

Approved: 3-7-95
Date

MINUTES OF THE SENATE COMMITTEE ON FEDERAL AND STATE AFFAIRS.

The meeting was called to order by Senator Lana Oleen at 11:05 a.m. on February 14, 1995 in Room 254-E of the Capitol.

All members were present.

Committee staff present: Mary Galligan, Legislative Research Department
Mary Ann Torrence, Revisor of Statutes
Kim Perkins, Committee Secretary

Conferees appearing before the committee: Jo Effertz, Great Plains Brewing Company
Chuck Magerl, Free State Brewery (Lawrence)
Neal Whitaker, Kansas Beer Wholesalers
Tuck Duncan, Kansas Wine and Spirits

Others attending: See attached list

Sen. Oleen introduced John Peterson who explained a bill proposal for introduction which relates to licensing speech-language pathologists and audiologist. Sen. Tillotson made a motion to introduce it and it was seconded by Sen. Papay. The motion passed. (Attachment 1)

Sen. Oleen announced that the committee would begin hearing **SB 256**, an act concerning microbreweries, and Sen. Vidricksen began testimony by giving background information on the bill. Sen. Vidricksen stated that in 1987 microbreweries were created as a category. That category included microbreweries which manufactured beer with 8% or less alcohol content and with capacities up to 5,000 barrels per year. In 1988, Sen. Vidricksen continued, farm wineries were permitted to sell directly to club drinking establishment retailers, and in 1992 farm wineries were permitted to operate with two licenses for off premise sale of domestic wine. Also in 1992, microbreweries licensees were authorized to obtain caterers' licenses for microbrewers to sell beer off premises at functions.

Sen. Oleen introduced Jo Effertz, of Great Plains Brewing Company, to speak as a proponent for **SB 256**. Jo Effertz will supply written testimony at a later date. Mr. Effertz explained that he is planning on opening a microbrewery in the state of Kansas and would like to see several changes in the current law. These changes include raising the ceiling of production of beer per barrel to 25,000 barrels; changing the law to allow for ownership of a restaurant location as well as a production site that would be able to produce bottled beer and kegs; and adjusting the percentage of ownership required by the state of Kansas from 50% of the business being owned by Kansas residents to 25%.

Sen. Oleen noted that the residency requirement which Mr. Effertz referenced was not in the bill, and the 25,000 limit which he referenced was written as 35,000 in the bill. Jo Effertz explained that he had not seen a copy of the bill prior to offering verbal testimony.

Sen. Parkinson asked Mr. Effertz if the problem with the current statute was that the statute does not allow a microbrewery the ability to market its product off the premises and if Mr. Effertz was requesting a statute which would allow him to brew his own beer which could then be sold to a local liquor store or to a drinking club. Mr. Effertz answered affirmatively and Sen. Parkinson continued to clarify that if the statute was not changed, Mr. Effertz would have to obtain a full manufacturers license. Sen. Parkinson asked if there are any small breweries in Kansas and Mr. Effertz responded that he knew of one, Miracle Brewing Company, and that he did not know the volumes which they produced.

Mr. Effertz pointed out that his company would be unique in the sense that it does plan to produce all the grains from Kansas for its production. Sen. Praeger asked whether the jump from 5,000 barrels to 25,000 barrels was extreme, and Mr. Effertz explained that he anticipated that his company would need the cap increased to that amount.

Sen. Vidricksen stated that he had spoken to Mary Torrence regarding the bill and that she suggested that the bill be kept separate from the Limited Liability Company (LLC) and that is why LLC was not included in the language.

Sen. Oleen introduced Chuck Magerl who appeared as an opponent to SB 256 (Attachment 2). Sen. Parkinson asked Mr. Magerl why we should not have a Boulevard Brewing Company in the state of Kansas, and Mr. Magerl responded that there was nothing to stop Kansas from having a similar company and Sen. Parkinson clarified that they would have to have a full manufacturers license. Sen. Parkinson asked Mr. Magerl if perhaps he was concerned that another industry is threatening to do something beyond what he did, and Mr. Magerl answered that he did not see that as an issue and that the reality of the situation was that for his business the most efficient way to distribute his product was through the wholesalers distribution method.

Sen. Tillotson asked Mr. Magerl to explain some of the benefits that the microbrewery license allows. Mr. Magerl stated that under the microbrewery license, his business is allowed to hold a drinking establishment license so people can come into the building and have food and beverage and his business is also allowed to sell directly to the consumer if that person comes into the establishment and wishes to buy packaged products to take out.

Sen. Gooch asked if a business could sell a product through the wholesaler as well as own a microbrewery and Mr. Magerl answered that they were currently doing both. Sen. Gooch asked why Mr. Magerl objected to competition and Mr. Magerl responded that there is already competition at every level within the current system.

