

Approved MAY 6, 1992

MINUTES OF THE SENATE COMMITTEE ON FEDERAL AND STATE AFFAIRS.

The meeting was called to order by Sen. Edward F. Reilly, Jr. at 11:00 a.m. on March 24, 1992 in Room 254-E of the Capitol.

All members were present except:  
Sen. Daniels was excused

Committee staff present:

Mary Torrence, Office of Revisor of Statutes  
Mary Galligan, Legislative Research Department  
Jeanne Eudaley, Committee Secretary

Conferees appearing before the committee:

Charles Wright, Kansans for Life at its Best  
Tuck Duncan, Kansas Wine & Spirits Wholesalers Assoc.  
Jim Conant, Kansas Alcoholic Beverage Control Division  
Neal Whitaker, Kansas Beer Wholesalers Assoc.  
Rebecca Rice, Kansas Retail Liquor Dealers Assoc.

Others attending: See attached list

Sen. Reilly called the meeting to order and announced the committee will hear testimony on three alcoholic beverage bills today. He introduced Charles Wright, who spoke for the Rev. Richard Taylor, who could not be present today because of illness. Mr. Wright spoke in opposition to HB 2716 and a brief discussion followed regarding serving alcoholic beverages at Historical sites throughout the state.

The Chairman called on Mary Galligan, who briefed the committee on amendments made by the House Committee of the Whole (Attachment 1) to HB 2840. Rep. Sprague requested he have time to present his amendments to the bill, but he was unable to be present. The following people presented testimony to the committee in support of HB 2840:

Tuck Duncan, (Attachment 2);  
Neal Whitaker, (Attachment 3);  
Jim Conant, (Attachment 4);  
Rebecca Rice, (Attachment 5).

Charles Wright spoke in opposition to HB 2840, but emphasized the importance of the keg amendment.

Following testimony by the proponents, discussion centered on the fact that it is illegal to bring alcoholic beverages into Kansas from another state; the fact that this bill gives regulatory authority to the ABC on gift packaging; if the keg registration amendments remain on the bill, the ABC recommended a standardized system for marking the kegs, making them easier to track.

Sen. Reilly stated that the committee had amended and passed SB 710, the State March, which was killed on the Senate floor. HB 3098 is the same bill and he asked for action on the bill. Several committee members voiced opposition to the proposed March.

The meeting adjourned at 12:00.



Attach. 1

SESSION OF 1992

SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2840

As Amended by House Committee of the Whole

**Brief\***

H.B. 2840 would amend two statutes concerning alcoholic beverages to:

1. allow retailers to sell to consumers items included by the manufacturer in packages containing alcoholic liquor;
2. allow retailers to distribute, without charge, consumer advertising specialties which bear advertising matter subject to rules and regulations of the Secretary of Revenue;
3. replace references to "wine" with the word "alcoholic liquor"; and
4. change the residency requirement from five years to one year for eligibility for a beer distributor's license.

The bill also would require liquor and CMB retailers to maintain records of sales of beer in containers of six or more gallons or 22.71 or more liters. Those containers would have to have an identification number that includes the retail liquor dealer's license number. At the time of sale the keg number, date of sale, purchaser's name, address, and signature would be recorded. In addition, a record would be kept of the number of a piece of the purchaser's identification that includes both a picture and signature. These sales records would have to be kept at the premises where the purchase was made for at least six months and would have to be available for inspection by any law enforcement officer at any reasonable time. A violation of this provision would result in suspension of the retailer's license for five business days.

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\* Supplemental Notes are prepared by the Legislative Research Department and do not express legislative intent.

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The bill also would permit sale of nonalcoholic beer on Sundays between 6:00 a.m. and midnight.

## **Background**

This bill would add two exceptions to the statutory prohibition against retailers selling or giving away "any service or thing of value whatsoever except alcoholic liquor in the original package." The House Committee was informed that a recent Attorney General's opinion concluded that retailer distribution of such items as baseball schedules, recipe cards, and posters were in violation of the statute, as these items were determined to be things of value. A representative of the Division of Alcoholic Beverage Control noted that this statutory restriction prevented the Division from focusing its enforcement efforts on areas of greater priority to the Division, such as sales to minors and improved tax collection. The other exception would allow liquor retailers to sell nonliquor items packaged by the manufacturer with liquor. Examples of such items discussed before the Committee include glasses, corkscrews, ashtrays, and others.

