

Approved April 1, 1991
Date

MINUTES OF THE HOUSE COMMITTEE ON FEDERAL AND STATE AFFAIRS

The meeting was called to order by Representative Kathleen Sebelius at
Chairperson

1:30 ~~am~~/p.m. on Wednesday, February 27, 1991 in room 526-S of the Capitol.

All members were present except:

Representative Sam Roper - Excused
Representative Arthur Douville - Excused
Representative Clyde Graeber - Excused

Committee staff present:

Mary Torrence - Office of the Revisor
Lynne Holt - Kansas Legislative Research Dept.
Connie Craig - Secretary to the Committee

Conferees appearing before the committee:

HB 2180

Representative Rick Bowden - PROPONENT

Reverend Richard Taylor - OPPONENT

HB 2295

PROponents

Representative Betty Jo Charlton
Verner L. Newman, III

NEUTRAL

Neal Whitaker, Kansas Beer Wholesalers Association

OPPONENT

Reverend Richard Taylor

HB 2180

Representative Rick Bowden offered testimony explaining why he introduced HB 2180, and that this bill would put the liability of producing proper identification on the person purchasing alcoholic beverages, as well as the retailer, Attachment #1.

Mary Torrence updated the Committee on the current status of the law in regards to requirements for identification and purchasing liquor, Attachment #2.

Committee Discussion:

- A non-driver ID was explained as being an official state picture identification obtained from the Highway Patrol Drivers' License Bureau without taking the driving test.
- It is the intent of this bill to make it a policy that you cannot buy liquor if you don't have proper identification.
- This bill would not repeal the penalty on the retail for selling alcoholic beverages to an under age person, but adds a penalty to the person who attempts to purchase liquor without proper identification.

Reverend Richard Taylor offered written testimony in support of HB 2180, Attachment #3, and added that he liked legislation that would help prevent young people from purchasing liquor.

Chair Sebelius introduced Brad Avery from the Kansas Association of Public Employees.

Mr. Avery asked the Committee to introduce legislation amending K.S.A. 75-2949(a), Attachment #4. He added that this legislation was basically a reaction to a recent court of appeals decision which overturned the meaning of "good of the service" in the case of "Sandstrom vs. Highway Patrol". It would also help define the meaning of "disciplinary purposes".

Representative Cates moved that Mr. Avery's request be introduced as legislation. Representative Jones seconded the motion, which passed on a voice vote.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON FEDERAL AND STATE AFFAIRS,
room 526-S, Statehouse, at 1:30 ~~am~~/p.m. on Wednesday, February 27, 1991

HB 2295

Mary Torrence set out the definitions of non-alcoholic malt beverages and cereal malt beverages, and what HB 2295 would do, Attachment #2.

Jim Conant, Acting Director of Alcoholic Beverage Control, Department of Revenue, stated the following in regards to fiscal loss of revenue to the State:

- the State of Kansas collected in gallonage tax for FY90 for non-alcoholic malt beverages \$25,806. That is .81% of all cereal malt beverages that the State collected tax on. ABC cannot estimate with any accuracy what was purchased at grocery stores with sales tax, what was purchased at retail liquor stores with the 8% tax, and how much went through the clubs with the 10% tax.

Representative Charlton explained to the Committee the purpose of HB 2295, Attachment #5, to change the status of non-alcoholic malt beverages. She pointed out that the reason the new section 3 was added into the bill was that it was felt that there might be a valid argument if NAB's (non-alcoholic beverages) were made available to teenagers like soda pop, these teenagers might develop a taste for beer and grow up to be beer-drinkers. The same conditions for purchasing cereal malt beverages remains for the purchase of NAB's. Representative Charlton added that she would not be adverse to amending HB 2295 to address the loss of tax revenues. She also stated the following information:

- NAB's have less than $\frac{1}{2}$ of 1% alcohol content
- Geritol has 12% alcohol
- Nyquil has 25% alcohol
- Listerine mouthwash has 26 $\frac{1}{2}$ % alcohol
- Pure vanilla extract has 35% alcohol which equals 70 proof
- The above products are not called beverages, therefore, they are not intended for drinking but can be purchased by minors.
- Could the State impose an age limitation on the purchase of products like vanilla extract or Nyquil?

Verner L. Newman, III appeared before the Committee as a proponent of HB 2295. He gave his history as a consumer of NAB's for eight years in many different states and locations, Attachment #6.

