

Approved 2/28/89
Date

MINUTES OF THE Senate COMMITTEE ON Federal & State Affairs

The meeting was called to order by Senator Edward F. Reilly at
Chairperson

11:04 a.m./~~p.m.~~ on February 23, 19 89 in room 254-E of the Capitol.

All members were present ~~except~~.

Committee staff present:

Mary Galligan, Legislative Research Department
Marty Robison, Secretary

Conferees appearing before the committee:

Mark Wettig, Department of Revenue
Frances Kastner, Kansas Food Dealers' Assoc., Inc.
Ron Males, QuikTrip
Ken Bahr, Kansas C.M.B.
Neal Whitaker, Kansas Beer Wholesalers Association
Pat Oppitz, Kansas Retail Liquor Dealers Assoc., Inc.
Carl Mitchell, Wichita
Judy Ensminger, Overland Park
Howard Willcott, Leavenworth
John Webb, Kansas Alcoholic Beverage Dealers Association
Rev. Richard Taylor, Kansans for Life at Its Best
R.E. "Tuck" Duncan, KS Wine & Spirits Wholesalers Assoc., Inc.

Chairman Reilly called the meeting to order.

Senator Anderson requested the committee consider introduction of a bill granting the KCCR specific statutory authority to promulgate regulations as to the Kansas Age Discrimination in Employment Act. Senator Bond moved the proposal be introduced. Senator Anderson seconded and the motion passed.

Senator Morris moved a proposal providing for certification and regulation of certain real estate appraisers be introduced. Senator Anderson seconded and the motion carried.

Senator Bond moved the introduction of a proposal which would permit banks to charge annual fees for the privilege of maintaining an overdraft line of credit. Senator Anderson seconded and the motion passed.

Chairman Reilly announced that the committee will meet again tomorrow, February 24, for the purpose of hearing requests for introduction.

A hearing was held for SB 93 which deals with one strength beer.

Mark Wettig appeared to discuss the ramifications of SB 93. He testified on the effects of the bill upon alcoholic beverage taxation revenue, enforcement concerns and technical problems with certain language (Attachment 1).

Frances Kastner told members that KBI compared the alcoholic content by weight of "strong beer" with CMB and found there is actually less than 1% difference in the same brand. Her Association believes this will allow Kansas to be competitive and will be an economic factor. Passage of this bill will allow any retailer holding either a CMB license or a liquor retail license the right to sell CMB up to 5% alcoholic content by weight (Attachment 2).

CONTINUATION SHEET

MINUTES OF THE Senate COMMITTEE ON Federal & State Affairs,
 room 254-E, Statehouse, at 11:04 a.m./~~p.m.~~ on February 23, 1989

Ron Males said the difference between strong beer and CMB is so small that the distinction between the two should be eliminated. QuikTrip bases their support on their advocacy for free enterprise and fair competition with competitors from bordering states (Attachment 3). In response to a question regarding the possibility of closing their whole store if they violated the sale to minors, Mr. Males said they would abide by the same rules and regulations as retail liquor stores.

Ken Bahr told the committee that 3.2% was established for the 18-21 year olds and that the new age limit of 21 makes this strength unnecessary. He said consumers would benefit from the competition that would evolve (Attachment 4). Concern was expressed by a committee member that redefining CMB might result in Constitutional problems with regard to wet & dry counties.

Neal Whitaker told the committee that the use of 3.2 beer has been reduced in excess of 10% of the total volume sold. Only Kansas and 3 other states distribute 3.2 CMB. Only 6 states continue to sell the product and 3.2 beer accounts for only 3% of the nation's largest brewer's sales. He also said that in fiscal year 1988, 172 citations were issued to retail liquor stores for violations of statutes prohibiting furnishing alcohol to minors (Attachment 5).

Pat Oppitz appeared in opposition to SB 93. She said calling 5% beer a CMB without asking them to obey the same state laws would legislate them out of business. There would be no state authority to regulate the pricing of the product and retail liquor store dealers have regulations relating to pricing (Attachment 6).

Carl Mitchell said one strength beer will put retail liquor store dealers out of business. Because they are so tightly regulated and can only sell alcoholic beverage products, he feels it unfair to take something away from them without giving them some other options. Beer represents 45% to 50% of their total sales, while it represents 2% to 3% of a major grocery store's sales and approximately 5% to 6% of a convenience store's sales (Attachment 7).

Judy Ensminger told members that this is an economic issue because liquor retailers are not allowed to sell any other products. Because they cannot be incorporated or own more than one store, they are unable to buy in large quantities and would not be able to compete with the price differences (Attachment 8).

Howard Willcott said that the State receives 8% in tax revenue from liquor stores and only 4% from grocery outlets so this would mean a large loss in State revenue.

John Webb said the product, CMB, is being called 2 different names even though it is the same - an alcoholic beverage. He believes this will be used as a promotional item in stores and the prices will be so much lower that retail dealers will not be able to compete.

Rev. Taylor said all carry-out alcoholic beverages should be sold in liquor stores only. This measure is for one purpose and that is to make more money for the outlet stores (Attachment 9).

Tuck Duncan said his association opposes SB 93 because it will have dramatic negative effects on the whole beverage alcohol industry, sends the wrong message, and reduces consumer product options. His testimony included a summary of arguments, ramifications of one strength beer, and a letter regarding the impact of the change in South Dakota (Attachment 10).

The meeting was adjourned at 12:17.

GUEST LIST

COMMITTEE: Senate Federal & State Affairs

DATE: 2/23/89

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
John T. Williams	316 Lawrence	WILLIAMS LIQUORS
Rick Matz	2500 Welgate Cir. Wichita	Standard Liquor Corp
Linda Binet	216 SOakwood Wichita	Standard Liquor Corp
Tom Jacobs	2221 N. Woodruff ^{Wichita}	Jacobs Retail Liquor
Neal Whitaker	Topeka	Kansas Beer/Whiskey
Jim Sheehan	Overland Park	Kansas Food Dealers Assn
Gerald Kline	Overland Park Ks	Exo's Supermarket
FRANCES KASTNER	Topeka	Ks Food Dealers Assn
Mike Donelan	Colby Ks	Ks Food Dealer Ass.
Ken Bahr	Topeka	KCMB
Tom Melv	Topeka	Quik Trip
Eldon Danenhauer	Topeka	Topeka, Inc.
John WEBB	Lawrence	WEBBS
Rich Ferguson	Overland Park	Ferguson Liquor Store
Chris Smith	Coage City	Mussutho Bros. Inc
Ron Whitney	"	"
Howard Welcott	Leawards	Retulley
Tom Hanna	Topeka	ABC - Retail Dept.
Jim Conant	Top.	ABC
Jon Lundford	Topeka	KTOP/KDUIV radio
Don LINDSEY	OSAWATOMIE	UTU
Sue Mitchell	Wichita	Carl Mitchell Liquor Store
Albert D. Lollar	Topeka	Lollar Liquor Store
Dean Reynoldson	Topeka	Dept. of Revenue
John Jones	Topeka Kansas	

MEMORANDUM

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

FROM: Mark E. Wettig
Special Assistant to the Secretary of Revenue

DATE: February 23, 1989

SUBJECT: Senate Bill 93, As Introduced

I appreciate the opportunity to appear before you today to discuss the ramifications of Senate Bill 93. The Department's testimony will focus on the effects of the bill upon alcoholic beverage taxation revenue, enforcement concerns and technical problems with certain language.

ALCOHOLIC BEVERAGE TAXATION

By redefining "beer" as containing more than 5% alcohol by weight, the bill would have a significant impact upon the alcoholic beverage market, which in turn, would affect tax revenue. The Department estimates a loss of \$2.58 million in total tax revenue in FY 1990.

Currently, strong beer (more than 3.2% alcohol by weight) can be purchased only at retail liquor stores for off-premise consumption. By allowing all beer up to 5% alcohol to be sold by both cereal malt beverage retailers and retail liquor stores, direct competition would arise between the two members of the industry. Since multiple or corporate ownership of retail liquor stores is prohibited, these entities would not be able to buy large quantities at discounted prices from distributors unlike their retail chain counterparts. Retail chains (grocery and convenience stores) would then draw sales away from retail liquor stores. As a result, the 4% retail sales tax collected from retail chain (CMB) stores would increase while the 8% liquor enforcement tax collections from liquor stores would decrease.

Sales of beer containing more than 5% alcohol would only be permitted in retail liquor stores. The Department estimates, however, that sales of beer stronger than 5% make up less than 1% of total beer sales in Kansas.

