

Approved: 2-6-96
Date

MINUTES OF THE HOUSE COMMITTEE ON FEDERAL AND STATE AFFAIRS.

The meeting was called to order by Chairperson Garry Boston at 1:30 p.m. on January 31, 1996 in Room 519-S of the Capitol.

All members were present except: Representative David Adkins, Excused
Representative John Ballou, Excused

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

Conferees appearing before the committee: Jim Conant, Chief Administrative Officer, Alcoholic Beverage Control Division
Tuck Duncan, Kansas Wine & Spirits Wholesalers Association, Inc.
Frances Kastner, Director, Governmental Affairs, KFDA
Don Mohler, General Counsel, League of Kansas Municipalities
James W. Clark, Executive Director, Kansas County & District Attorneys Association
Mike Taylor, Government Relations Director, City of Wichita
John Webb, Lawrence

Others attending: See attached sheet

The Chairperson stated a hearing was held January 30 on **SB 495** and asked if any of the committee members had a motion in regard **SB 495**.

Representative Nichols moved and Representative Cox seconded to pass **SB 495** out of committee favorably. The motion carried.

The Chairperson opened the hearing on **HB 2675 - Revising and combining the Kansas Liquor Control Act and the Club and Drinking Establishment Act.**

Jim Conant, Chief Administrative Officer, Alcoholic Beverage Control Division, testified as a proponent in support of **HB 2675**, stating this bill was the result of a lengthy effort undertaken by the ABC Division to review and identify opportunities for improvement to Kansas liquor laws. Concern has long been expressed regarding the complexity of these laws, with each year bringing new amendments to further complicate the picture. There is a clear need for clarity and consistency in both the technical language and format of the laws and in the way those laws are applied to various segments of the industry. This bill is the first significant step in that direction, focusing primarily on technical cleanup and setting the stage for future debate of policy issues.

This bill would: (1) Eliminate outdated, unnecessary and unenforceable laws and regulations, (2) Eliminate duplication among the various acts relating to beverage alcohol and (3) Identify related policy issues for separate consideration by the Legislature.

In addition to the overall cleanup and consolidation of current law, the following policy related changes were identified and recommended as amendments:

1. Term of salesperson's permit - K.S.A. 41-334 (Page 38). This is a matter of improving customer service and reducing processing cycles for the ABC Division. The proposal is to renew salesperson's permits every three years at a rate of \$30 instead of every year for \$10. An additional amendment is needed to page 39, line 1, to reflect the \$30 fee.

2. Repeal of advertising statute - K.S.A. 41-714. After its most recent amendment in 1991, the Attorney General ruled this statute to be vague and unenforceable, primarily due to confusion regarding the intent of the

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE FEDERAL AND STATE AFFAIRS, Room 519-S
Statehouse, at 1:30 p.m. on January 31, 1996.

billboard provisions. The ABC Division advised the industry that only the handbill provisions would be enforced pending resolution of this issue. The recommendation to repeal is made solely to bring this issue to the attention of the Legislature.

3. Repeal of sale to incapacitated person statute - K.S.A. 41-715. Lacking a clear definition of the term incapacitated, it is not possible to advise licensees of their responsibility under this statute or to enforce it in a consistent manner. This issue is very closely related to "dram shop" liability for licensees. The recommendation to repeal is made solely to bring this issue to the attention of the Legislature.

4. Non-discrimination in wholesale-to-retail price of cereal malt beverage - K.S.A. 41-1101 (Page 68). The Task Force concluded that it was the intent of the 1995 Legislature to establish uniform pricing for cereal malt beverage by outlawing quantity discounts in subsection (d) of this statute. Without clear language prohibiting any discrimination in pricing, this intent has not been fully realized. The proposed amendment of this statute beginning on page 70, line 21, clarifies what is believed to be the original intent of the 1995 bill.

Mr. Conant stated the following amendments were needed to correct items which did not make the transition from the Task Force draft to the bill form:

1. Repeal of K.S.A. 41-503 instead of K.S.A. 41-208 - page 1, line 27.

2. On page 95, line 8 - the term "alcoholic liquor" needs to be specifically defined to exclude non-alcoholic malt beverages, for the purposes of the furnishing statute, K.S.A. 21-3610.

3. On page 26, line 26, the word "or" should be inserted between the words "liquor and cereal" to provide for proper syntax in the affected sentence.

4. On page 34, line 13, the words "of licenses" should be reinserted to clarify the intent of the affected sentence.

5. On page 39, line 38, the word "under" should be inserted before the word "such" to provide for proper syntax in the affected sentence.