Neal Whitaker came to the Committee as a neutral conferee and stated that it would be more appropriate to amend K.S.A. 4-345 with days and hours of sale to insure that the state could still collect its taxes and keep the product from being sold in vending machines, Attachment #7. He added that in its present form, HB 2295 would take away the right of retail liquor dealers to sell NAB's.

Reverend Richard Taylor opposed HB 2295, and offered written testimony on the bottom of Attachment #3.

Rebecca Rice stood before the Committee and explained that she had not intended to appear originally as a conferee, but as a representative of the retail liquor dealers, she would have to oppose HB 2295 in its present form. She would prefer Neal Whitaker's suggestion to amend the law which would allow retail liquor dealers the option to continue to sell NAB's.

Chair Sebelius announced that she was asked by Jerry Simpson, Director of the Lottery Commission to extend an invitation to the Committee for lunch at Lottery Headquarters on Tuesday, March 5, 1991, Attachment #8. There would also be an overview given at that time on the Lottery's new games and equipment.

Chair Sebelius adjourned the meeting.

Testimony on HB 2180
House Federal and State Affairs Committee
by
Rep. Rick Bowden
February 27, 1991

Madame Chair and Members of the Committee:

I introduced HB 2180 at the behest of several liquore store owners in my district. Last summer a "sting" operation was conducted in our county. A very mature looking, yet under age operative was used in this operation.

The owners recognize and will not deny that they were negligent in not asking for proper ID from this person. In one situation, this operative didn't ask for/order the alcoholic drink, and she handed the money over to the owner when the drinks were delivered. However, they believe that they were entrapped in this operation. It is my understanding, from conversations I had after this bill was introduced, that the language contained in this bill expands the things that could be used as means of identification. It was not my intent to make it easier for persons to purchase liquor via methods of identification that this committee and the legislature has deemed inappropriate in recent years. I would encourage you and your staff to bring the language of this bill into conformity with existing language to rectify this problem, if it is the desire of the committee to proceed with this legislation.

To: House Committee on Federal and State Affairs
From: Mary Torrence, Assistant Revisor of Statutes
Date: February 27, 1991
Re: Background on House Bill Nos. 2180 and 2295

Identification to Purchase Alcoholic Beverages

False identification statutes (K.S.A. 8-246, 8-247, 8-1326, 8-1327 and 21-3830) have been strengthened in last eight years

- More stringent requirements to obtain duplicate driver's license or nondriver's identification card
- Increased penalties for using, lending or duplicating license or ID card for illegal purposes
- Increased penalties for crime of dealing in false ID's

In addition, drivers' licenses and nondriver's ID cards have been made more difficult to duplicate so that false ones are easier to identify

Furnishing alcoholic beverages to a minor (K.S.A. 21-3610 and 21-3610a) is a crime regardless of lack of knowledge of the minor's age. In 1989 an exception was adopted for alcoholic beverage licensees who sell to minors if there is reasonable cause to believe the minor is 21 or more years of age and the minor shows official or apparently official documentation of age.

Nonalcoholic Malt Beverages

"Nonalcoholic malt beverage (NMB)": Less than 1/2% alcohol by volume (both Kansas and federal definition)

"Cereal malt beverage (CMB)": 3.2% or less alcohol by weight

Until 1990, NMB was treated as CMB; in 1990, K.S.A. 1990 Supp. 41-342 through 41-345 were enacted

- NMB may be sold at wholesale by wine and spirits distributors without separate CMB license
- NMB may be sold by clubs and drinking establishments without separate CMB license
- NMB may be sold by liquor retailers without separate CMB license (not previously permitted to sell CMB) and is subject to liquor enforcement tax
- NMC may continue to be sold by CMB licensees

H.B. 2295 removes NMB from the definition of CMB; it would be subject to no liquor or CMB taxes and could be sold without a license; liquor retailers would not be able to sell it because they are prohibited from selling anything but liquor

February 27, 1991
Hearing on House bills 2180 & 2295
House Federal & State Affairs Committee

Rev. Richard Taylor
KANSANS FOR LIFE AT ITS BEST!

HB 2180

For the physical and emotional development of the human brain, it is important to delay alcohol consumption as long as possible. Toxic means poison. An intoxicated person is poisoned on alcohol. Brain cells are damaged and destroyed.

The younger the drinker, the greater the risk of permanent brain damage. The extreme of this is the fetal alcohol syndrome birth defect when the brain of the fetus suffers major permanent damage caused by the drinking of the mother.