One of several reasons given to the Committee for the proposed change in the beer distributor residency requirement in K.S.A. 1991 Supp. 41-311 is the ability of the Division of Alcoholic Beverage Control to conduct electronic background checks on prospective licensees.

Proponents of the bill include representatives from the Division of Alcoholic Beverage Control, the Kansas Beer Wholesalers Association, the Kansas Retailer Liquor Dealers Association, and the Kansas Wine and Spirits Wholesalers Association. There were no opponents.

The House Committee of the Whole amended the bill to require record keeping on sale of beer in kegs and to allow sale of nonalcoholic beer on Sunday.

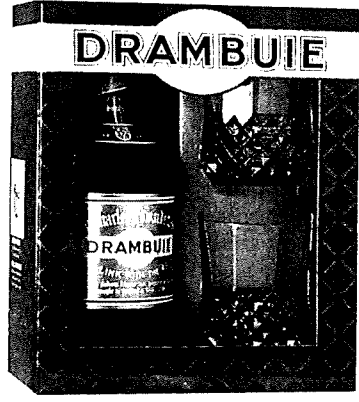
K · A · N · S · A · S  
**WINE & SPIRITS**  
WHOLESALE ASSOCIATION, INC.

March 24, 1992

To: Senate Committee on Federal and State Affairs  
From: R.E. "Tuck" Duncan  
RE: House Bill 2840

The Kansas Wine and Spirits Wholesalers Association (KSWA) supports House Bill 2840. The bill, as it was introduced, and recommended by the House Committee, makes three modifications to current law.

One modification allows the sale of "gift packs" to consumers by a licensed Kansas retail liquor dealer. There are, particularly at various holidays, packages available which combine certain non-alcoholic items, such as glassware, with the beverage alcohol container. Kansas consumers may not purchase these packages currently because of the existing "original container" language in the statute. Missouri, Oklahoma, Nebraska and Colorado all permit the sale of these packages. The Alcoholic Beverage Control, Kansas Dept. of Revenue, does not oppose this modification and the Kansas retailers support this provision.



Gift Pack

Another modification allows the distribution of recipes, sports schedules and other consumer advertising items that originate with suppliers, which are provided to retailers at no charge and distributed to consumers at no charge. Distribution of these items occurred for several years without difficulty until the issuance of an Attorney General's opinion last year. The Alcoholic Beverage Control [which drafted this language] does not oppose this modification and Kansas retailers support same.

The third modification reduces the residency requirement for persons seeking a beer distributors license. The KSWA, whose members also possess beer distributors licenses, have no objection to the proposed modification.

The KSWA has no position regarding the amendments added by the House Committee of the Whole, but hopes that the foregoing provisions will not be abandoned due to any controversy surrounding them. Thank you for your attention to and consideration of these matters.



TESTIMONY  
on  
HOUSE BILL 2840

Senate Federal and State Affairs Committee

Tuesday, March 24, 1992

by

NEAL WHITAKER  
representing  
KANSAS BEER WHOLESALERS ASSOCIATION

Mr. Chairman and Members of the Committee:

The Kansas Beer Wholesalers Association appears here today in support of **House Bill 2840** as it passed out of the House Federal and State Affairs Committee. The bill at that time made several minor adjustments to the liquor control act.

First, as the result of an Attorney General's Opinion this past summer items such as baseball schedules, recipe cards and posters that had been available in licensed liquor retailers' establishments were ruled to be a thing of value and, therefore, no longer allowed to be distributed by retailers. Collectively the retailers, spirits wholesalers and ourselves, are asking the legislature to allow consumer advertising specialties such as these to be distributed to the public without charge.