In addition to reducing tax revenue, the redefinition would have the effect of forcing drinking establishments and private clubs to obtain locally issued cereal malt beverage retailer licenses.

ENFORCEMENT CONCERNS

A redefinition of beer would also raise enforcement concerns as the marketplace shifts from ABC liquor licensees to grocery stores, convenient stores, and gasoline stations. The shift in the location of the vast majority of retail beer sales would have a major impact on the potential for increased sales to minors and would increase the need for positive enforcement efforts on the part of both state and local agencies.

Thank you for your attention. I'd be happy to answer any questions.

SF-SA
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Attachment 1

TECHNICAL AMENDMENTS

Section 10 amends K.S.A. 41-501, applying a gallonage tax at the rate of \$.18 per gallon on beer containing more than 5% alcohol by weight. A corresponding change would be needed to K.S.A. 79-3817 redefining cereal malt beverage for tax purposes as *5% or less*. Without this change, there is, in effect, no gallonage tax applied to malt beverage with alcoholic content between 3.2% and 5%.

Lines 102 through 104 in Section 14 should be amended to read "41-708. No retailer licensed under this act shall purchase or receive alcoholic liquor *or cereal malt beverage* from any source...", in order to be consistent with similar changes made throughout the bill.

Section 19, which amends K.S.A. 41-2704(d), states that events catered by a caterer shall be open to law enforcement and "not to the public". This conflicts with K.S.A. 41-2643 which states that a caterer may "sell and serve alcoholic liquor on unlicensed premises, which may be open to the public..."

Throughout the bill, changes are made which allow licensed caterers and temporary permit holders to purchase cereal malt beverages. Corresponding changes would be needed in both 41-2643 and 41-2645 to allow caterers and temporary permit holders to *sell* cereal malt beverage.



Kansas Food Dealers' Association, Inc.

2809 WEST 47th STREET SHAWNEE MISSION, KANSAS 66205

PHONE: (913) 384-3838

February 23, 1989

SENATE FEDERAL & STATE AFFAIRS COMM.

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JOE WHITE
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DIRECTOR OF GOVERNMENTAL AFFAIRS

FRANCES KASTNER

SUPPORTING SB 93

EXECUTIVE DIRECTOR
JIM SHEEHAN
Shawnee Mission

We appreciate the opportunity of appearing before you supporting all strength beer sales in Kansas.

Yesterday I referred to the Liquor Law Review Commission's report to the 1987 legislature. Today I would like to again refer to that report, on page 9, and read a quote by Judge Herb Rohleder, chairman of that prestigious group, which 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." We heartily agree with his conclusions.

The Kansas Bureau of Investigation compared the alcoholic content by weight of the so-called "strong beer" and CMB, and found there is actually LESS THAN ONE PERCENT difference in the same brand. Page 31, of the Liquor Law Review Commission's report, lists the various brands and the findings of the KBI. For example: a 12 ounce can of Bud Light (strong) beer has 3.5% alcohol by weight; and a 12 ounce can of Bud Light (CMB) actually has only 2.8% alcohol by weight. I have attached page 31 for your convenience.

In 1988 we asked this committee to introduce a bill permitting the sale of all-strength beer-- SB 560. It also got lost in the legislative shuffle, and I am grateful that this year you introduced SB 93, with the identical language.

We believe being able to sell all-strength beer is a great economic factor for Kansas. One of our members has a store in Missouri, where all-strength beer is sold in grocery stores, and annual sales equal \$300,000 in his Missouri store, while his Kansas store of comparable size only has \$30,000 worth of CMB sales in a year.

SF & SA

2-23-89

Attachment 2

The federal government makes no distinction between selling CMB or all-strength beer when it comes to filing forms with the Federal Alcohol, Tobacco and Firearms Office and paying annual fees of \$250.00 for the privilege of selling either CMB or all-strength beer. The fee was raised from \$24 to the \$250 amount as a part of the 1986 Federal Tax Reform package.

When the liquor laws in Kansas were overhauled in 1987 and 1988, our members were required to buy a \$25.00 State Stamp in addition to paying whatever local fees are charged to sell CMB. We did not oppose the legislation pertaining to the State Stamp and understood the reasons the fee was requested by the ABC Division of the Kansas Department of Revenue.

What we don't understand is the reason for denying our retailers of cereal malt beverage the right to sell all-strength beer. Passage of SB 93 will permit any retailer holding either a CMB license OR a liquor retail license the right to sell CMB up to 5% alcoholic content by weight, according to an Attorney General's Opinion dated April 2, 1987. I have copied below that Opinion No. 87-48.

"According to Kansas caselaw, the Kansas Legislature has the power to define all beer containing less than 5 percent alcohol by weight as a cereal malt beverage (CMB). The legislature may allow the sale of this "5 percent CMB" by all entities currently allowed to sell CMB, as well as by retail liquor stores currently restricted to the sale of "strong" beer. Whether a county voted for or against the 1986 constitutional amendment allowing liquor-by-the-drink in certain establishments open to the public has no bearing on this conclusions."

This measure will allow Kansas to be competitive with the grocers in Missouri. When you consider that the difference in CMB sales in just one store is TEN TIMES GREATER in Missouri than in Kansas, you can understand why we believe passage of SB 93 is a bill that will further economic development and keep Kansas grocers on a profit-making basis.

We appreciate the opportunity of appearing before you and ask that you give SB 93 favorable consideration during your deliberations. I will be happy to answer any questions you may have.

Frances Kastner, Director
Governmental Affairs, KFDA

Appendix A
Comparison of Strong Beer and Cereal Malt Beverage by Alcohol Content

RESULTS OF EXAMINATION
by K.B.I. LAB

	% ETHANOL (Alcohol) BY WEIGHT
1 - One 12 oz. can Bud Light (strong)	3.5
2 - One 12 oz. can Bud Light (3.2)	2.8
3 - One 12 oz. can Busch (strong)	3.9
4 - One 12 oz. can Busch (3.2)	3.2
5 - One 12 oz. can Budweiser (strong)	3.9
6 - One 12 oz. can Budweiser (3.2)	3.1
7 - One 12 oz. can Coors (strong)	3.8
8 - One 12 oz. can Coors (3.2)	3.2
9 - One 12 oz. bottle Miller (strong)	3.8
10 - One 12 oz. bottle Miller (3.2)	3.1
11 - One 12 oz. bottle Michelob (strong)	4.1
12 - One 12 oz. bottle Michelob (3.2)	3.2
13 - One 12 oz. can Old Milwaukee (strong)	3.9
14 - One 12 oz. bottle Wiedemann (strong)	3.7
15 - One 16 oz. can Colt 45 (strong)	4.1
16 - One 12 oz. bottle Corona (Mexican, strong)	3.6
17 - One 7 oz. bottle Little King (3.2)	3.2

K.S.A. 41-102 (C) defines "beer" when its meaning is not enlarged, modified, or limited by other words, means a beverage containing more than 3.2% alcohol by weight, obtained by alcoholic fermentation of an infusion or concoction of barley, or other grain, malt and hops in water and includes beer, ale, stout, lager beer, porter and similar beverages having such alcoholic content.

K.S.A. 41-2701 (a) defines "Cereal Malt Beverage" as any fermented but undistilled liquor brewed or made from malt or a mixture of malt or malt substitute, but does not include any such liquor which is more than three and two-tenths percent (3.2%) alcohol by weight.



Mr. Chairman and Members of the Committee:

My name is Ron Males, I am the Vice President of QuikTrip Corporation. We operate 70 stores in the state of Kansas and employ over 300 people in the state of Kansas. Kansas is only one of six states which prohibit fair competition in the retail beverage industry by restricting strong beer to liquor stores. As revealed in the Kansas Liquor Review Commission, the alcohol content in strong beer is approximately 3.8% by weight, as compared to cereal malt beverage which is 3.2% by weight. Since the difference between strong beer and cereal malt beverage is so small, we believe the distinction should be eliminated through legislative action. This would change the definition of cereal malt beverage to include strong beer, as in most states, and that convenience and grocery stores should be allowed to sell these beer products.

We emphasize in the training of all store personnel the need for responsible alcohol retailing. This training consists of not only in-store training, but also incorporates videos, which are used to further emphasize the need for responsible alcohol retailing. It is our policy to severely discipline, including possible termination, any store personnel, who might sell beer to a minor, or persons already intoxicated. I also believe the same penalties for selling beer to minors should apply to us, as they do to liquor store retailers.