When a young person chooses to solve problems by drugging his or her mind, emotional development is stunted.

To reduce personal and social damage, law must place a heavy burden on the seller and the buyer of our most abused drug to reduce consumption by persons under 21. If this bill places a greater burden on the buyer than does current law, that is a step in the right direction.

HB 2295

This bill looks like a boom for baby beer drinkers.

Last year we supported the half percent beer bill. Beer lobbyists promised that age 21, no Sunday carry-out sales, and all other cereal malt beverage control laws would apply to half percent beer.

Because this bill has no age restrictions, would permit Sunday carry-out sales, and looks upon half percent beer as if it were no more dangerous than classic coke, surely lawmakers concerned for our social drug problem will want to vote NO.

Legislation passed last year would encourage regular beer drinkers to switch to half percent beer. That is a step in the right direction.

This bill will encourage children and youth to drink half percent beer until age 21 and then switch to regular beer.

Nonalcoholic beer is a good substitute for regular beer. It is not a good substitute for root beer. This bill is a step in the wrong direction.

Respectfully yours,

Richard Taylor

HOUSE FEDERAL AND STATE AFFAIRS
February 27, 1991
ATTACHMENT #3 - Page 1

K.S.A. 75-2949(a) is hereby amended as follows:

An appointing authority may dismiss or demote any permanent employee in the classified service when the appointing authority considers that the good of the service will be served thereby and for disciplinary purposes may suspend without pay a permanent classified employee for a period not to exceed 30 calendar days, but no permanent employee in the classified service shall be dismissed, demoted or suspended for political, racial or other nonmerit reasons.

For the purposes of dismissal or demotion, "good of the service" shall mean that clear and convincing evidence exists that an employee has substantially and directly impaired the function and operations of the agency bringing the disciplinary action.

For the purpose of suspension, "disciplinary purposes" shall mean that the employee has violated a policy or directive of the agency made known to the employee prior to the violation thereof.

February 27, 1991

Madam Chairman and Members of the Committee:

I am Representative Charlton and I would like to explain
HB 2295.

The purpose of the bill is to change the status of nonalcoholic malt beverage. This would be done by removing the definition of nonalcoholic beverage from the cereal malt beverage law and repealing sections of the liquor control act.

The first change is on Page 1 of the bill, at line 22, where "any nonalcoholic malt beverage" is excluded from the definition of a cereal malt beverage. Second, beginning at line 42, subsection (i) and continuing on Page 2, lines 1, 2 and 3, "non-alcoholic malt beverage" is defined. Next, at lines 30 and 31 on Page 2, NAB is again excluded from CMB. Finally, new Section 3, beginning at line 39 and continuing on Page 3, provides misdemeanor penalties for furnishing NAB to minors. The repealers in Section 4 remove NAB from the liquor control act.

Madam Chairman and Members of the Committee:

I am Verner L. Newman III. I am here on behalf of House Bill No. 2295.

I began drinking Non-alcoholic beer (N.A.B.) eight years ago when I quit drinking all alcohol and cereal malt beverages. In the beginning you could only buy a few varieties of domestic N.A.B.s, which weren't very good, but on a hot day one or two cans were refreshing. With the emergence of the foreign N.A.B.s it got a lot better and more American Companies were producing, but with the strict Kansas laws and import cost, you had to go to Missouri to get the best variety at a lesser cost. I advised the former ABC Director of my purchases of N.A.B. in Missouri and he promptly advised me that this was illegal. As a retired Police Captain, I can assure you that law enforcement have a lot more serious violations to deal with than to be stifled with such frivolous statutes.

Alcohol contributes to the palate experience, to the mouth feel. So as robust as some of the N.A.B.s may be, they are disappointing. It's like - did I miss my mouth, or what? Or, as American humorist Philander Johnson once said, "The man who called it near beer was a bad judge of distance."

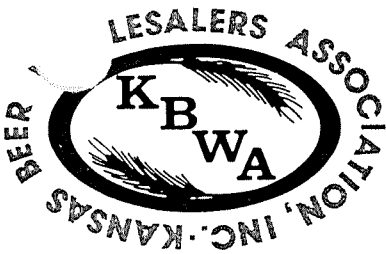
Drinking N.A.B. isn't solely about taste. It's about lifestyle. N.A.B.s are being marketed as the thing to drink when you want a beer but don't want alcohol - at a business lunch, at a gathering you will be driving home from, between sets of tennis - even on military duty. N.A.B.s are sometimes used as a part of a post-race

rehydration and carbo-replacement plan. (Each 12-ounce beer provides 10 to 20 grams of carbohydrate.)