The other item that beer wholesalers are specifically interested in is the matter of residency. K.S.A. 41-311, qualifications for licensure, has been amended 13 times since the original Liquor Control Act was passed in 1949. As times have changed the Legislature has seen the need to amend the qualifications for licensure to address changing business operations. Presently, in order to secure a beer distributors license you not only must have been a United States citizen for at least 10 years but you also must have been a resident of the state for

five years immediately preceding the date of application for the beer distributors license. Today, ABC has the ability to do an electronic background check on almost any person in the United States and therefore the need for lengthy residency requirements has been eliminated. In addition, when one decides to sell their business the five year residency requirement becomes a limiting factor for individuals who might wish to invest in a beer distributorship. More than once beer distributors, in an attempt to attract qualified management personnel, have offered as part of a prospective employee's compensation a percentage of ownership in the business. This is a common business practice in other industries. However, in Kansas unless the prospective employee has lived within the state for more than five years, they would not qualify to become a licensed owner. The current law could even keep an owner from passing the business on to his or her children if the children had not been continuous residents. Therefore, we ask that the residency requirement be reduced to one (1) year as it is stated in **House Bill 2840**.

KBWA also supports the packaging amendment to the bill.

The KBWA opposes the two House floor amendments that were added to the bill. The first, allowing for the sale of non-alcoholic malt beverage on Sunday, is an issue better left for another day. If the legislature should choose to address Sunday sales that effort should be directed toward the legal sale on Sunday of all alcoholic beverages. I would like to take this opportunity to point out that Sunday sales of these products is a convenience issue for the consumer, not a consumption issue. Oklahoma which has beer for sale for off premise consumption 24 hours a day, seven days a week, has a lower per capita consumption rate than Kansas.

The final issue is the keg registration amendment offered by Representative Dale Sprague on the floor of the House. Keg registration is a new issue to the Kansas Legislature and, in fact, to most of the nation. There were approximately 470,000 quarter barrel and half barrel kegs sold by wholesalers in Kansas to clubs, drinking establishments, restaurants, grocery stores and licensed liquor retailers. Of that number it is impossible to determine at this time how many kegs were sold by retailers for off premise consumption by private parties. The very idea that the state would require an adult to surrender their name, address,

driver's license number or other suitable identification to purchase a product legal for use by everyone in this state over 21 years of age amounts to an invasion of that individual's privacy. If this is such a good idea, then what's next? Are we going to require every adult who rents an "R" rated videoe tape to sign a statement that no one under the age of 17 in their household will view the tape? Do we need to be keeping track of the names and addresses of every person who buys cigarettes in carton quantities? Where does this legislative peek into private lives end?

This requirement will not keep underage persons from having parties that include the illegal consumption of alcoholic beverages. Keg registration is nothing more than an attempt to insert the law in place of parental responsibility. One wonders also if the imagined need for keg registration wasn't created by another law which took away an 18 year old's right to consume cereal malt beverage and closed many of the places where young people used to gather for legal activities. This type of law has failed so miserably that the Lawrence City Commission considered at their retreat this past fall an effort to return the legal age of consumption to age 18. No law is going to keep young people from taking part in activities that become legal rights they enjoy as adults when they turn 21.

Every major brewery has put forth a great deal of effort and resources toward educating young people on the dangers of alcohol abuse. Only education and changing social attitudes will solve the problem of consumption by young people. All of this makes keg registration just one more meaningless statute which will be ignored by every minor who is interested in circumventing the law.

I urge you to strip this amendment from the bill and report **HB 2840 Favorable for Passage** in its original form.

NW/km



STATE OF KANSAS

Attach. 4

Robert A. Engler, Director  
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Topeka, Kansas 66603-3150



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Department of Revenue  
*Division of Alcoholic Beverage Control*

**TO:** Sen. Edward Reilly, Chairman  
Senate Committee on Federal and State Affairs

**FROM:** Jim Conant, Chief Administrative Officer  
Alcoholic Beverage Control Division

**DATE:** March 24, 1992

**SUBJECT:** House Bill 2840

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I appreciate the opportunity to appear before the committee today regarding House Bill 2840. The bill, as amended by House Committee of the Whole, would amend several statutes regarding the rights of retail liquor licensees, residency requirements for beer distributors and hours and days of sale for non-alcoholic malt beverages. The provisions of House Bill 2967 were also included, establishing a keg registration system at the retail level. The ABC Division appears primarily as a proponent of the bill, but does have specific concerns with certain sections.

