

Approved _____

Date

4/1/86

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./~~pm~~ on March 27, 1986 in room 254-E of the Capitol.

All members were present ~~except~~

Committee staff present:

J. Russell Mills, Jr., Legislative Research
Emalene Correll, Legislative Research
Mary Torrence, Assistant Revisor of Statutes
June Windscheffel, Secretary to the Committee

Conferees appearing before the committee:

Christopher S. Edmonds, Tavern League of Kansas
John Lamb, Director, Alcoholic Beverage Control
The Reverend Richard Taylor, Kansans for Life at Its Best
Neal Whitaker (available to answer questions), Kansas Beer Wholesalers Association

HB2813 - concerning alcoholic beverages; prohibiting certain sales practices and providing penalties

Christopher Edmonds of the Tavern League of Kansas was the first conferee to be introduced by the Chairman. Mr. Edmonds distributed copies of HB2813 in a balloon form, which expressed the proposed amendments his organization supports. (Attachment #1) He explained it to the Committee.

Mr. John Lamb, Director, Alcoholic Beverage Control, was the next conferee. Mr. Lamb said they had been asked by the Chairman of the House Committee to draft some amendments that they felt would be clean-up in nature, and the Alcoholic Beverage Control attempted to do that in the current bill. Mr. Lamb explained various problems encountered in law enforcement and stated that this proposed legislation should help alleviate those problems.

Among other things, Mr. Lamb stated that the word "knowingly" which the Tavern League had wanted inserted in line 45, would be difficult to prove. He said the promotion of food has been a positive impact on the intent of liquor legislation. The vast majority of the clubs and taverns are trying to abide. There are individuals who comply and those who do not comply. It is really a handful of people who are causing a lot of other people potential problems in this kind of legislation. (Attachment 2)

Senator Morris, who was chairing the Committee temporarily, asked Mr. Lamb to look at the amendments suggested by Mr. Edmonds while the next speaker appeared.

The next conferee was Richard Taylor, of Kansans for Life at Its Best. He said that they support the concept of what was done a year ago to get rid of the problems of excessive consumption of alcoholic beverage consumption.

A member asked if the Liquor Review Commission is looking at this issue. Senator Morris said this will be looked at by the Subcommittee of On-Premise Consumption. He said to remember that there was to be a minimum of changes because those committees were meeting. Senator Morris said he thought this is one that was being made in cleaning up the "happy hour."

Senator Martin said he would propose the adoption of these amendments except for the word "knowingly" where it appears.

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room 254-E, Statehouse, at 11:00 a.m. ~~on~~ on March 27, 1986

There was discussion about posting the prices for drinks. Mr. Lamb said he thought the language on page 2 needs to say "available at any time to members...." So if someone wants to see what the posted price is it would take care of the posting requirement.

Senator Martin moved to amend his motion to strike "in a prominent place" and add the language "available upon request." (Language 64 through 66) The motion included reinserting the first part of the motion. 2d by Senator Arasmith. Motion adopted. It was pointed out that the Committee has changed the words on posted and has adopted the rest of the words suggested by Mr. Edmonds, except "knowingly."

Senator Martin moved that the bill be passed out favorably.

Chairman Reilly said he would like an opportunity to review the changes.

The Chairman said that the House has passed the capital punishment bill. He said that as the Committee would remember that last year he indicated he would not present the bill again this year, provided it was voted out of this Committee. It was voted out of Committee and voted on on the Floor of the Senate last year. The Chairman has visited with the Governor to see if it were a reconstructed bill if he would veto it. The Governor indicated that he would veto it. So, that being the case, the bill is in a different form. It is no longer the bill that was introduced in the House. It is similar to the one that was in this Committee last year. The Chairman asked the Committee if it was its desire to release the Chairman from the commitment he made. He wants to be fair. He said from what he has been told by the Governor he thinks it is a futile effort to debate the subject.

Senator Martin said from the standpoint of the Governor's position it appears he is not going to change. He said there are many other important issues to be debated in the Legislature. Senator Martin can see nothing but a waste of time for this Committee and for the Senate to consider it at this time. He said that obviously there will not be an overturn of the Governor's veto. So rather than go through the testimony and the fight on the floor he would prefer that the Committee look at this another year; and at that time there will be the opportunity to vote on it again.

Chairman Reilly asked if the Committee reflect on the matter and continue the discussion at a later time. Senator Anderson said the majority of the Committee does not want to deal with this issue. Senator Morris said it is the Legislature's job to propose debate and pass legislation, and it is the Governor's job to consider it and veto it if he chooses. Senator Vidricksen said there are other Committees to which the legislation could be sent. Senator Hoferer said she would be opposed to bringing it back up. The Chairman said he did make some commitments last year, and he does not want to go back on those. He said he understands what is the feeling of the Committee.

SB577 - consent to abortions performed on minors; defining crimes relating to abortion

The Chairman asked the Committee to turn its attention to SB577. The bill has been discussed before. It is still in Committee. There was an attempt to table it. In addition a Resolution has been introduced, also. Senator Martin moved that SB577 be passed out favorably. 2d by Senator Daniels. Discussion.