As I stated before, I have been drinking N.A.B. for over eight years and, even with the production of new N.A.B. by two of our largest breweries and the improved taste, there is no way N.A.B. is ever going to replace the real thing. If it was readily available and free, it would never be accepted by anyone desiring a good beer or one out to enjoy the evening.

I have drank N.A.B. from California to Maryland, airports, hotel bars, restaurants and nite clubs and nowhere were the laws and restriction as sad as what we have in Kansas. With the price range \$2 - 3.00 per bottle and \$4-6.00 per six-pack I don't believe too many young people will be willing to pay such prices for a non-kick drink, or a more proper name "NON-ALCOHOLIC BEVERAGE." Sauda Arabia, which probably has the strictest laws in reference to alcohol, allowed two American Companies to ship in thousands of cases of their N.A.B. (16,000) to our military forces stationed in their country. We didn't hear any outcry from anyone against this and I am sure that our law makers read about this as I did but probably didn't want the world to know that Kansas has such laws and that our young troops should be denied because of our beliefs.

I think it is about time that you Kansas law maker listen to us, try and N.A.B. and stop imaging the worst. Believe me, anyone desiring a real beer is not going to be satisfied with an N.A.B. N.A.B should be included as a grocery item as 101 other food products and non-prescription drugs with far more alcohol in its ingredients than N.A.B. "Non-Alcoholic Brews are the beer of the future."



Testimony on House Bill 2295
by Neal Whitaker
Kansas Beer Wholesalers Association
February 27, 1991

It has been the public policy of this state to regulate the sale of all beverages containing alcohol for over 50 years. The product referred to in **House Bill 2295** is commonly called "*near beer*", first popular during prohibition and returning to popularity with changing attitudes about alcohol consumption. Prior to the last session of the legislature "*near beer*", considered cereal malt beverage under Kansas law, was sold only in establishments which held cereal malt beverage licenses. The few brands available were subject to the state cereal malt beverage gallonage tax and state sales tax. During 1989 major brewers Anheuser-Busch and Miller approached the market place with O'Doul's and Sharps. These products attracted the attention of the consumer who soon discovered that because of Kansas law licensed private clubs, drinking establishments and liquor retailers were prohibited from selling them. As a result, the 1990 Legislature passed legislation allowing these three groups of establishments the opportunity to sell non-alcoholic malt beverages. Today when a non-alcoholic malt beverage is sold in a club or drinking establishment it is subject to the 8% enforcement tax and the 10% tax on drinks, and when sold in a liquor retailer's establishment it is subject to the 8% enforcement tax. These products are delivered from the breweries to retailers in the same manner that both cereal malt beverage and strong beer are delivered in Kansas.

If the intent is to allow for the sale of "*near beer*" 24 hours a day and on Sundays then I believe it would be more appropriate to amend K.S.A. 41-345 with days and hours of sale. The product would still be widely available in the state in almost every grocery store, many drinking establishments and licensed liquor retailer's establishments. Further, this would insure that the state could still collect its taxes and keep the product from being sold in vending machines.

HOUSE FEDERAL AND STATE AFFAIRS
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ATTACHMENT #7 - Page 1

son's permit shall be issued except to a person who, in good faith, devotes a major part of the person's time to selling, or taking or soliciting orders for the sale of, alcoholic liquor or cereal malt beverage and whose principal occupation is that of a salesperson of the person, firm or corporation on whose behalf the application is filed. Nothing in this section shall prohibit the issuance of a permit to a person who is regularly employed on a full-time basis by a manufacturer or licensed distributor of alcoholic liquor or cereal malt beverage and who, incident to the person's regular employment for such manufacturer or distributor, may sell, take or solicit orders for the sale of alcoholic liquor or cereal malt beverage.

History: L. 1987, ch. 182, § 134; April 30.