Sen. Walker clarified that with a manufacturers license, a business could not sell its product direct and the business would have to go through the wholesaler. Chuck Magerl answered affirmatively.

Sen. Oleen introduced Neal Whitaker and Tuck Duncan to speak as opponents to SB 256 (Attachment 3 & 4).

Sen. Oleen called for committee approval of the minutes dated February 7, 1995. Sen. Papay made a motion to approve the committee minutes and the motion was seconded by Sen. Tillotson. The motion passed. Sen. Oleen called for further discussion, and seeing none the meeting was adjourned at 11:55 a.m.

*Mr. Peterson wants
to introduce on 2/14.
Thanks.*

February 13, 1995

_____ BILL NO.

BY _____

AN ACT relating to licensing speech-language pathologists and audiologists; amending K.S.A. 65-6505, 65-6506, and 65-6508.

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

Section 1. K.S.A. 1991 Supp. 65-6505 is hereby amended to read as follows: 65-6505. Qualifications for licensure. Speech-language pathologists or audiologists shall meet the following qualifications for licensure under this act:

(a) Possess at least a master's degree ~~or equivalent~~ in speech-language pathology or audiology from an education institution with standards consistent with those of the state universities of Kansas ~~approved by the secretary which consists of a course of study consistent with the standards of the state universities of Kansas~~ approved by the secretary pursuant to the rules and regulations;

(b) completed supervised clinical practicum experiences from an educational institution or its cooperating programs the content of which shall be ~~approved by the secretary and shall be~~ consistent with the standards of the state universities of Kansas and delineated in the rules and regulations;

(c) completed a postgraduate professional experience ~~as approved by the secretary~~ pursuant to the rules and regulations; and

(d) pass an examination in speech-language pathology or audiology ~~approved by the secretary~~ pursuant to rules and regulations.

Sec. 2. K.S.A. 65-6506 is hereby amended to read as follows: 65-6506. Application for licensure; expiration and renewal; fees; reinstatement of lapsed license; licensure without examination; licensure by another jurisdiction; temporary license. (a) Any applicant for licensure shall submit an application to the secretary upon the forms prescribed and furnished by the secretary and shall pay appropriate fees as established by the secretary, including examination fees if required. All licenses shall expire after two years and may be renewed by submitting an application, showing proof of

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Attachment 1*

completing required continuing education and paying a renewal fee to be established in regulations and collected by the secretary.

(b) At least 30 days before the expiration of the license, the secretary shall notify the licensee of the expiration by mail addressed to the licensee's last place of residence as noted upon the office records. If the licensee fails to submit an application and fee by the date of expiration of the license, the licensee shall be given a second notice that the license has expired and the license may only be renewed if the application, renewal fee, and late renewal fee are received by the secretary with the ~~thirty~~ 30-day period following the date of expiration and, if both fees are not received within the ~~thirty~~ 30-day period, the license shall be considered to have lapsed for failure to renew and shall be reissued only after the applicant has been reinstated under subsection (c). Temporary licenses may be renewed for one consecutive 12 month period upon payment of renewal fee and documentation of failure to complete requirements for which the temporary license was originally issued.

~~(c) Any licensee who allows the licensee's license to lapse by failing to renew as herein provided may be reinstated upon payment of the renewal fee and the reinstatement fee, and upon submitting evidence of satisfactory completion of any applicable continuing education requirements established by the secretary. The secretary shall adopt rules and regulations establishing appropriate continuing education requirements for reinstatement of persons whose licenses have lapsed for failure to renew.~~

~~(d) Upon due application and payment of a licensure fee as established by the secretary within one year subsequent to September 1, 1992 December 31, 1992, the secretary may waive the examination and grant a license to any applicant so long as the applicant:~~

~~(1) Has met the education at least a master's degree or equivalent in speech language pathology or audiology, supervised clinical practicum experiences, and postgraduate professional experience set forth in this act on or before September 1, 1992; or~~

~~(2) has at least a master's degree or equivalent in speech language~~

~~pathology or audiology and has been actively engaged in the practice of speech-language pathology or audiology for at least two years of the last four years immediately preceding September 1, 1992; or~~

~~(3) holds a current teaching certificate by the Kansas department of education as a speech-language pathologist or audiologist on the effective date of this act; or~~

~~(4) has a bachelor's degree in speech-language pathology or audiology and has been actively engaged in the practice of speech-language pathology or audiology for at least three years of the last four years immediately preceding September 1, 1992.~~

~~(e) The secretary, upon application and payment of the endorsement fee and licensure fee fixed by the secretary, may issue a license as a speech-language pathologist or audiologist to any person who holds a valid license or its equivalent issued to such person by another state or country if the requirements for the current licensure standards in the issuing state of the speech-language pathologist or audiologist under which such license or equivalent was issued are equivalent to or exceed the education standards of this act.~~

to a person holding a valid license in another state provided that:

(1) documentation is received from the issuing state(s) that the licensee is currently in good standing with no violations or sanctions pending or in effect;

(2) the applicant meets current educational, clinical practicum, postgraduate professional experience and examination requirements; or, has received a masters degree awarded prior to January 1, 1993 with a major course of study in speech-language pathology, audiology or both, and 300 hours or greater supervised clinical practicum experience and has completed postgraduate professional experience and passed an examination in speech-language pathology or audiology or both pursuant to rules and regulations; and,

(3) the applicant pays an endorsement and application fee pursuant to rules and regulations.

(f) The secretary, upon application and payment of an ~~endorsement and application fee, the~~ may issue a temporary licensure fee, and submission of evidence of successful completion of the education and supervised clinical practicum experiences, may issue a temporary license, which shall expire ~~12 months from the date of issuance. The temporary license may be renewed for one period not to exceed 12 months by appeal to the secretary if the applicant has failed the examination or failed to complete the postgraduate professional experience.~~ speech-language pathology or audiology license for a period of 12 months to a person who has:

(1) met licensure requirement of educational and clinical practicum as specified in Section 1; but,

(2) has not yet completed the postgraduate professional experience and/or passed the examination pursuant to rules and regulations.

Sec. 3. K.S.A. 65-6508 is hereby amended to read as follows: 65-6508. Denial, revocation, suspension, or limitation of license; grounds. The secretary shall deny, revoke, suspend, or limit the license provided for in this act for any of the following reasons:

(a) Making a false statement on an application for a license, or any other document required by the secretary;

(b) engaging or attempting to engage, or representing oneself as so entitled, to perform procedures not authorized in the license;

(c) demonstrating incompetence or making consistent negligent errors in tests or procedures;

(d) engaging in dishonorable, unethical, or unprofessional conduct ~~of a character likely to deceive, defraud or harm the public~~ as defined by rules and regulations;

(e) providing professional services while mentally incompetent, under the influence of alcohol or narcotic or controlled substance that is in excess of therapeutic amounts or without valid medical indication;

(f) violating or aiding and abetting in a violation of any provisions of this act or any of the rules and regulations adopted under this act; or

(g) having been convicted of a crime found by the secretary to have a

direct bearing on whether such person should be entrusted to serve the public in the capacity of a speech-language pathologist or audiologist.

Sec. 4. K.S.A. 65-6505, K.S.A. 65-6506, and K.S.A. 65-6508 are hereby amended.

Sec. 5. This act shall take effect and be in force from and after its publication in the statute book.

February 14, 1995

To: Federal & State Affairs Committee

From: Chuck Magerl

I'd like to thank the Committee for this opportunity to address the issues presented in SB 256. My name is Chuck Magerl. I am the owner of the Free State Brewing Company in Lawrence. In 1987 I appeared before this Committee and advocated legislation that resulted in the licensing provisions that regulate microbreweries in Kansas. I have had the opportunity to provide testimony on related legislation several times over the past 8 years. My brewery opened for business 6 years ago, the first to receive a microbrewery license in the State. At the moment, we are the largest microbrewery in Kansas. Although I do not represent myself as a spokesman for the industry in Kansas, I have maintained a very active interest in the regulations and developments that impact our industry throughout the United States. I'd like to share some of that information with you today.

Six microbreweries have opened in Kansas under the licensing provisions of KSA 41-308b. One of these businesses has recently closed, and four more are expected to open in the next few months. Current production levels of these businesses range from 2200 barrels per year to 600 barrels per year. (A barrel of beer is 31 gallons.) All but one of these breweries include a Drinking Establishment serving food and beverage on site. On a national scope, over 500 businesses regard themselves as microbreweries, based on the comparatively small production output. The greatest concentration of these businesses are along the west coast and in Colorado. Of operations similar to ours, which combine a brewery and restaurant business on one site, the largest one is in California, and produces approximately 5,000 barrels per year. Five microbreweries that have been in business for over 10 years on the west coast have managed to exceed the 35,000 barrel production level suggested in this bill. That represents 1% of the industry. A full 95% of the industry is working at a production level of 10,000 barrels per year or less.

I am opposed to the changes represented by SB 256 for several reasons. The suggestion for raising the production limit from 5,000 to 35,000 barrels is excessive.