6. On page 84, line 19, the word "license" should be inserted between the words "establishment" and "from" to clarify the intent of the affected word.

7. On page 92, line 29, the words "defined by" should be reinserted to clarify the intent of the affected sentence. (See Attachment #1)

R. E. "Tuck" Duncan, testified as a proponent for HB 2675, stating the recodification consolidates similar sections of existing law and eliminates outdated and redundant provisions. This is a major step in providing clarity and simplicity in the statutes. There are no problems with ABC's recommended amendments. (See Attachment #2)

Frances Kastner, Director, Governmental Affairs, Kansas Food Dealers Association, testified as a proponent for HB 2675, representing the retailers, wholesalers and distributors of food products throughout the state of Kansas stated they support the bill. (See Attachment #3)

Don Moler, General Counsel, League of Kansas Municipalities, testified as an opponent to HB 2675, stating the League believes that rewriting under a single piece of legislation the statutes relating to clubs and drinking establishments may constitute a preemption of local action in this area. Under current law cities across the state of Kansas routinely license and regulate clubs and drinking establishments under local ordinance. Included within these local ordinances in many communities are prohibitions against nudity in liquor establishments. It is believed that this rewrite and recodification of the alcoholic liquor and club and drinking establishments acts may well serve to preempt not only local fees which may be higher than those provided for by state statute, but also preempt local licensure and local regulation in the areas of nude dancing, and other types of lewd and lascivious behavior on premises where alcoholic liquor is served.

The following recommended amendments are summarized:

1. A section that specifically authorize local licensure of clubs and drinking establishments by cities throughout Kansas. It is believed that specifically allowing dual licensure would allow for the control of these establishments at the local level and allow community standards to be enforced.

2. A specific statement that local regulations relating to activities within clubs and drinking establishments

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE FEDERAL AND STATE AFFAIRS, Room 519-S
Statehouse, at 1:30 p.m. on January 31, 1996.

could be established by cities and counties and that violation of these local regulations could lead to suspension or revocation of the local license which would have the effect of closing down the establishment. It is believed that without this provision, and provision (1) dealing with local licensure, that essentially the ability of local governments to enforce community standards relating to decency and appropriate behavior in the community.

3. Request a section be added specifically authorizing cities to exceed the statutory license fee of \$250 for a club or drinking establishment which has been placed in Section 28 of **HB 2675**, when the city complies with the provisions of K.S.A. 12-137. This statute requires a 2/3rds vote of the governing body, two newspaper publications, and is subject to protest petition and election of the public. This would allow local determination and regulation of these establishments. This would seem prudent in light of the fact that the expenses of regulating clubs and drinking establishments throughout Kansas typically do not fall directly on the state of Kansas but rather are borne by local governments and their taxpayers. Thus, more reasonable license fees, as determined at the local level, would seem to be appropriate. (See Attachment #4)

James W. Clark, Executive Director, Kansas County & District Attorneys Association, testified opposing **HB 2675**, stating they are supportive of efforts to update the generally outdated, duplicitous, and sometimes ridiculous laws dealing with regulation of alcohol in Kansas. However, are concerned with what appears as New Section 40, but is really current law which appears in K.S.A. 41-324 (p. 36); and Section 104 (p. 71) and the following provisions should be eliminated for the following reasons:

1. Cost Shifting - Section 40 allows employees of a state agency (who receive more than \$25 per day) to impose duties on a locally elected official with inadequate compensation (i.e. district attorneys receive the same salary as a district judge). It should be noted that the Kansas Supreme Court has held that requiring attorneys to accept less than \$50 per hour when appointed to represent indigent defendants is unconstitutional.
2. Prosecutor Discretion - Both sections give the unelected head of a state agency the power to dictate how a locally elected prosecutor conducts his or her office. The provisions detract from the concept of prosecutorial discretion, and violate the separation of powers doctrine.
3. Attorney Ethics - The provisions also conflict with ethical rules that govern attorneys in Kansas. While these rules are generally promulgated for the benefits of the public in its relationship with privately retained attorneys, they are also applicable to public sector attorney, and are increasingly being used against prosecuting attorneys. (See Attachment #5)

Mike Taylor, Government Relations Director, City of Wichita, stated the City of Wichita opposed **HB 2675** as the proposal appears to end non-uniformity in Kansas liquor laws. The end result of that action takes away local control of nightclubs, taverns and a host of other businesses which serve alcohol. In addition to pre-empting local control, **HB 2675** would also eliminate a city's ability to charge local fees on these businesses. An argument could be made that this proposal results in an unfunded mandate imposed by the state on its cities. (See Attachment #6)

John Webb, Webb's Fine Wine and Spirits, Lawrence, speaking as neither a proponent or opponent stated a lot of legislation was being affected and furnished a packet of background information. (See Attachment #7)

The Chairman closed the hearing on **HB 2675**.