There are some who believe this legislative change would allow for more drunken driving, however, a documented study, performed by Professor Berg in the state of California, revealed that less than 5% of convicted drunk drivers purchased their alcohol from a convenience store. Another study conducted by the California Police Department revealed that less than 1% of persons convicted of drunken driving purchased their alcohol in convenience stores.

I realize the opposition to this bill will make pleas to you and others regarding loss of jobs in their sector, however, I would point out that legislation which allows for unfair competition is not in the best interest to the people of Kansas, and serves only a sector which has declined in the number of outlets by over 20% in the last six years anyway.

The whole basis for our philosophy and our advocacy is free enterprise in retailing and modernization of archaic liquor legislation. We seek fair competition with our competitors and to our bordering states. Passage of Senate Bill 93 would provide this. Thank you for your time and consideration.

SFA SA

2-23-89

Attachment 3

Kansas C.M.B.
1200 W. 10th Street
Topeka, Kansas 66604-1291
(913) 233-1903

TESTIMONY BY KEN BAHR
KANSAS C.M.B.

February 23, 1989

Mr. Chairman; members of the Committee. I am Ken Bahr representing Kansas C.M.B.

Senate Bill 93 redefines cereal malt beverage as 5% or less. Kansas C.M.B. supports Senate Bill 93 for the following reasons. The age limit has been raised to 21 for any purchase of cereal malt beverage, beer, wine or spirits. The rationale used in 1937 to create a market for 18-20 year olds by establishing a non-intoxicating beverage defined as 3.2% alcohol by weight no longer exists.

The results of an examination made by the Kansas Bureau of Investigation for the Kansas Liquor Law Review Commission determined that a cereal malt beverage had 3.1 - 3.2% alcohol by weight as compared to an average of between 3.5 - 3.8% alcohol by weight for "strong" beer. The difference is minimal and as many people have remarked--they can't tell the difference! To those who maintain that there is 20% more alcohol in 3.2% versus 3.8%, the point needs to be expanded to consider that 3.2% of a 12 ounce can of beer represents less than four-tenths of one ounce. Add .6 of 1 per cent to this formula and that can of beer has almost 4.5 tenths alcohol by weight. Judge Rohleder of the

SF-SA
2-23-89
Attachment 4

Kansas Liquor Law Review Commission referred to this difference as a "hypocritical distinction." He also recommended that all strengths of beer be allowed to be sold at current C.M.B. outlets as well as retail liquor stores.

To those who maintain that many liquor stores would go out of business if they were forced to share their beer market, I would call such a prognosis a "doomsday forecast." Many in the industry predicted that a large number of liquor stores would go out of business when minimum markup was declared unconstitutional. Such has not been the case and I believe that they are overestimating their losses again. The retailers, perhaps deliberately, are underestimating their clientele and their loyalty. Practically everyone has a neighborhood liquor store they frequent. Such would still be the case if the beer market were shared with present day C.M.B. outlets. The consumer would benefit in the competition that would evolve. An interesting point must be drawn from the Department of Revenue's Revenue Review dated November, 1988. On page 6 it states that "the minimum price markup system was eliminated in the Spring of 1987. The expected decrease in prices has not yet come to pass, however. The vast majority of liquor retailers are continuing to use the former mandatory markups dictated by the ABC Board of Review (spirits 28.5%, wine 40.5%, and cordials 31.5%). The

Kansas Beverage News continues to publish retail prices for liquor products based on the old markups and most retailers continue to utilize these prices."

It's time for liquor retailers to become businessmen and women as those of us in convenience and grocery stores are expected to be. Granted that beer is a controlled product, however, our present laws more than adequately address the sale and consumption of alcoholic products. The process now becomes one of education of the public as to the need to responsibly consume these products.

Let's recognize that beer is beer and allow both C.M.B. outlets as well as retail liquor store dealers to responsibly sell both.



February 23, 1989

TESTIMONY ON SENATE BILL 93 - REGULAR BEER

before the

SENATE FEDERAL AND STATE AFFAIRS COMMITTEE

by

Neal Whitaker, Executive Director

Kansas Beer Wholesalers Association

Mr. Chairman, Members of the Committee:

I appear here today in support of Senate Bill 93 which would effectively allow the sale of regular beer in all outlets in Kansas that currently sell both 3.2 and strong beer. In 1937, the Kansas legislature approved a bill that allowed for the sale of 3.2% beer as cereal malt beverage for both on and off premise consumption purchased by persons 18 years of age or older. In 1986, the Kansas legislature passed a law that raised the drinking age over the following three years from 18 to 21. As a result of that increase in age the need to have a separate outlet for the sale of 3.2 beer was legislated out of existence. In addition, in 1987 the legislature, for the first time, allowed beer wholesalers to deliver regular beer directly to private clubs and the newly created drinking establishments. In the past most of these products had been cereal malt beverage. This act reduced the use of 3.2 beer in this state in excess of 10% of the total volume sold.

Between 1934 and 1937, every state passed a law allowing for the sale and consumption of 3.2 beer. Today, those laws have been modernized to the point that 3.2 cereal malt beverage is only widely distributed in Kansas, Oklahoma, Utah and Minnesota. It is sold only to a limited degree in Colorado and Missouri. So, out of the original 48 states only six states continue to sell the product. The nation's largest brewer reports that 3.2 beer is only 3% of their sales nationally. This limited distribution nationally has created a substantial number of problems for Kansas wholesalers. As you might guess, wholesalers of popular brands have less problem getting 3.2 beer than wholesalers who feature brands that maintain a small percentage of the market place. I have provided the committee with copies of shipment reports for products less than 3.2 shipped into Kansas during the month of December 1988. The percentages on the right hand side of the page indicate the market share each of those breweries enjoyed in Kansas during that month. Breweries with the smaller percentages are placing more stringent requirements upon wholesalers for the ordering of 3.2 beer. One brewery requires that the wholesaler place a minimum order of almost 1400 cases before they will brew and package the product especially for Kansas. Another brewery requires 3.2 to be only ordered every other week or, in some cases, every third week and, finally, a brewery has dramatically reduced the number of packages available in 3.2. Why? Nationally consumption of 3.2 beer is very limited. This pressure from breweries is going to become more intense as time goes by. To the wholesaler businessman in Kansas this

means that he has fewer packages available for sale in 3.2, and that he has a more difficult time keeping his products fresh. Every domestic beer product has a code date on each can or bottle and the wholesaler, as a requirement of his contract with the brewery, must withdraw from the market place any products not sold prior to the expiration date on the package. This one fact alone prohibits many wholesalers in Kansas from ordering 1400 cases of products at a time. That requirement effectively removes those beers from grocery store shelves in this state.

You have heard considerable testimony, both yesterday and in years past, that grocery stores are not capable of handling regular beer. You have been told that very few sale to minor violations occur in Kansas retail liquor stores. The facts are contrary to that testimony. Department of Revenue records indicate that in fiscal year 1987, 178 citations were issued to Kansas retail liquor stores for violations of statutes prohibiting furnishing alcohol to minors. In fiscal year 1988, 172 citations were issued and fiscal year 1989 experience is demonstrating approximately the same number of citations will be issued this year. That number of citations indicates that almost 18% of the total retail liquor licensees in this state are cited in one year's period of time for selling to minors. Persons who in the past have stood before this committee and made the statements that most of the underage purchases occur in grocery and convenience stores are doing so not based on any factual information but only their personal impressions. Mr. Males testified yesterday that his company and many others have taken decisive action

to assure that their clerks do not sell to minors. Their training programs and reward programs are evidence that they wish to be responsible citizens in the Kansas business community.

A little over a year ago the legislature in South Dakota addressed this very same issue. The solution was to allow regular beer to be sold in all outlets. The law went into effect in March of 1988 so we do not have the opportunity to look at a full year's experience. However, the information we have been able to develop indicates that even though regular beer was sold in grocery stores as well as private package liquor retail stores, those liquor stores suffered no loss in revenue because of the beer question. Interviewing beer wholesalers in South Dakota, we have discovered private package liquor stores suffered no loss as the result of selling beer in all outlets. Persons who shop today at retail liquor stores in Kansas do so because of convenience. They have gone there to buy a specific product. They are not willing to stand in long lines at grocery checkout counters to purchase similar products.

