bill Owens, R-Aurora, to place the question on the ballot in November 1986. The measure now goes to the House Appropriations Committee.

A Senate committee earlier this year killed a separate proposal that would have boosted the drinking age without action by the voters.

Owens' bill, if approved by the Legislature and then at the polls, would eliminate the state's 3.2 beer law, which allows people between 18 and 21 years old to buy beer with a slightly lower alcohol content than most brews.

Owens and an alcohol researcher for the state Health Department, Glenn Kataoka, both told the House panel there was no significant difference between 3.2 beer and so-called regular beer in terms of alcohol content.

"This is simply a way to reduce drinking in the age group that is most vulnerable to drinking," Owens said. "I'm convinced

See *Drinking age* page 17

### *Drinking age*

without a doubt that it will save lives."

Owens said he generally opposes asking the public to decide important issues, but he said concerns over a threatened loss of federal highway funds unless the state raises its drinking age have clouded the issue in the Legislature.

"This is an important issue and it is one that can and should be decided by the voters," he said. "...We're dealing with taxpayers and tax dollars, and I think they should have a say."

Committee members were given the same statistics on drunk-driving deaths that have been offered at numerous previous hearings on the drinking age, and some again questioned their validity.

The panel also heard testimony in support of the measure from Frances Taylor, state coordinator of Mothers Against Drunk Driving, Beverly Kinard of the Colorado Federation of Parents and Dan Hopkins of the Colorado AAA.

One Denver-area mother, Hildrud Jenkins, told the committee that when she dropped off her daughter for her freshman year at the University of Colorado, "I had a feeling I'd left my child in a bar rather than a dormitory."

"We have a deep drinking problem at our colleges and universities," she said. "I realize raising the drinking age is not a panacea...but we have to start somewhere."

*Attachment #4*