The meeting adjourned at 3:00 p.m.

The next meeting is scheduled for February 6, 1996.

FEDERAL & STATE AFFAIRS COMMITTEE GUEST LIST

DATE: January 31, 1996

NAME	REPRESENTING
Bernie Nowood	ABC
Natalie Haag	State Gaming Agency
Ted Park	KBI
Jennifer Brandeb	City of Overland Park
Meggen Griss	KOMA
Pam Evans	Kansas Gallery
Amy Muell	Pat Heubel
Sandra Dowell	Retailer
Tom Bruno	Allen & Assoc.
Kathy Reiter	DISCOS
Don Mohr	League of KS Municipalities
Frances Kastner	Ks Food Dealers Assn
Neal Whitaker	Ks Beer Wholesalers Assn
Mike Taylor	City of Wichita
Jane Conant	ABC
John D. ...	KWSWA
Allen Jones	SGA
Kyle Smith	KBI

Bernie Norwood, Director
Division of Alcoholic Beverage Control
4 Townsite Plaza, Suite 210
200 S.E. 6th Street
Topeka, KS 66603-3512



(913) 296-3946
FAX (913) 296-0922

Division of Alcoholic Beverage Control

MEMORANDUM

TO: Representative Garry Boston, Chairman
House Committee on Federal & State Affairs

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

DATE: January 31, 1996

SUBJECT: House Bill 2675

Thank you for the opportunity to appear today in support of House Bill 2675. This bill is the result of a lengthy effort undertaken by the ABC Division to review and identify opportunities for improvement to Kansas liquor laws. Concern has long been expressed regarding the complexity of these laws, with each year bringing new amendments to further complicate the picture. There is a clear need for clarity and consistency in both the technical language and format of the laws and in the way those laws are applied to various segments of the industry. This bill is the first significant step in that direction, focusing primarily on technical cleanup and setting the stage for future debate of policy issues. My testimony today will provide a review of the process used to bring this proposal to bill form, and an overview of the technical changes proposed with emphasis on the few issues of substance addressed by the bill.

In July of 1995, Director Norwood formed the Beverage Alcohol Advisory Task Force, comprised of representatives from ABC and the following industry associations:

Beverage Alcohol Task Force
Kansas Retail Liquor Dealer's Association
Kansas Food Dealer's Association
Kansas Restaurant and Hospitality Association
Kansas Wine and Spirits Wholesaler's Association
Kansas Beer Wholesaler's Association
Distilled Spirits Council of the United States
Wine Institute

The task force was asked to conduct a comprehensive review of state liquor laws, and provided with the following mission statement to guide the group's efforts:

MISSION: The Beverage Alcohol Advisory Task Force shall review Kansas Statutes relating to the manufacturing, bottling, sale, transportation, furnishing, possession and taxation of alcoholic liquor, cereal malt beverages and nonalcoholic malt beverages and shall recommend amendments to those statutes intended to:

Feds State
1-31-96
Atch #1

1. Eliminate outdated, unnecessary and unenforceable laws and regulations;
2. Eliminate duplication among the various acts relating to beverage alcohol;
3. Identify related policy issues for separate consideration by the Legislature.

Through a series of review meetings, the Task Force examined the current liquor laws, with a focus on identifying outdated and duplicative language as prioritized in the mission statement. The Task Force concluded that the four current acts - The Liquor Control Act, The Club and Drinking Establishment Act, The Nonalcoholic Malt Beverages Act and the cereal malt beverage laws - should be resolved into a new structure consisting of two acts. First, a revised Liquor Control Act would address all aspects of the alcoholic liquor industry, both on and off-premise, including licensing, regulation and enforcement, generally subject to the same basic policies currently in place. Second, Article 27 of Chapter 41, dealing with retail cereal malt beverage licensing and regulation, would be formalized as the Cereal Malt Beverage Act, again subject to the same basic policies currently in place. The group then proceeded to review a number of progressively refined drafts of the proposed new structure, consolidating like sections and eliminating outdated and redundant provisions. The final output from the task force was then used by the Revisor's office to prepare the bill in front of you today. During the course of this review effort, the ABC Division appeared before the interim Special Committee on Federal and State Affairs as it examined the liquor laws (Proposal No. 66). The Special Committee concluded that the Legislature should review and consider the recommendations of the Task Force.