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As I have just indicated, the vast majority of businesses in this category throughout the country are at less than 10,000 barrels. If there is desire to expand our definition, that may be a reasonable limit to consider. The microbrewery license in Kansas grants the business the opportunity to sell at retail direct to the consumer, either as a bottled or kegged product for off premise consumption, or as in the case of a drinking establishment, to the customer who comes in for a meal or a drink. This exception to the long-standing three tiered system was granted to allow an opportunity for small operations to emerge in the beer industry which had become very consolidated. I know of no start-ups in the brewing industry that began with production levels above 10,000 barrels. Should a business of this size emerge in Kansas, there would be ample time in future sessions of the legislature to consider whether the special exceptions of the microbrewers should continue to be expanded.

The other provision of SB 256 is more troubling. I'm referring to the proposal to allow self-distribution of licensed beverage. This is a topic I've spent a lot of time on. In fact, several years ago I testified before this Committee in favor of such legislation. I would now suggest that self-distribution of licensed beverage is not good public policy.

Many factors have converged to prompt me to change my mind. In conversations with small brewers around the country, they are generally supportive of working through distributors, rather than handling that end of the business themselves. In fact, they find working with a distributor a more egalitarian, open market style of operation.

Five years ago, self-distribution was a desirable feature for many small brewers, because the wholesalers were often focused on a relatively few brands of beer, and had no interest in working the microbrewers' products into their accounts. That situation has turned around completely. Wholesalers are now scrambling to add specialty beers to their catalog, and working hard to promote them to their on premise and retail accounts. They are doing a good job, and the consumer in Kansas is benefiting by the wholesalers' attention to the growing specialty beer market.

Small breweries need a strong independent network of wholesalers. That is a key to getting specialty products to a wider market. Beer wholesalers in America are under a terrible threat. Retailing, wholesaling, the structure of delivering and selling beer are all changing. Small brewers would be nothing without our hard-working wholesalers. While I think that the most serious threats to wholesalers come under the headings of GATT, NAFTA, Stroh's and Anheuser-Busch, I would not like to see microbreweries contributing to this challenge of our distribution system.

I have plans underway to begin bottling and wholesaling our beer. Ultimately, I'd like to know that friends and family in Pratt, Hays and Beloit could buy our beer. The only way that is possible is with a solid network of wholesalers able to sell a full range of products in markets all across the state.

I'm proud of the fact that my company brought top quality specialty beers to the people of Kansas several years before the current craze swept in. I'm proud of the fact that we've been offering Sunday sales of beer for the past year and a half with no discernible harm to our community. I'm proud that we provided the food and beer for a wonderful Symphony on the Prairie in Chase County this past summer. All of these opportunities were based on legislation passed by this Committee. But I would not be proud of microbrewery legislation that threatens the valuable role of the wholesaler in our industry. The long term health of the microbrewery industry and the free market consumer selections of all the people of Kansas are best served by a strong distributor network. I urge you to vote no on SB 256.

Thank you for your time.



Testimony
by
Neal Whitaker, Executive Director
Kansas Beer Wholesalers Association
on
Senate Bill 256
before the
Senate Federal and State Affairs Committee
February 14, 1995

Kansas Beer Wholesalers Association appears today in opposition to **Senate Bill 256** for the following reasons:

1. Kansas micro brewery statute was passed to provide a special exemption in the liquor control act for small businesses. **Senate Bill 256** raises the gallons produced by a micro brewery from 155,000 to 1,085,000 gallons, a 700% increase. SB 256 contemplates big business using a small business exemption.
2. The amendment allowing micro breweries to sell to any club and drinking establishment throughout the state is not tied to the anti-discrimination statutes the rest of the industry must operate under. Currently every product a distributor sells must be made available to every licensee within their territory. If enough product is not available to service every licensee then they must establish a rationing plan, approved by the ABC Director, that will service as many accounts as possible. This is to assure that all Kansas businesses large and small have equal opportunity to secure product.
3. SB 256 allows a manufacturer to cross tiers and sell directly to a retailer. The three tiered system was developed to assure the state's ability to collect taxes and to keep a criminal element from controlling the industry. If this bill were to pass, as a result of the General Agreement on Tariffs and Trade (GATT) a large foreign brewery, most likely Canada or Mexico, could come to Kansas, import their product directly into the United States and sell it directly to clubs and drinking establishments, or import in or brew their beer here and also operate a chain of restaurant/drinking establishments.

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MEMORANDUM
February 14, 1995

To: Senate Committee on Federal and State Affairs
From: R.E. "Tuck" Duncan *R. E. Duncan*
RE: Microbreweries

The K.W.S.W.A. joins with the position of the Kansas Beer Wholesalers regarding this bill. This bill is contrary to the three-tier system of distribution which is the foundation of the Kansas (and most other states') beverage alcohol distribution system. Further, we too are concerned about the GATT implications associated with this legislation. The microbrewery law is not broke -- don't fix it.

Thank you for your attention to and consideration of this matter.