Just how similar are these products? The Governor's Liquor Law Review Commission requested that the KBI run content tests on both what the statute calls strong beer and cereal malt beverage. Attached to my remarks you will find the results of that examination by the KBI lab. You will note that Item #5, a 12 oz. can of Budweiser tested at 3.9% by weight, whereas a 12 oz. can of

Budweiser 3.2 tested at 3.1%. Coors 12 oz. can tested at 3.8% and 3.2 Coors tested at 3.2. There are similar numbers all up and down that list. That difference rounded up to one decimal point amounts to 8/100th of an ounce of alcohol.

The difference between these two products is so small that it is almost insignificant. Therefore, we of the Kansas Beer Wholesalers Association urge you to adopt Senate Bill 93.

*Appendix A**
Comparison of Strong Beer and Cereal Malt Beverage by Alcohol Content

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 by K.B.I. LAB

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K.S.A. 41-102 (C) defines "beer" when its meaning is not enlarged, modified, or limited by other words, means a beverage containing more than 3.2% alcohol by weight, obtained by alcoholic fermentation of an infusion or concoction of barley, or other grain, malt and hops in water and includes beer, ale, stout, lager beer, porter and similar beverages having such alcoholic content.

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* from the Final Report and Recommendations of the Kansas Liquor Law Review Commission
 Judge Herb Rohleder, Chairman - December 1986

The Beer Industry's Contribution to Kansas' Economy, 1987

Jobs	Direct	Indirect	Total
Brewing	--	2,579	2,579
Wholesaling	960	1,631	2,591
Retailing	10,168	6,458	16,626
Total	11,128	10,668	21,796

Wages (\$000)	Direct	Indirect	Total
Brewing	\$ --	\$ 48,782	\$ 48,782
Wholesaling	\$ 25,431	\$ 20,936	\$ 46,367
Retailing	\$ 68,369	\$ 105,442	\$ 173,811
Total	\$ 93,800	\$ 175,160	\$ 268,960

State & Local Taxes (\$000)	Direct	Indirect	Total
Brewing	\$ --	\$ 1,643	\$ 1,643
Wholesaling	\$ 22,294	\$ 25,646	\$ 47,940
Retailing	\$ 6,002	\$ 17,989	\$ 23,991
Total	\$ 28,296	\$ 45,278	\$ 73,574

FET on Beer Sales (\$000)	Direct	Indirect	Total
	\$ 14,270	n/a	n/a

Total Beer Sales by Industry Tier (\$000)

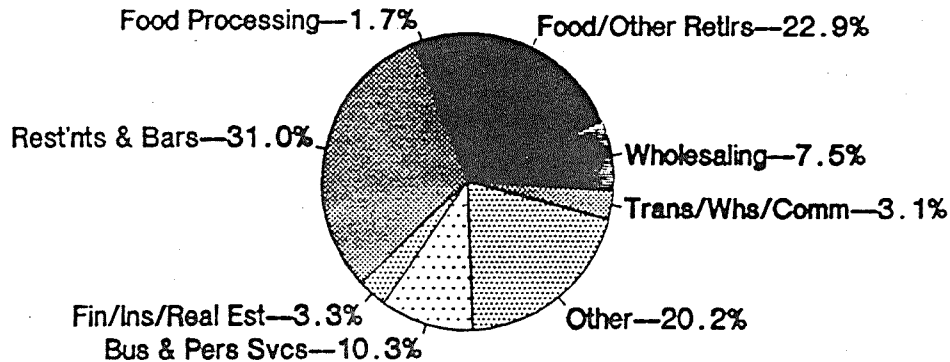
Brewing	\$ --
Wholesaling	\$ 196,878
Retailing	\$ 407,428

Kansas beer wholesalers are located in the following cities:

Atchison
 Arkansas City
 Baxter Springs
 Beloit
 Coffeyville
 Colby
 Dodge City
 El Dorado
 Emporia
 Fort Scott
 Frontenac
 Great Bend
 Hays
 Hutchinson
 Independence
 Junction City
 Kansas City
 Lawrence
 Leavenworth
 Manhattan
 Marysville
 Norton
 Olathe
 Osage City
 Osawatomie
 Parsons
 Pittsburg
 Salina

Seneca
 Topeka
 Wichita

How Kansas' Industries Share Jobs Created by the Beer Industry



Total Jobs: 21,796

Source: Steve L. Barsby & Associates, Inc.

Office:
800 Jackson, Suite 1017
Topeka, Kansas 66612

DECEMBER 1988

*****STATEMENT OF 3.2% CEREAL MALT BEVERAGE SHIPPED TO KANSAS BEER DISTRIBUTORS-IN CASES*****

BREWRIES & IMPORTERS	48/7 OZ.* 12/40 OZ.**	24/7 OZ.* 30/12 OZ.**	12/12 OZ.	12/32 OZ.	24/12 OZ.	24/16 OZ.	1/4 BBL.	1/2 BBL.	TOTAL GALLONS	%
ADOLPH COORS CO. Golden, CO				2,200	158,112	96	135	4,140	427,856	31.27
ANHEUSER-BUSCH, INC. St. Louis, MO	107*			3,296	191,352	776	44	7,180	554,670	40.54
G. HEILEMAN BREWING LaCrosse, WI			5,104		1,960			12	10,338	0.76
MILLER BREWING CO. Milwaukee, WI	280*			840	69,946			1,136	178,241	13.03
PABST BREWING CO. Milwaukee, WI			18,144		672		15		22,040	1.61
SCHOENLING BREWING Cincinnati, OH		90*							118	0.009
STROH BREWERY Detroit, MI	582**	350**		720	73,738			236	174,896	12.78
TOTAL CASES	387* 582**	90* 350**	23,248	7,056	495,780	872	194	12,704		
TOTAL GALLONS	1,016* 2,182**	118* 985**	26,154	21,168	1,115,505	2,616	1,503	196,912	1,368,159	

DECEMBER 1988 1,368,159 gallons
 DECEMBER 1987 1,551,251 gallons
 183,092 gallon DECREASE = 11.80% DECREASE

KANSAS RETAIL LIQUOR DEALERS ASSOCIATION INC.

400 SW CROIX
TOPEKA, KS. 66611
(913) 266-3963

PATRICIA A. OPPITZ
PRESIDENT

TRACY MOODY, 1st Vice-President
ALBERT LOLLAR, 2nd Vice-President
MAXINE STROTHMAN, Secretary-Treasurer

SENATOR REILLY AND MEMEBERS OF THE SENATE FEDERAL & STATE AFFAIRS COMMITTEE...I AM PATRICIA OPPITZ, PRESIDENT OF THE KANSAS RETAIL LIQUOR DEALERS ASSOCIATION. I HAVE BEEN ASKED TO STRENUOUSLY SPEAK IN OPPOSITION TO SENATE BILL 93.

SENATE BILL 93 CREATES A ONE-STRENGTH CEREAL MALT BEVERAGE OF UP TO 5% ALCOHOL BY WEIGHT. THIS IS NOT A PROBLEM FOR LIQUOR RETAILERS, SINCE THIS IS THE BEER WE NOW SELL. BUT CALLING THIS BEER A CEREAL MALT BEVERAGE AND GIVING IT TO CONVENIENCE STORES, GAS STATEONS AND GROCERY STORES, ETC. WITHOUT ASKING THEM TO OBEY THE SAME STATE LAWS WE OBEY IS LEGISLATING US OUT OF BUSINESS.