Due to the size of the bill and the many demands on your time, it may not be possible to review each section in detail. In fact, a detailed review will only confirm that the majority of the bill is technical in nature, accomplishing the repeal and consolidation necessary to recodify current law into the format of the new acts. Concern has been voiced regarding the large number of statutes proposed for repeal. Most of the statutes proposed for repeal are either covered in another statute which is being retained or they are being repealed and reenacted as a new section to facilitate the layout of articles in the new acts. Attached is a graph explaining the resulting effect for each statute proposed for simple repeal (as opposed to amended with existing section repealed).

In addition to the overall cleanup and consolidation of current law, the Task Force identified a limited number of policy related changes which you should be aware of as you consider the bill. These items are listed by topic below.

- Term of salesperson's permit - K.S.A. 41-334 (Page 38). This is a matter of improving customer service and reducing processing cycles for the ABC Division. The proposal is to renew salesperson's permits every three years at a rate of \$30 instead of every year for \$10. An additional amendment is needed on page 39, line 1, to reflect the \$30 fee.
- Repeal of advertising statute - K.S.A. 41-714. After its most recent amendment in 1991, the Attorney General ruled this statute to be vague and unenforceable, primarily due to confusion regarding the intent of the billboard provisions. The ABC Division advised the industry that only the handbill provisions would be enforced pending resolution of this issue. The recommendation to repeal is made solely to bring this issue to the attention of the Legislature.
- Repeal of sale to incapacitated person statute - K.S.A. 41-715. Lacking a clear definition of the term incapacitated, it is not possible to advise licensees of their responsibility under this statute or to enforce it in a consistent manner. This issue is very closely related to "dram shop" liability for licensees. The recommendation to repeal is made solely to bring this issue to the attention of the Legislature.

- Non-discrimination in wholesale-to-retail price of cereal malt beverage - K.S.A. 41-1101 (Page 68). The Task Force concluded that it was the intent of the 1995 Legislature to establish uniform pricing for cereal malt beverage by outlawing quantity discounts in subsection (d) of this statute. Without clear language prohibiting any discrimination in pricing, this intent has not been fully realized. The proposed amendment to this statute beginning on page 70, line 21, clarifies what we believe to be the original intent of the 1995 bill.

Finally, the following additional amendments are needed to correct items which did not make the transition from the Task Force draft to bill form:

- As noted in the attached repealer graphic, K.S.A. 41-503 was intended for repeal, but the bill repeals 41-208. This can be corrected on page 1, line 27.
- The term "alcoholic liquor" needs to be specifically defined to exclude non-alcoholic malt beverages, for the purposes of the furnishing statute, K.S.A. 21-3610. This can be accomplished on page 95, beginning at line 8.
- On page 26, line 26, the word *or* should be inserted between the words liquor and cereal to provide for proper syntax in the affected sentence.
- On page 34, line 13, the words *of licenses* should be reinserted to clarify the intent of the affected sentence.
- On page 39, line 38, the word *under* should be inserted before the word such to provide for proper syntax in the affected sentence.
- On page 84, line 19, the word *license* should be inserted between the words establishment and from to clarify the intent of the affected sentence.
- On page 92, line 29, the words *defined by* should be reinserted to clarify the intent of the affected sentence.

Once again, my thanks to the committee for your introduction and support of House Bill 2675. Your investment of time and attention to this bill will produce dividends for many years to come as Kansas liquor laws evolve into the 21st Century.