41-341. Same; prohibited acts. No salesperson shall directly or indirectly: (a) Sell, supply, furnish, give, pay for, loan or lease any furnishing, fixture or equipment on the premises of a place of business of a licensee authorized under this law to sell alcoholic liquor or cereal malt beverage at retail; (b) pay for any such license, or advance, furnish, lend or give money for payment of such license; (c) purchase or become the owner of any note, mortgage or other evidence of indebtedness of such licensee or any form of security therefor; (d) be interested in the ownership, conduct or operation of the business of any licensee authorized to sell alcoholic liquor at retail; or (e) be interested, directly or indirectly, or as owner, part owner, lessee or lessor thereof, in any premises upon which alcoholic liquor or cereal malt beverage is sold at retail, and any person having any such interest as described above shall not be eligible to receive or to hold a salesperson's permit.

History: L. 1987, ch. 182, § 135; April 30.

41-342. Nonalcoholic malt beverages; title of act. K.S.A. 1990 Supp. 41-342 through 41-345 shall be known and may be cited as the nonalcoholic malt beverages act.

History: L. 1990, ch. 178, § 2; May 17.

41-343. Same; definitions. As used in K.S.A. 1990 Supp. 41-342 through 41-345, "nonalcoholic malt beverage" means a beverage containing less than .5% alcohol by volume obtained by alcohol fermentation of an infusion or coction 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.

History: L. 1990, ch. 178, § 3; May 17.

41-344. Same; sales by certain licensees. Nonalcoholic malt beverages may be sold by retailers licensed pursuant to the liquor control act, by clubs and drinking establishments licensed pursuant to the club and drinking establishment act by retailers licensed pursuant to article 27 of chapter 41 of the Kansas Statutes Annotated, as an additional privilege of the license issued in accordance therewith.

History: L. 1990, ch. 178, § 4; May 17.

41-345. Same; distribution; sales and taxation. (a) Nonalcoholic malt beverages shall be distributed by distributors, as defined by K.S.A. 41-102 and amendments thereto, pursuant to all terms and conditions of the liquor control act. The provisions of K.S.A. 79-3817 et seq. and amendments thereto shall apply to sales and distribution of nonalcoholic malt beverages by such distributors.

(b) The provisions of the liquor control act, and any rules and regulations adopted thereunder for the administration of enforcement thereof, shall apply to the sale and taxation of nonalcoholic malt beverages by retailers licensed thereunder. The provisions of K.S.A. 79-4101 et seq. and amendments thereto shall apply to the sale of nonalcoholic malt beverages at retail by such retailers.

(c) The provisions of the club and drinking establishment act, and any rules and regulations adopted thereunder for the administration of enforcement thereof, shall apply to the sale and taxation of nonalcoholic malt beverages by clubs and drinking establishments licensed thereunder. The provisions of K.S.A. 79-41a01 et seq. and amendments thereto shall apply to the sale of nonalcoholic malt beverages by a club or drinking establishment.

(d) The provisions of K.S.A. 41-2701 et seq. and amendments thereto, and any rules and regulations adopted thereunder for the administration of enforcement thereof, shall apply to the sale and taxation of nonalcoholic malt beverages by retailers licensed thereunder.

History: L. 1990, ch. 178, § 5; May 17.

Article 4.—BONDED WAREHOUSES AND RELATED PROVISIONS

41-401. Bonded warehouse required, spirits or wine manufacturer or distributor. Every licensed manufacturer of spirits or wine and every spirits or wine distributor shall provide at such manufacturer's or distributor's own



Kansas Lottery

Joan Finney
Governor

CREATING JOBS FOR KANSAS

February 27, 1991

The Honorable Kathleen Sebelius
Chairperson, House Federal and State Affairs Committee
State of Kansas

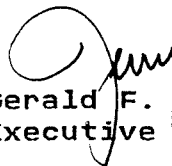
Dear Representative Sebelius:

The Kansas Lottery is alive and well and reaching our sales projections for fiscal year 91! As you are chairperson of the House Federal and State Affairs Committee, it is incumbent upon us to provide you a complete understanding of the Kansas Lottery.

We invite you and the members of your committee to come to Lottery headquarters at 128 N. Kansas, on Tuesday, March 5, at noon, for an update and brief overview of Lottery games and a discussion of new game concepts. Lunch will be provided. In order that we have an accurate count for lunch, we ask that the committee members call our office to let us know if they will be attending. Please ask them to contact Jane Elliott at 296-6819 by 1:00 p.m. Monday, March 4.

It will be our pleasure to be your hosts on Tuesday. If you have any questions, please do not hesitate to call.

Sincerely,


Gerald F. Simpson
Executive Director

GFS:ms

HOUSE FEDERAL AND STATE AFFAIRS
February 27, 1991
ATTACHMENT #8 - Page 1