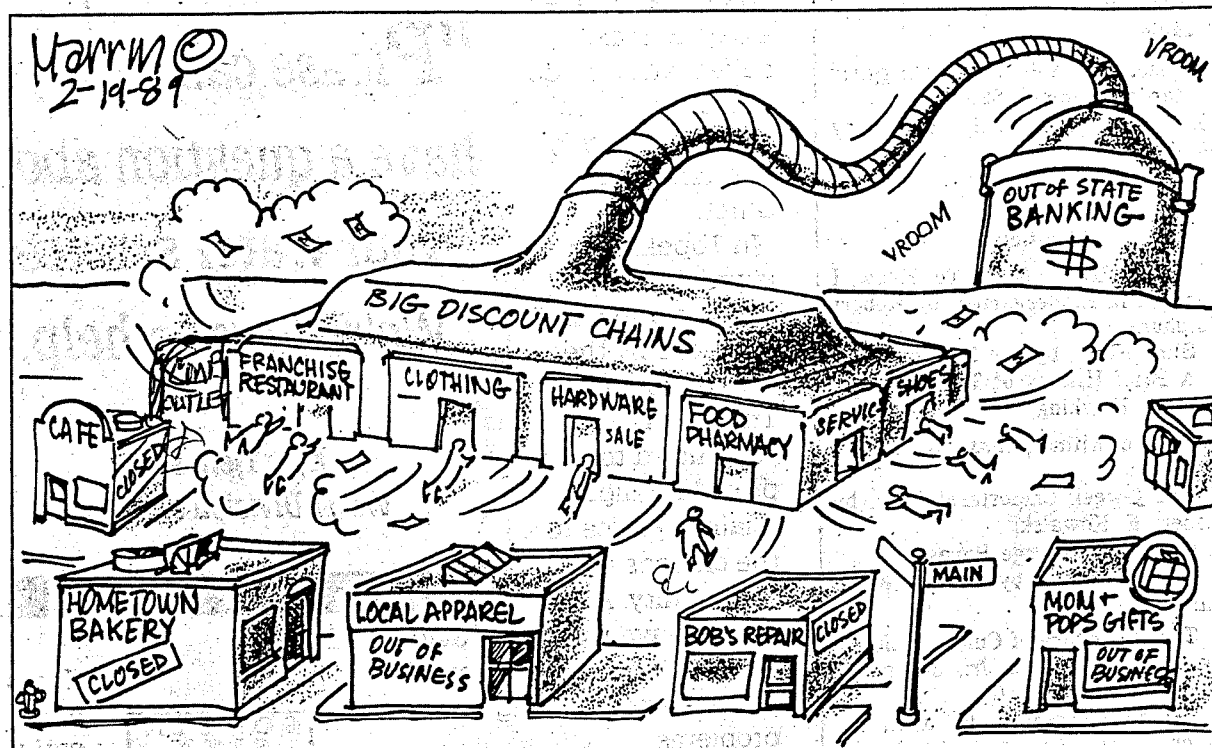
THESE OUTLETS WANT TO SELL OUR BEER, BUT THEY DO NOT WANT TO DO IT UNDER THE STATE LAWS THAT REGULATE US. SINCE 1949 WE HAVE BEEN ALLOWED TO SELL OUR PRODUCTS AS LONG AS WE WERE LICENSED BY THE STATE AND UNDER THE JURISDICTION OF THE ALCOHOL BEVERAGE CONTROL. THIS MANDATED AN ORDERLY SELLING OF ALCOHOLIC PRODUCTS BY RESPONSIBLE PEOPLE. WE MAY SELL OUR PRODUCTS, INCLUDING STRONG BEER, AT ANY PRICE WE CHOOSE, AS LONG AS WE SELL IT ABOVE COST. WE COLLECT AND SEND TO THE DEPARTMENT OF REVENUE AN 8% ENFORCEMENT TAX.

ALLOWING CONVENIENCE/GAS SHOPS AND GROCERY STORES TO SELL THE STRONGER CEREAL MALT BEVERAGE, WITHOUT STATE SUPERVISION, WOULD BE CONTRARY TO THE WELL-BEING OF THE PUBLIC. NO STATE AUTHORITY COULD SHUT THEIR DOORS IF THEY ILLEGALLY SOLD TO UNDER AGE PERSONS. THE ONLY TAX COLLECTED WOULD BE THE LOCAL SALES TAX. THE SALES CLERKS COULD BE 18 YEARS OF AGE. THEY WOULD CERTAINLY BE THE MOST POPULAR PLACE FOR UNDER AGE INDIVIDUALS TO BUY BEER. THERE WOULD BE NO STATE AUTHORITY TO TELL THESE STORES HOW MUCH OR HOW LITTLE TO CHARGE. GROCERY STORE

SF+SA
2-23-89
Attachment 6

CHAINS WOULD CERTAINLY PRICE THIS CEREAL MALT BEVERAGE LOW ENOUGH TO GET PEOPLE IN THE DOOR TO BUY THEIR OTHER HUNDREDS OF PRODUCTS. THERE IS NO WAY A LIQUOR STORE COULD COMPETE IN PRICE WITH THESE STORES. AT LEAST 50% OF OUR BUSINESS WOULD FLY RIGHT OUT THE DOOR. LIQUOR STORES ARE OWNED AND OPERATED BY HOME-TOWN PEOPLE, WHO VOTE, PAY TAXES, LIVE AND CONTRIBUTE TO THEIR COMMUNITIES. WE CAN OWN ONLY ONE STORE. MOST GROCERY AND CONVENIENCE STORES ARE PART OF A CHAIN. THE MONEY THEY MAKE GOES OUT-OF-STATE. THEY DON'T HAVE A REAL FEELING FOR OUR STATE OR OUR COMMUNITIES. THEY ONLY ARE INTERESTED IN HOW MUCH MONEY THEY CAN MAKE. PLEASE DON'T LEGISLATE US OUT OF BUSINESS. IF THERE IS TO BE ONLY ONE-STRENGTH BEER, A STRONGER BEER, TO SELL, THEN LEAVE IT IN OUR LIQUOR STORES, WHERE IT WILL BE SOLD BY RESPONSIBLE PEOPLE.

Marrin's view



Carl Mitchell

Retail Liquor Store

February 23, 1989

Senator F. Reilly
Chairman Federal and State Affairs Committee

Dear Senator Reilly and Fellow Committee Members:

We in the retail liquor store business understand that competition must seek it's own level, but to legislate and tax people out of business is wrong. On December 31, 1984 there were 1079 liquor stores in Kansas. On December 31, 1988 there were 911 liquor stores in Kansas, for a loss of 168 stores in a four year period.

With the two strength beer system no one gets hurt. With the proposed one strength beer bill, the legislature would be giving alot of honest hard working liquor retailers the kiss of death without giving them any alternative to save their businesses.

Retail liquor stores are so tightly regulated and controlled that they can sell only alcoholic beverage products. It seems terribly unfair for the legislature to take something away from liquor retailers without giving them something in return so they can survive and protect their investments.

Unlike 3.2 beer outlets, liquor stores are told when they can open, told when they have to close, told who they can sell to, told who they can't sell to, told who they can buy from, told who they can't buy from, told what products they can sell and told what products they can't sell. With this type of control from the state we must have some type of legislation and regulations that can protect us.

1950 West 21st Street 832-1155 Wichita, KS 67203

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2-23-89

Attachment 7

Carl Mitchell

Retail Liquor Store

If the proposed one strength beer bill is passed it is like cutting off one of our legs and then asking us to compete in a race.

Beer is the single most important item liquor stores have to sell. On the average beer represents 45% to 50% of a liquor store's total sales. On the other hand beer sales represents approximately 2% to 3% of a major grocery store's sales and approximately 5% to 6% of a convenient store's sales.

3.2 beer outlets want to increase their beer sales at our expense. Why not have one strength beer and let only liquor stores sell it. Let us increase our beer sales at their expense. Either way the legislature should not be used to eliminate competition. It is all a matter of money and greed.

If the legislature passed Senate Bill 93 in favor of one strength beer, but allowed it to be sold only in liquor stores, you would find that grocery stores and other 3.2 outlets would lose interest in one strength beer and demand that the legislature allow 3.2 beer back into the state. It is a money issue and not just a one strength beer issue.

3.2 beer is just like any other product in one sense. As long as there is large enough demand for a product there will be someone willing to produce it. Kansas, Oklahoma, Missouri and Colorado now have 3.2 beer and always will as long as there is a demand.

Beer is an alcoholic beverage whether it is 3.2 beer or a so called strong beer. People can get drunk drinking to much of either one.

ARE
There ~~is~~ alot of number games to determine alcohol content. If a can of beer had a 4.0% alcohol content and another can of beer had a 3.2% alcohol content, one beer can would have .8% more alcohol or 25% more in alcohol content.

Carl Mitchell

Retail Liquor Store

Society is demanding more control, responsibility and accountability in the sale of an alcoholic beverage. It is obvious there would be more control over the sale of beer and other alcoholic beverages if they were sold and handled only by professionals in the alcoholic beverage industry.

Some people feel alcoholic beverages should be sold by those who have the most to lose if any violations occur. I have never heard of a grocery store being closed because they sold beer to a minor, yet if a liquor store sells to a minor they can be fined and closed.

Do the committee members feel grocery stores, convenient stores, filling stations, bait shops and other 3.2 beer outlets should be subject to the same laws and regulations the liquor stores now operate under. If no. Why not?

Liquor store owners are required to go through a complete personal investigation before they can get their license and open their doors for business.

It is proven that liquor stores have been more responsible and accountable for the sale of beer than 3.2 beer outlets. Liquor store clerks must be 21 years of age and have no criminal record. In 3.2 beer outlets you many times find 18 year old kids selling beer and not checking IDs. In short you many times have kids selling kids.

