

Approved _____

1/20/88
Date

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. ~~xxx~~ on January 14, 1988 in room 254-E of the Capitol.

All members were present ~~except~~

Committee staff present:

Mary Galligan, Legislative Research
Emalene Correll, Legislative Research
Mary Ann Torrence, Assistant Revisor of Statutes
June Windscheffel, Committee Secretary

Conferees appearing before the committee:

Mrs. Frances Kastner, Kansas Food Dealers' Association, Inc.
Mr. Harley T. Duncan. Secretary of Revenue

The purpose of today's meeting was for anyone wishing to appear concerning proposed legislation from this Committee.

The first conferee was Mrs. Frances Kastner, of the Kansas Food Dealers' Association, Inc. A copy of her statement, including the Association's request for legislation, is part of these Minutes. (Attachment #1) It concerns all strength beer. The Chairman thanked her for her presentation.

The next conferee was Mr. Harley Duncan, Secretary, Kansas Department of Revenue. Secretary Duncan presented his request for requested legislation concerning the Alcoholic Beverage Control. (Attachment #2) There were Committee questions, following which the Chairman thanked him for his presentation.

Senator Morris moved that the proposed legislation requested by Secretary Duncan be introduced. The motion was seconded by Senator Bond. The motion carried.

Concerning the request of the Food Dealers' Association, Senator Morris moved that the legislation be introduced. It was seconded by Senator Anderson. The motion carried.

The meeting was adjourned at noon.

1/14/88
Frances A. Kastner
Attachment #1



Kansas Food Dealers' Association, Inc.

2809 WEST 47th STREET SHAWNEE MISSION, KANSAS 66205
PHONE: (913) 384-3838

January 14, 1988

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DIRECTOR OF GOVERNMENTAL AFFAIRS

FRANCES KASTNER

SENATE FEDERAL & STATE AFFAIRS COMM.

EXECUTIVE DIRECTOR
JIM SHEEHAN
Shawnee Mission

I appreciate the opportunity to appear before you today requesting that you give serious consideration to portions of the Liquor Law Review Commission's Report which was not passed in 1987 during your diligent work on the major revision of Kansas Liquor Laws.

On page 9 of that report, the comments by Judge Rohleder, chairman of that prestigious committee sums up our feelings. "Current law is inconsistent in that it incorrectly defines 3.2 beer...." and he ends the paragraph saying"There should be no distinction made between strengths of beer. All strengths of beer should be permitted to be sold at current CMB outlets as well as retail liquor stores."

The KBI's comparison of Strong Beer and CMB by alcohol content shows less than ONE PERCENT difference in strong beer and 3.2 beer of the same brand. The first two listed on that report, Page 31, shows one 12 oz. can of Bud Light (strong) = 3.5% alcohol by weight; and a 12 oz. can of Bud Light CMB actually has only 2.8% alcohol by weight, even though it is commonly called 3.2 beer.

As to the economic factor, one of our members in Kansas City operates stores in both Kansas and Missouri and reports that in two of his stores of comparable size, the Missouri store has \$300,000 annual sales in cereal malt beverages (where there is all one strength beer) compared to \$30,000 CMB sales in his Kansas store.

We request that you introduce and pass a bill permitting the sales of all strength beer in Kansas, which will put our members in a competitive mode with our neighboring states, and bring in more revenue not only for the merchants, but also for state coffers.

Senate FSA
1/14/88
Attachment #1

We also request that you give serious consideration to permitting Sunday Sales for off-premise consumption using the same guidelines as we have for consumption of cereal malt beverage on premise.

It bothers our members that Kansans are permitted to consume CMB and alcoholic liquors on premises, ON SUNDAY, yet are denied the right to buy a six-pack and take it home for consumption.

We request that any bill you consider for Sunday sales specifically says that sales must be made in no less than a six-pack carton for off-premise consumption. This would eliminate the opportunity for a retailer to have a type of drive-through operation where the customer can buy one can of CMB and proceed on his way.

Thanks to the hard work done in this Committee, we saw some badly needed legislation enacted last year dealing with our antiquated liquor laws. We commend you for it, and ask that you now move us forward on cereal malt beverage.



Frances Kastner, Director
Governmental Affairs, KFDA



KANSAS DEPARTMENT OF REVENUE
Office of the Secretary
Robert B. Docking State Office Building
Topeka, Kansas 66612-1588

1/14/88
Harley T. Duncan
Attachment #2

MEMORANDUM

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

FROM: Harley T. Duncan *HTD*
Secretary of Revenue

RE: Requested Legislation - Alcoholic Beverage Control

DATE: January 14, 1988

The Department of Revenue respectfully requests the introduction of bills to accomplish the following in the area of alcoholic beverage control.