Section 1 of the bill amends K.S.A. 1991 Supp. 41-308, which generally prohibits a retail liquor licensee from offering any service or thing of value from the licensed premises other than alcoholic liquor, subject to a limited list of exceptions. The bill would provide for two additional exceptions:

1. Retailers would be allowed to pass along to the consumer items which are packaged with containers of alcoholic liquor by the manufacturer. Example: champagne glass boxed together with a bottle of champagne.
2. Retailers would be allowed to distribute, without charge, consumer advertising specialties which bear advertising matter. The form and distribution of these items would be limited by regulations of the secretary so that they are not conditioned on or an inducement to the purchase of alcoholic liquor. Example: These items are currently defined in an ABC regulation which limits those things a distributor may furnish to its customers as follows: **K.A.R. 14-10-10 (e)**. *Consumer advertising specialties, including ash trays, bottle or can openers, cork screws, shopping bags, matches, printed recipes, pamphlets, cards, leaflets, blotters, post cards, and pencils, which bear advertising matter may be furnished, given or sold to a club, drinking establishment or caterer for unconditional distribution by the club, drinking establishment or caterer to the general public. The club, drinking establishment or caterer shall not be paid or credited in any manner, directly or indirectly, for this distribution service.*

The Division has interpreted items such as those described above to be things of value as prohibited by 41-308. In a recent opinion requested by the Division, the Attorney General's office concurred with this interpretation, ruling that under current standards retailers may not offer these items to consumers.

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The strict controls placed on goods and services offered by retail liquor stores have been in place since the inception of the Liquor Control Act in 1949. While the exact legislative intent at that time is unclear, it is reasonable to believe that items other than liquor were prohibited to preclude their use as inducements to purchase liquor. As the liquor laws have been modernized in recent years, merchandising and advertising restrictions on most other levels of the industry have been liberalized or completely removed. Clubs, drinking establishments and cereal malt beverage retailers may freely distribute consumer advertising specialties to the public. Where these licensees are concerned, ABC is able to focus enforcement efforts in priority areas such as sales to minors and improved tax collection. The continuing restrictions on retail liquor stores require that ABC devote inspection and investigative time to ensuring compliance with K.S.A. 41-308. In order to maintain statewide consistency, all 750+ retailers in the state are routinely monitored for illegal distribution of advertising specialties such as drink-related recipe cards and baseball schedules. It is the agency's position that the current restrictions found in K.S.A. 41-308 are no longer practical or cost-effective to enforce.

Section 2 of the bill amends K.S.A. 1991 Supp. 41-311, regarding the qualifications for licensure under the Liquor Control Act. Specifically, the state residency requirement for a beer distributor's license is reduced from five years to one year immediately preceding the date of application. This provision has no significant impact on the Division and, as such, we find no reason for concern on this issue.

New Section 3 incorporates language from House Bill 2967, imposing an identification and recordkeeping system on the retail sale of large capacity containers of beer and cereal malt beverage. Retail liquor store and cereal malt beverage licensees would be required to place a "keg identification number" on all containers with a liquid capacity of six (6) or more gallons or 22.71 or more liters. At the time of sale of these containers, the licensee would be required to record the following information:

1. the keg identification number (includes seller's license number)
2. the date of the sale
3. the purchaser's name, address and signature
4. the number from an identification document bearing the purchaser's picture and signature

This information must be kept by the licensee for a period of not less than six months and must be made available for inspection by any law enforcement officer. When it is determined in a hearing that a licensee has failed to comply with any of these identification and recordkeeping requirements, the license would be subject to a five day suspension.

The ABC Division supports the keg registration provisions of this bill. Law enforcement officials throughout the state routinely must deal with "keg parties" where minors are allowed access to large quantities of beer. In many cases, the beer has been legally purchased by an adult, and then passed along or made available to minors. The identification and recordkeeping requirements would serve as a tool in identifying individuals who furnish beer to minors, including those licensees who do not rigidly observe the drinking age laws.

The Division requests that additional consideration be given to the practicality and enforceability of the keg registration provisions. In fairness to the seller of these products, it would appear that a corresponding prohibition should be imposed against the purchaser removing the required markings. Depending on the marking method employed, a purchaser/consumer, regardless of age, could evade the entire intent of the bill by simply removing the "keg identification number." Additional language should be explored which would make it illegal to be in possession of a qualifying container which does not have the proper identification number affixed.