Senator Hoferer made a substitute motion which would involve amendments. The first motion was to delete the preamble to this bill, that is to strike all of Section 1. The other part would be on line 73 to strike the words "both parents" and make the requirement that it be the consent of one parent. She said the staff may have to look at some other areas where language referring

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to parents and guardians may need changes. Emalene Correll raised a question of venue of the court proceeding for consent. Senator Hoferer added to her motion to delete all before "for" in line 96 so that venue will not be limited. 2d by Senator Arasmith. Motion carried.

Senator Hoferer said that the age limit on SB577 is under age 18. She moved that on line 58 to delete "18" years and make it "16," to conform to other statutes dealing with consent to medical care (see section 11). 2d by Senator Walker. Motion carried.

Senator Ehrlich made the motion in line 46 the amendment that has been decided on by the Catholic Conference and Right to Life. The motion was on line 46 to strike the words "known to be pregnant" and insert "from the time of fertilization until live birth." The motion died for lack of a second.

Senator Martin moved that SB577 be recommended favorably as amended. 2d by Senator Daniels. Senator Strick made the substitute motion to table this bill and leave it in Committee as now amended. 2d by Senator Morris. Motion failed. The Chairman then referred back to the original motion. Motion carried. Senator Anderson voted "no."

The Minutes of the Meeting of March 26 were approved on a motion of Senator Arasmith, 2d by Senator Morris. Motion carried.

The meeting was adjourned at 12:10 p.m.

HOUSE BILL No. 2813

By Committee on Federal and State Affairs

1-31

0018 AN ACT concerning alcoholic beverages; prohibiting certain
0019 sales practices with respect thereto and providing penalties
0020 for violations; amending K.S.A. 1985 Supp. 41-2640 and 41-
0021 2722 and repealing the existing sections.

0022 *Be it enacted by the Legislature of the State of Kansas:*

0023 Section 1. K.S.A. 1985 Supp. 41-2640 is hereby amended to
0024 read as follows: 41-2640. (a) No club licensed pursuant to article
0025 26 of chapter 41 of the Kansas Statutes Annotated, or employee or
0026 agent of such a club, shall:

0027 (1) Offer or serve any free ~~drink~~ cereal malt beverage or
0028 alcoholic liquor in any form to any person;

0029 (2) *offer or serve to any person a drink at a price that is less*
0030 *than the acquisition cost of the drink to the licensee;*

0031 (3) *sell or serve more than two drinks or a pitcher or similar*
0032 *quantity of drinks to one person at one time or while there are*
0033 *unconsumed drinks in the person's possession;*

0034 (3)(4)(3) sell, offer to sell or serve to any person an unlimited
0035 number of drinks during any set period of time for a fixed price,
0036 except at private functions not open to the general club mem-
0037 bership;

0038 (4)(5)(4) ~~sell, offer to sell or serve any drink to any person on~~
0039 ~~any one day at any time at a price less than that charged all other~~
0040 ~~purchasers of drinks on that day during that week;~~

0041 (5)(6)(5) increase the volume of alcoholic liquor contained
0042 in a drink or the size of a drink of cereal malt beverage without
0043 increasing proportionately the price regularly charged for the
0044 drink on that day;

0045 (6)(7)(6) encourage or permit, on the licensed premises, any
0046 game or contest which involves drinking alcoholic liquor or

sell, offer to sell, or serve any drink to any person at any time at a price less than that charged all other purchasers of drinks on that day

knowingly

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Attachment 1

Attachment #1

0047 cereal malt beverage or the awarding of drinks as prizes; or
0048 ~~(7) (8)~~ (7) advertise or promote in any way, whether on or off
0049 the licensed premises, any of the practices prohibited under
0050 subsections (a)(1) through ~~(6) (7)~~ (6).

0051 (b) Nothing in subsection (a) shall be construed to prohibit a
0052 club from:

0053 (1) Offering free food or entertainment at any time; or
0054 ~~(2) including a drink as part of a meal package; or~~

0055 ~~(3) (2)~~ (2) selling or delivering wine by the bottle or carafe.

0056 (c) Violation of any provision of this section is a misdemeanor
0057 punishable as provided by K.S.A. 41-2633 and amendments
0058 thereto.

0059 (d) Violation of any provision of this section shall be grounds
0060 for suspension or revocation of the club's license as provided by
0061 K.S.A. 41-2609 and amendments thereto and for imposition of a
0062 civil fine as provided by K.S.A. 41-2633a and amendments
0063 thereto.

0064 ~~(e) Every licensed private club shall display, in a prominent~~
0065 ~~place where it can be seen by members and guests, a price list~~
0066 ~~showing the club's current prices per drink for all drinks.~~

Every licensee shall keep, on hand at all times, a list of prices showing the current prices per drink for all drinks.

0067 (f) As used in this section:

0068 (1) "Drink" means an individual serving of any beverage
0069 containing alcoholic liquor or an individual serving of cereal
0070 malt beverage.