Beer is just one of many items sold by a grocery store and they often sell and promote beer as if it were a can of soda pop. Beer and other alcoholic beverages are very special products and should be handled in a special way and sold by special licensed people.


We would hope that the committee would leave all state laws and regulations concerning 3.2 beer and strong beer as they are for the good of all.

Carl Mitchell Retail Liquor Store

If the committee feels that Kansas needs one strength beer, we recommend you leave the sale of the one strength beer in the hands of the professionals in the alcoholic beverage business.

Thank you for your consideration.

Sincerely,



Carl L. Mitchell
Owner, Carl Mitchell Retail Liquor Store

mm

Judy Eusminger
Eusminger Retail Liquor
11052 Quivira Rd.
Overland Park, KS. 66210
469-9006

Bill # 93

- 1) Language of Bill # 93
- 2) Even if it's only "Beer", lets look at the parity of the situation the bill produces.
- 3) Are 18 year old clerks responsible sellers?
- 4) Solutions and Options
- 5) Personal level of this bill.
- 6) Do any actions that are fueled by Corporate or individual greed have a good outcome?

SF & SA
2-23-89
Attachment 8

SB 93 will increase the maximum amount of absolute alcohol in a can of cereal malt beverage from 3.2% to 5%, an increase of 56¼%. (56¼% of 3.2 is 1.8 3.2 + 1.8 = 5) 2 cans of the new will have more brain dulling power than 3 cans of the old.

Domestic cereal malt beverage will contain not more than 8% alcohol by weight. I have been told that if beer is 3.2% alcohol by weight it is 4.5% alcohol by volume. That would make 8% beer by weight contain 11.25% alcohol by volume. We have too many kids dying today on our highways, full of 3.2 beer. What will happen when cereal malt beverage is 5% and 8%?

To reduce the personal and social damage caused by our most abused drug, we should be moving in the direction of lower alcoholic content, not more.

Why is this measure before you today? Money.

Yesterday the beer lobbyists jumped through all sorts of hoops (their phrase) trying to convince you to help them make money selling carry-out beer on Sunday. They claimed this was for their customers, but no customers were here clamoring for the change. Back in 1972, it was refreshing when the beer lobbyist passed out this information seeking to win Sunday Sales.

<p>\$</p> <p>Sunday sales of 3.2 Beer would increase the excise tax paid Kansas by an estimated <u>\$370,000.00</u> per year</p> <p>\$</p>	<p>\$</p> <p>An estimated <u>\$85,000.00</u> increase in sales tax would result from Sunday sales of 3.2 Beer</p> <p>\$</p>
---	--

At that time the excise tax was 15¢ a gallon so this came to nearly 50,000 gallons more beer every week consumed on Sunday in addition to beer purchased during the week and consumed on Sunday. Lawmakers thought that was too much additional beer in drivers coming from Kansas lakes on Sundays and defeated it 2 to 1!

Today beer lobbyists have jumped through all sorts of hoops trying to win your YES vote that will permit them to change ALCOHOLIC LIQUOR under current laws to CEREAL MALT BEVERAGE under this new law.

ALL carry-out alcoholic beverages should be sold in liquor stores only. Grocery money would not be spent for alcohol, underage sales in convenience stores would end, highways would be safer with no more cold beer to go in filling stations, and lake marinas would not be pushing beer to boaters.

How refreshing it would be if beer people came before this committee, looked you in the eye, and said, "HELP US MAKE MONEY SELLING STRONG BEER IN GROCERY STORES, FILLING STATIONS, QUICK SHOPS, AND MARINAS."

If SB 93 is approved, in the name of consistency you will be asked to approve wine sales in grocery stores, quick shops, filling stations, and marinas. In other states, grocery stores are supermarket liquor stores, making a lot of money on high volume and low prices with cut rate competition.

We are in favor of businessmen making money, except when the product they push causes drug suffering, alcoholism, disability, tragedy, and death.

In a kind way, may I say it seems an insult to the intelligence of this committee when beer lobbyists give you all sorts of reasons other than, "PLEASE HELP US MAKE MONEY."

SF 0 SA
2-23-89
Attachment 9

I . A . N . S . A . S
WINE & SPIRITS
WHOLESALE ASSOCIATION, INC.

February 23, 1989

To: Senate Federal and State Affairs Committee
From: R.E. "Tuck" Duncan
RE: Senate Bill 93

The Kansas Wine and Spirits Wholesalers Association opposes Senate Bill 93. We believe the passage of this bill will have dramatic negative effects on the whole beverage alcohol industry, sends the wrong message at a time of heightened concern regarding abusive use of alcohol, and reduces consumer product options.

Attached hereto we are providing the committee:

- a ten point summary of arguments in opposition to Senate Bill 93.

- a detailed analysis of the ramifications of single strength beer, including:

- A. on alcohol consumption,
- B. on enforcement, and
- C. economic ramifications.

- a letter from South Dakota Retail Liquor Dealers Association on the impact of this change in 1988.

When all the facts are considered we believe the committee will agree that what appears to be a simple change is really most complex. A previous Secretary of Revenue used to say that the beverage alcohol industry [CMB, beer, spirits and wine] is akin to a spider web, when you touched one gossamer thread the rest of the system experiences the turbulence as the vibration waves across all the delicate threads spun throughout the years into an intricate pattern.

It has been suggested that the difference in alcohol content is minimal, a myth. As we demonstrate in our detailed analysis, to suggest that there is a minimal difference belies the mathematic reality. Further, industry trends in response to consumer desires are towards lower alcohol content products.

For the social, economic and legal reasons we present to you we ask that you reject Senate Bill 93. Thank you for your attention to and consideration of these matters.

SF & SA
2-23-89
Attachment 10

SUMMARY OF ARGUMENTS IN OPPOSITION TO
SENATE BILL 93 "ONE-STRENGTH" BEER

1. Mandating increased consumption is clearly in conflict with public sentiment and recent changes in enforcement of tougher alcohol-related laws.

2. Kansas retail liquor dealers will suffer a drastic economic loss in sales. Currently 40-60% of an average liquor retailer's sales volume is beer.

3. Many independent retailers will go out of business as chain convenience and grocery stores dominate the market for "beer". Profits to small Kansas businesses flow out-of-state to chains.

4. Younger persons will sell a product with more alcohol. Now only persons over 21 can sell beer in a liquor store, but 18 year olds sell CMB.

5. The sale of the same product would be governed by two contradictory sets of laws and regulations. Today's CMB laws are more relaxed than those governing the sale of "strong" beer. CMB hours of sale are longer, trade practices are pliant and penalties for violation differ.

6. The state loses excise tax as the shift from sales in liquor stores moves to grocery stores. Currently liquor stores collect 8% tax, grocery and convenience stores collect 4% sales tax.

7. Since CMB (3.2) was available in Kansas before the repeal of prohibition did not the citizens of Kansas mean for alcoholic beverages to include all products over 3.2? If yes, does the sale of something other than 3.2 CMB in a dry county tavern violate the rejection by that county's citizens of liquor-by-the-drink?

8. The Legislature would be reversing the will of voters in many towns who have rejected liquor stores and "forcing" those communities and all consumers to buy a higher strength beer.

9. A "stronger" beer will be available in more outlets for off-premise sale. The lighter alcohol product many enjoy may never again be available.

10. There have been significant changes in the beverage alcohol industry within the last several years, and one that will not take effect until July, 1989 such that additional structural modifications are not appropriate while the industry is still adjusting to these changes.

* * *

THE RAMIFICATIONS OF SINGLE STRENGTH BEER

A. On Alcoholic Consumption.

Increased alcoholic consumption is inevitable. The reasons are listed below:

1. The Legislature would be forcing increased alcohol consumption by mandating at least a 20% increase in beer strength. The option of choosing a lower (3.2%) alcohol content beer would most likely be eliminated.

ALCOHOL CONTENT BY WEIGHT OF VARIOUS BRANDS

<u>Brand</u>	<u>Alcohol Content By Weight</u>	<u>Source</u>
EKU	8.10	Midwest Lab
Carlsberg Malt	5.67	Midwest Lab
King Cobra	4.91	Midwest Lab
Colt 45	4.27	Midwest Lab
Michelob	4.21	Midwest Lab
Heineken	4.07	Midwest Lab
Fosters Lager	3.86	Midwest Lab
Budweiser	3.83*	Midwest Lab
Coors - Extra Gold (strong)	3.90*	Coors Brewery
- Extra Gold (3.2)	3.13	Coors Brewery
- Herman Joseph (strong)	3.93*	Coors Brewery
- Herman Joseph (3.2)	3.13	Coors Brewery
- Winterfest I	4.50	Coors Brewery
- Turbo 1000	4.90	Coors Brewery
Miller - Highlife (strong)	3.65	Miller Brewing Co.
- Lowenbrau	3.85	Miller Brewing Co.
- Magnum	4.70	Miller Brewing Co.
- Meister Brau	3.58	Miller Brewing Co.