Since the bill does not specify a method to be used in marking the containers, it is assumed that the Division would propose regulations to establish marking standards. Consideration must be given to the practicality and expense of various methods such as stickers, removable tags, marking directly on the keg surface, etc. Also, ABC has minimal regulatory authority over the operations of cereal malt beverage licensees. Additional language should be considered to specifically grant ABC the authority to promulgate regulations necessary to ensure uniform implementation of the marking requirements for all licensees.

Finally, New Section 4 would amend K.S.A. 1991 Supp. 41-345 and 41-2704, allowing non-alcoholic malt beverages to be sold between the hours of 6:00 a.m. and midnight on Sunday, in addition to currently approved hours and days of sale. The ABC Division is concerned with the possible confusion which may result from this portion of the bill. Under current law, no alcoholic beverage may be sold for off-premise consumption on Sunday. If this product is approved for Sunday sales, great care would need to be taken by grocery stores, etc. that only nonalcoholic malt beverages are sold. The possibility would greatly increase that similarly packaged cereal malt beverages would be sold mistakenly in the rush to ring up product at the checkout lanes.

I thank you again for your attention, and would be happy to answer questions about any aspect of the bill.

TESTIMONY PRESENTED  
TO THE  
SENATE FEDERAL AND STATE AFFAIRS COMMITTEE  
Re: HB 2840

March 24, 1992

by Rebecca Rice, Legislative Counsel to the  
Kansas Retail Liquor Dealers Association

Thank you, Mr. Chairman and members of the committee. I appear before you today on behalf of the Kansas Retail Liquor Dealers Association in support of HB 2840 if the amendment added on the House floor is removed.

Retail liquor dealers have been struggling with the ambiguity of current advertising standards pertaining to liquor. The advertising component of HB 2840 provides the clarification which is needed to allow our industry to operate in a logical fashion.

We are, however, extremely opposed to the amendment put on the bill in the House Committee of the Whole. This amendment requires a retailer to place an identification number on any beer container having a capacity of six or more gallons, basically a keg of beer. The objectionable part of the amendment is the requirement that the retailer or an employee must record, at the time of sale, the identification number; the date of sale; the purchaser's name, address and signature; and the form of identification presented. The record of the transaction must be maintained for not less than six months.

The rationale for this record-keeping presented to the House is that such record will enable law enforcement officers to track any individual who purchases a keg of beer for consumption by minors. Although the rationale for this amendment may appear laudable, retailers are extremely concerned about the increasing efforts by this Legislature to move them into a law enforcement role. Kansas retail liquor dealers are not law enforcement officers and should not be required to operate their business and subject themselves to greater civil liability for the convenience of law enforcement officers.

The civil liability consequences of this amendment, coupled with the extremely punitive nature of the sanctions imposed by this bill for violation, render this amendment completely unacceptable to the Kansas Retail Liquor Dealers Association. We believe this amendment is setting the stage for dram shop litigation. In other words, if the dealer "should have known" that the keg was being purchased by an individual for possible consumption by minors, this legislation can be utilized to show the legislature intends for liability to accrue to the individual retailer.

If a false I.D. is utilized in purchasing the keg, although all

information is properly recorded, the keg of beer can be traced back to the retailer where the purchase can then be traced, the false I.D. can be discovered and a civil lawsuit can be filed by any damaged parent who believes the retailer or employee "should have known" the identification was false.

The threat of civil litigation coupled with the automatic five day suspension of the retailer's license indicate the true purpose of the amendment which is to eliminate the sale of kegs to individuals other than taverns or other liquor by the drink establishments. If the individual offering the amendment believes that minors will simply stop having parties where alcohol is served due to restrictions placed on kegs, I can tell you that most minors are not so easily dissuaded. Most individuals under the age of 21 can figure out that beer is also sold in "party balls" and cans. What will be accomplished is that fewer kegs will be sold and more records will be kept for those kegs sold by retailers increasing the possibility for civil litigation. We do not understand how this is going to accomplish any effort to influence the consumption of alcohol by minors.

We would request that this committee remove the amendment added on the floor of the House regarding keg registration. We would ask that the committee support the balance of the bill.

Thank you, Mr. Chairman.