0071 ~~(2) "Week" means any seven-day period beginning on Mon-~~
0072 ~~day and ending on Sunday.~~

delete

0073 ~~(f) (g)~~ (g) This section shall be part of and supplemental to K.S.A.
0074 41-2601 through 41-2639, and amendments thereto.

0075 Sec. 2. K.S.A. 1985 Supp. 41-2722 is hereby amended to read
0076 as follows: 41-2722. (a) No retailer, or employee or agent of a
0077 retailer, licensed to sell cereal malt beverage for consumption on
0078 the licensed premises shall:

0079 (1) Offer or serve any free ~~drink~~ cereal malt beverage to any
0080 person;

0081 (2) offer or serve to any person a drink at a price that is less
0082 than the acquisition cost of the drink to the licensee;

0083 ~~(3) sell or serve more than two drinks or a pitcher or similar~~

0121 ~~(f)~~(g) This section shall be part of and supplemental to K.S.A.
0122 41-2701 through 41-2721, and amendments thereto.

0123 Sec. 3. K.S.A. 1985 Supp. 41-2640 and ~~21-2722~~ 41-2722 are
0124 hereby repealed.

0125 Sec. 4. This act shall take effect and be in force from and
0126 after its publication in the statute book.

MEMORANDUM

TO: Senator Ed Reilly, Chairman
Senate Federal and State Affairs Committee

FROM: JOHN A. LAMB, DIRECTOR, ABC DIVISION

RE: Happy Hour Survey

DATE: March 27, 1986

Arizona

Law enacted last session (August, 1985)

Major components of the statute include:

- no free drinks can be given away unless given by the person specified as the licensee;
- no more than 2 drinks can be served to 1 person at any time;
- no drinking contests are permitted;
- unlimited number of drinks may not served to any customer;
- "happy hours" are not prohibited - the focus is on the delivery of drinks, not the sale.

They feel the new law is generally working very well. This is partially because a common law "dram shop" liability is also being enforced.

Connecticut

Happy hour legislation is pending this session. The bill is no where near its final form.

Minnesota

Attempted to enact "happy hour" bans last session, but the legislation didn't pass. At this point, happy hours, free drinks, drinking contests, inducements, etc. are permitted.

Massachussetts

Law enacted last session (June, 1985)

Major components of the statute include:

- no free drinks;
- no sales of 2 drinks for the price of 1;
- prices are set from week to week, and must remain the same all week;
- a dram shop act is a part of the happy hour bill - it addresses a prohibition on the sale of alcohol to an

alcoholic or "known drunkard" (probably a hold-over from colonial common law.)

- "private" functions are excepted from this act (defined as a function for which the licensee offers a service, but doesn't solicit the business.)

They feel that their statute is enforceable and workable for the most part.

Wisconsin

Has no "happy hour" ban, but the City of Madison is considering one.

It is illegal to sell to intoxicated persons - an "anti-dram shop act" because liability doesn't attach unless the server has knowledge or should have knowledge that the consumer is intoxicated or is highly likely to become incapacitated.

Oklahoma

Law enacted last session.

Major focus of their act is to prohibit "inducements to stimulate consumption of alcohol":

- no 2 for 1s;
- set prices from week to week and must be posted;
- cannot sell an unlimited number of drinks for a fixed price;
- day prices must remain consistent with night prices;
- cannot increase the amount of alcohol in drinks (ie., sell one big drink instead of several smaller ones.);
- no games or contests;
- can give away complimentary drinks to groups, (ie., ladies' nights) but cannot discount drinks ;
- may sell drinks at a reduced price to private parties.

They are having similar enforcement problems to the ones we're experiencing, but don't anticipate more legislation anytime soon.

Nebraska

Attempted a "happy hour" ban last session but it didn't pass. A "multiple drink rule" was enacted, which allows clubs to have happy hours. It regulates the number of drinks which can be served to one customer at a time (1 drink) and the amount of liquor which can be in that drink (1½oz.) They feel it has been an enforceable rule.

Colorado

Legislation has been proposed this session which would prohibit the giving away of free drinks. It would also allow clubs to sell only 1 reduced price drink per customer per visit. There also is common law created liability for "over-serving" an individual.

Indiana

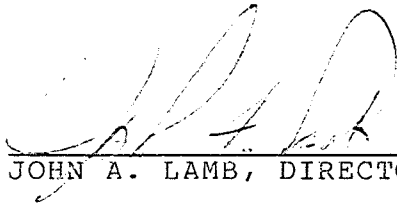
Law became effective September, 1985.

Major components of the law include:

- No reduced price drinks;
- no sales of 2 drinks for the price of 1;
- no charging a single price for a required purchase of 2 drinks;
- provisions apply to private clubs but not to private functions.

The legislature will be examining this bill again this session. They are having enforcement problems similar to the ones we've experienced.

Respectfully submitted,



JOHN A. LAMB, DIRECTOR

Compiled by Julie Fletcher
Legal Intern

JAL:cjk