*% difference in 3.2 and strong products:

Coors Extra Gold - 24.6%

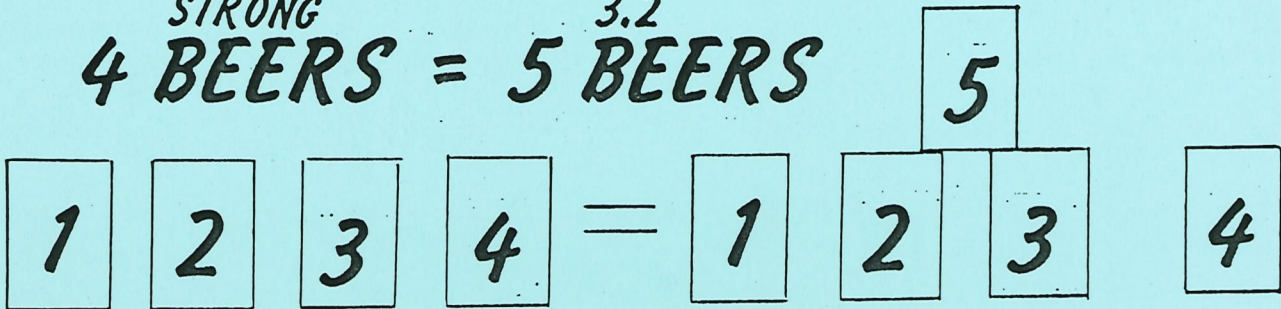
Coors Herman Joseph - 25.6%

Budweiser (assuming 3.2 is exactly 3.2) - 19.7%

AVERAGE: 23.3%

Even if an individual did not change the number of drinks he was accustomed to consuming, the amount of alcohol consumed increases, on average, 20%. That means the 4 beers he normally drinks automatically becomes equivalent to 5. That "extra beer" that the consumer unknowingly drinks could very well push a driver into an impaired condition.

**STRONG
4 BEERS = 3.2
5 BEERS**



THE TABLE BELOW SHOWS THAT A PERSON 160-180 POUNDS WOULD BE LEGALLY "INTOXICATED" BY DRINKING 4 STRONG BEERS INSTEAD OF 4 3.2 BEERS IN A ONE HOUR PERIOD.

APPROXIMATE BLOOD ALCOHOL PERCENTAGE

Drinks	Body Weight in Pounds								
	100	120	140	160	180	200	220	240	
1	.04	.03	.03	.02	.02	.02	.02	.02	Influenced Rarely
2	.08	.06	.05	.05	.04	.04	.03	.03	
3	.11	.09	.08	.07	.06	.06	.05	.05	Possibly
4	.15	.12	.11	.09	.08	.08	.07	.06	
5	.19	.16	.13	.12	.11	.09	.09	.08	
6	.23	.19	.16	.14	.13	.11	.10	.09	Definitely
7	.26	.22	.19	.16	.15	.13	.12	.11	
8	.30	.25	.21	.19	.17	.15	.14	.13	
9	.34	.28	.24	.21	.19	.17	.15	.14	
10	.38	.31	.27	.23	.21	.19	.17	.16	

Subtract .01 for each hour of drinking. In Kansas, the legal limit is .10, but safe limit could be less.

Source: Kansas Beer Wholesalers and Kansas Wine and Spirits Wholesalers Brochure.

10-4

2. Currently, strong beer is available in 911 retail outlets across the State of Kansas. If the CMB outlets were to be allowed to sell strong beer, that number would increase more than 5 fold to approximately 6,000. This enormous increase in availability would also have a positive impact on consumption.

Mandating increased consumption is clearly in conflict with public sentiment and recent changes and enforcement of tougher alcohol-related laws.

B. On Enforcement.

Enforcement of sales to minors, outside legal hours sales, etc. would be seriously negatively affected.

Currently, strong beer regulations are monitored by the Alcoholic Beverage Control (A.B.C.) which has 31 agents policing those outlets licensed to sell the product. An official at ABC stated in a phone conversation that strong licenses are more tightly controlled than the 3.2 licenses because they add an extra layer of enforcement targeting the clubs and liquor stores. He also pointed out that the strong licenses are enforced equally across the whole state, whereas the 3.2 regulations are monitored by city and county police departments while they are on routine patrol.

The number of 3.2 violations is very difficult to measure because of the way they are recorded and the large number of different agencies (both city and county) involved.

The penalty or risk of infraction to the liquor store owner is far greater than to the grocery store conglomerate whose hand many get slapped versus the liquor store owner whose business and only source of income could be closed down. In many cases the liquor store owner or his wife is running the cash register and is much more apt to check I.D.s, for example, than an 18-year-old clerk in a grocery store whose check out stand is backed up by 8 overflowing grocery carts and who is servicing many of this friends who might be between 18 and 21. Also, a police officer really has no reason to card an underage person coming out of a grocery store. If an obviously underage person comes out of a liquor store, the conclusion is apparent. Finally, liquor store owners are held individually responsible for violations, whereas the cash register operator at a convenience or grocery store may be indemnified by the corporation.

The combination of quintupling the number of available outlets and removing a layer of enforcement by eliminating the ABC agents or stretching them over 6,000 more outlets would have a disastrous effect on sales to minors violations, sale to individuals who already are intoxicated, after hours sales, and enforcement of the Liquor Control Act.

The following enforcement and legal issues should also be addressed as they are not addressed in the current bill:

- a. What will be the penalty for selling to minors?
 - b. Would the state have to provide adequate funds to staff enough agents to monitor the additional approximately 6,000 outlets?
 - c. Would minors be allowed to actually "ring up" the sale of strong beer?
 - d. Would minors be allowed to work in grocery store back rooms and actually have access to strong beer?
 - e. Would the sales tax be uniform at 8% as is now in effect for strong beer or at 4% as it is now for CMB? If 4%, how would the approximate \$2,500,000 loss in tax revenue to the state general fund be made up? If it all was taxed as an excise tax of 8%, then how would the cities and counties make up the 1-2% sales tax they currently receive for CMB sales?
 - f. Will the grocery outlets follow the same closing day laws as liquor stores, i.e., July 4th, Memorial Day, Labor Day, etc.?
 - g. Will the stores be required to follow the liquor store law of sales only between 9 a.m. and 11 p.m. or shorter hours as may be required by local units of government?
 - h. Would all outlets have to abide by the same restrictions as liquor stores as far as proximity to schools, churches, etc.?
2. As pertains to the current 3.2 taverns.
- a. In those counties that did not vote for "liquor by the drink," will the 3.2 taverns that would sell strong beer if Kansas had one strength have to become private clubs? (Pizza Huts, etc.?)
 - b. Would these taverns be restricted from selling package goods for take out (small town pool halls, etc.)?

- c. Towns that have not approved liquor stores would now have strong beer in their grocery stores.

C. Economic Ramifications.

1. Hundreds of liquor store owners would be forced to close their doors.

There has been a tremendous upheaval in the Kansas retail liquor trade over the last several years. In 1987, prices were deregulated. In July, 1989 price and brand advertising comes into effect. Now you are proposing to take away 45% of the retail liquor store's business. Is that a fair and equitable treatment for these independent businessmen? Due to these economic and legal changes, the number of retail stores has dropped by 148 stores (from 1,059 in July, 1985, to 911 in December, 1988) or 16% in 3 years. In Wichita, the decrease has been even more drastic with 43 stores closing, resulting in a 28% decrease in the number of stores in only 3 years.

Example: South Dakota eliminated 3.2 beer in March, 1988. Doug Cole, of the South Dakota Retail Liquor Store Association, reports 17 store closings with "a lot more in trouble." He adds that allowing one strength beer has made "the Mom and Pop liquor store a dinosaur." A Sioux Falls, South Dakota liquor store owner, who sold his store in December, states that his beer sales dropped 40% over the same period last year. The Director of Revenue, James Fry, says, "The convenience stores are the winners, with the beer distributors right behind." That means the sale of beer will shift towards the convenience stores and a greater proportion of beer sales will be in conjunction with gasoline sales and more single cans of stronger cold beer will be sold to drivers. Are they going to wait until they get home to consume it or more likely to drink it like a pop in the car?