REQUIRING CATERERS TO CONTACT ABC

Prior to catering liquor to an event, a caterer is required to notify the local city police chief or county sheriff. There is no requirement to notify the Division of Alcoholic Beverage Control. Caterers are licensees of the ABC and the division should have knowledge of when and where they are operating. With the ABC having no knowledge of catered events, there exists potential for widespread violations, including sales to minors.

Recommendation. The department recommends requiring caterers to notify the ABC prior to catering to an event where liquor is served. This would enable ABC to enforce the liquor laws more consistently among license types.

TEMPORARY LIQUOR PERMIT TAXATION

Currently, all sales, including liquor, at temporary permit events are subject to the state sales tax. Sales of liquor at all other on-premise locations are subject to the 10 percent liquor excise tax and are exempt from the sales tax. The application of the sales tax to the sale of liquor at temporary permit events occurred by default since the Legislature chose not to apply the excise tax to liquor sales at temporary permit events. As a result, there exists the potential for temporary permit holders to compete with established on-premise licensees.

Recommendation. The department recommends that the sale of liquor at temporary permit events be subject to the liquor excise tax. Since all on-premise sales of liquor would again be subject to the excise tax, consistency would be restored. Established on-premise licensees (drinking establishments, private clubs, and caterers) would not operate at a disadvantage vis-a-vis temporary permit holders in regard to taxation.

Senate FSA
1/14/88
Attachment #2

GALLONAGE TAX CREDIT FOR SALES TO THE MILITARY

Federal guidelines require military installations to purchase beer and wine through a state distributor. However, military installations have the discretion of purchasing spirits from either an in-state distributor or directly from a supplier. Because a Kansas distributor must pay gallonage taxes on all purchases of spirits, it cannot compete with a supplier in regard to price. As a result, almost all spirits purchased by military installations in Kansas is done so directly through a supplier without state taxation.

Recommendation. Our recommendation is to give distributors a refund of gallonage taxes paid on spirits sold to military installations. By refunding the gallonage tax, the State would allow in-state distributors to compete with suppliers. Although the State would still lose the gallonage tax, profits earned by distributors on these sales would be subject to state income tax.

NOTIFICATION OF TEMPORARY PERMIT EVENTS

A temporary permit candidate is required by statute to file an application with the Director of ABC seven days prior to an event. The only exception to this requirement is an emergency provision whereby the director can waive the seven day requirement. After approving an application and running an enforcement check on the applicant, the ABC must send notice to a liquor control agent and notify the local law enforcement agency. Notification is accomplished by sending each party a copy of the temporary permit.

Recommendation. Seven days is not a long enough period of time for the ABC to notify the appropriate liquor control agent(s) and either the local police chief or sheriff. There have been a number of occasions where proper notification was not received until after an event had taken place. The department recommends the seven day requirement be changed to 14 days.

MULTIPLE ON-PREMISE LIQUOR LICENSING

The minimum food requirement for a single drinking establishment is 30 percent of its gross receipts. Gross receipts for a drinking establishment is defined as the sale of food and beverages. If a person possesses more than one drinking establishment license however, each establishment must meet the requirements of a restaurant as defined in K.S.A. 41-2601. To be a restaurant, an establishment must maintain 50 percent of its gross receipts in the sale of food. Gross receipts for a restaurant is defined as sales of all types on the licensed premises, including sales of not only food and beverages but membership fees, cover charges, video games, etc.

The difference in the food requirements and the different procedures for defining the requirements causes inconsistency and confusion in the industry. Obtaining a second drinking establishment license is not only confusing for a person with a single drinking establishment but may not be possible with the more restrictive food requirements.

Recommendation. The inconsistency should be eliminated. With this in mind, the department recommends a 30 percent food requirement where "gross receipts" include food and beverages for the purposes of multiple licensing of drinking establishments and private clubs.

90-DAY FOOD PROVISION

K.S.A. 41-2601 defines a "restaurant" as a food establishment deriving not less than 50 percent of its gross receipts in each calendar year from the sale of food. Because the statute specifies that the food requirement must be maintained for a calendar year, many reciprocating private clubs, and multiple drinking establishments and clubs are allowed to operate for a long period of time before they are in violation. Conceivably, a licensee could operate for 23 months without selling any food before action could be taken if the license was obtained in February.

Recommendation. The ability of on-premise licensees to operate unchecked for more than a year makes it difficult to enforce the food provisions. In order to assist in the enforcement of the minimum food requirement, the department recommends language which would allow the use of a 90-day period for audit purposes.