2. Money would flow out of state to the head offices of the large chains instead of staying in Kansas and benefiting the Kansas economy. Kansas liquor stores are owned to a great extent by husband/wife teams. These Mom and Pop operations, many of whom have been born and raised in the neighborhood where their store is located, will be eliminated by the predominantly out-of-state conglomerates owning the giant grocery chains and convenience chains. Besides transferring ownership to out-of-state concerns, the profits will also flow out of state rather than staying and being spent inside Kansas. Kansas will also lose the income and property taxes associated with local ownership.

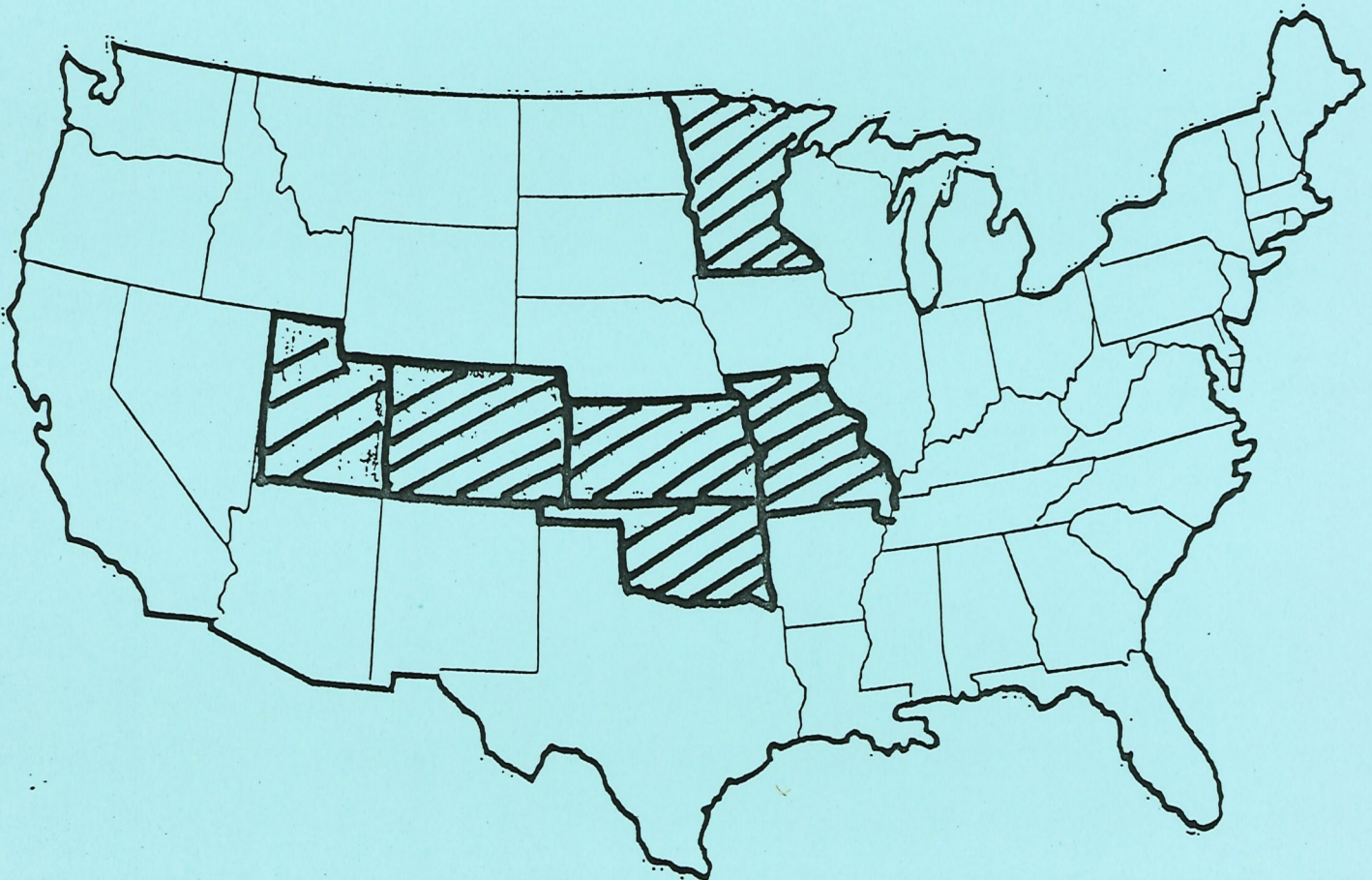
3. Tax Considerations - a possible loss of \$2,500,000 per year to the state general fund.

Current Tax Structure

- Strong - 8% enforcement tax
- 3.2 CMB - 1) 4% sales tax
2) 1-2% local tax (optional)

If no changes were made, the state would lose half the revenue on the amount of beer volume that would shift from the liquor stores to CMB outlets.

- 6 -



Three of the four states bordering Kansas sell 3.2 beer.

10-8

The SOUTH DAKOTA RETAIL LIQUOR DEALERS Association

An Organization of On- and Off-Sale Dealers to Promote the General Welfare of Their Business
MEMBER OF NATIONAL LICENSED BEVERAGE ASSOCIATION

306 S. COTEAU ST.
PIERRE, S.D. 57501
PHONE 605-224-1817

DOUG COLE
EXECUTIVE SECRETARY

February 17, 1989

Mr. Tuck Duncan
Kansas Wine & Spirits Wholesale Assn.
Jay Hawk Tower, Suite 803
700 Jackson
Topeka, Kansas 66603

Dear Mr. Duncan:

I understand that the legislature in Kansas is considering a measure that would eliminate 3.2 beer. I wish that I was able to travel to your great state and ask your legislature not to repeat the mistake that was made in South Dakota.

On April 1, 1988 in conjunction with an increase in South Dakota's drinking age from 19 to 21, 3.2 beer licensing was eliminated.

In South Dakota, we and other opponents were not given a chance to discuss the merits of 3.2 beer licensing because it was piggy-backed into the 21 year old drinking legislation.

The economic damage to our industry can never be repaired. I hope that in my absence the following information can be presented to your legislature as testimony against the elimination of 3.2 beer.

1. Alcohol content. When moving from a 3.2 beer to one that contains 3.6 to 4.0 the increase may seem insignificant, but you increase the product's alcoholic content by 12.5 percent to 25 percent per can.

10-9

People under the legal age when attempting to obtain alcoholic beverages in South Dakota most often tried to obtain 3.2 beer. You cannot stop underage drinking, but you can control the alcoholic content of the most sought after product.

2. Economic Damage. 3.2 beer was eliminated less than eleven months ago and for many retail liquor dealers it was "the straw that broke the camels back".

We have seen independant package store close in cities of all sizes all across the state. The "Mom and Pop" stores are small businesses; they pay taxes, and provide jobs. In South Dakota before its elimination 3.2 beer was available in grocery stores, convenience stores, and gas stations. None of those business depend on beer sales to keep the doors from being boarded up.

On the average for the independant liquor retailers in South Dakota beer sales comprise 50 percent of the business's gross. When the same beer product is available on virtually every street corner the independent cannot compete. The beer company's sales remain stable, but the market shifts.

In Sioux Falls, our state's largest city, Skyway Liquors, an independent package store, with a very favorable location in a high traffic area experienced from April 1 to December 1, 1988 a 40 percent decline in beer sales. The business was sold to an investor that needed a tax write-off. Many others haven't been as lucky, what used to be a good family businesses are now empty buildings.

South Dakota's population is approximately 700,000 people. The retail liquor industry in South Dakota prior to April 1, 1988, included approximately 700 package sale licenses that employed in the

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neighborhood of 4,000 people. 1987 statistics show that our industry contributed a total of \$23 million dollars in federal, state, and local taxes and license fees. With the elimination of 3.2 beer for the package industry in our state none of those numbers will ever be surpassed.

The only argument offered by the proponents of the elimination of 3.2 beer that to me was irrefutable was that the beer distributors had to keep a "double" inventory of all products.

The question you need to ask is whether rectifying this inconvenience is worth closing of businesses, the loss of jobs, and the decline in tax revenues and license fees.

A popular phrase used in the South Dakota legislature is "If it ain't broke don't fix it". It seems to me that cliché applies to the situation in Kansas, and believe me when they tinkered with it here they broke it forever.

Respectfully,



Doug Cole
Executive Secretary
S.D. Retail Liquor Dealers Association

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