HOUSE BILL 2675
REPEALED STATUTES ANALYSIS

OLD	NEW	TOPIC	OLD	NEW	TOPIC
41-203	obsolete	ABC Board abolished	41-1111	invalid	minimum markup
41-205	New Sec. 9	re-enact	41-1112	invalid	minimum markup
41-208	Error	should be 41-503	41-1114	invalid	minimum markup
41-210	New Sec. 14	re-enact	41-1115	invalid	minimum markup
41-305	New Sec. 20	re-enact	41-1116	invalid	minimum markup
41-308	New Sec. 24	re-enact	41-1117	invalid	minimum markup
41-312	New Sec. 30	re-enact	41-1118	invalid	minimum markup
41-316	41-304	issuance of license	41-1119	invalid	minimum markup
41-318	41-301	application procedure	41-1120	invalid	minimum markup
41-324	New Sec. 40	re-enact	41-1121	invalid	minimum markup
41-325	41-315	premise/lic. display	41-1124	41-1123	sale by director
41-327	41-304	issuance of license	41-1127	41-101	act cited/severability
41-329	invalid	Federal law overrides	41-2604	41-805	public nuisance
41-335	New Sec. 48	re-enact	41-2605	41-304	issuance of license
41-336	New Sec. 49	re-enact	41-2606	41-317	registration fees
41-337	New Sec. 50	re-enact	41-2607	41-326	license term
41-338	New Sec. 51	re-enact	41-2608	41-710	premise/zoning
41-340	New Sec. 53	re-enact	41-2609	41-320	admin. procedure
41-341	41-703	trade practices	41-2612	41-315	premise/lic. display
41-342	41-101	act cited/severability	41-2619	41-901	sale without license
41-343	41-102	definitions	41-2620	41-901	sale without license
41-344	41-102	NAMB	41-2621	41-315	premise/lic. display
41-345	41-102	NAMB	41-2623	41-311	license qualifications
41-409	New Sec. 63	re-enact	41-2625	41-313	licensing corps.
41-412	41-101	act cited/severability	41-2626	41-314	revoke/suspend lic.
41-501c	obsolete	unknown/out of print	41-2627	41-315	premise/lic. display
41-510	41-502	tax credit/military	41-2628	41-319	application time limit
41-707	obsolete	label approval	41-2629	41-326	license term
41-709	New Sec. 79	re-enact	41-2630	41-805	public nuisance
41-711	New Sec. 81	re-enact	41-2631	41-208	local penalties
41-714	unclear	advertising	41-2633	41-902	general penalty
41-715	unclear	sale to incapacitated	41-2633a	41-328	admin. fines
41-721	41-805	public nuisance	41-2634	41-211	rules/regulations
41-722	41-805	public nuisance	41-2635	41-101	act cited/severability
41-723	41-805	public nuisance	41-2636	41-326	sale of license
41-724	41-408	transportation/carriers	41-2644	New Sec. 121	re-enact
41-725	41-408	transportation/carriers	41-2648	obsolete	license conversion
41-726	41-408	transportation/carriers	41-2649	41-101	act cited/severability
41-801	obsolete	carrier reporting	41-2650	41-101	act cited/severability
41-803	41-805	public nuisance	41-308b	New Sec. 26	re-enact
41-1105	41-101	act cited/severability	41-2601	41-102	definitions
			41-2622	41-310	license fees
			41-2637	New Sec. 115	re-enact
			41-2641	New Sec. 118	re-enact
			41-2708a	obsolete	unknown/out of print

41-714. Advertising and display of liquor; restrictions. (a) It shall be unlawful for:

(1) Any person to advertise any alcoholic liquor by means of handbills;
(2) any retailer of alcoholic liquor to advertise any alcoholic liquor by means of billboards along public highways, roads and streets or to have on the retailer's licensed premises any billboard advertising alcoholic liquor; or
(3) any licensee to display alcoholic liquor in any window of the licensed premises.

(b) The provisions of this section shall not be interpreted to prohibit the advertising of a microbrewery or farm winery. Any advertising of a farm winery or microbrewery shall be subject to approval by the director prior to its dissemination.

(c) The provisions of this section shall not be interpreted to:

(1) Preempt any city ordinance or county resolution restricting or prohibiting signs or outdoor advertising; or

(2) prohibit advertising of the price of any alcoholic liquor or advertising of any alcoholic liquor by brand name, other than by means declared unlawful by subsection (a), and no rule and regulation adopted hereunder shall prohibit such advertising.

(d) The secretary of revenue may adopt, in accordance with K.S.A. 41-210 and amendments thereto, rules and regulations necessary to regulate and control the advertising, in any form, and display of alcoholic liquor and nothing contained in this section shall be construed as limiting the secretary's power to adopt such rules and regulations not in conflict with this act.

(e) As used in this section, "billboard" means any board or panel erected, constructed or maintained for the purpose of displaying outdoor advertising by means of painted letters, posters, pictures or pictorial or reading matter, either illuminated or nonilluminated, when such sign is supported by uprights or braces placed upon the ground or upon a structure affixed thereto. Billboard does not include a sign containing statements pertaining to a business conducted within or on the premises on which the sign is maintained.

History: L. 1949, ch. 242, § 77; L. 1983, ch. 161, § 17; L. 1985, ch. 170, § 15; L. 1987, ch. 182, § 51; Jan. 1, 1988; L. 1991, ch. 142, § 3; April 25.

41-715. Sale of liquor to incapacitated or intoxicated person; penalties.

(a) No person shall knowingly sell, give away, dispose of, exchange or deliver, or permit the sale, gift or procuring of any alcoholic liquor to or for any person who is an incapacitated person, or any person who is physically or mentally incapacitated by the consumption of such liquor.

(b) Violation of this section is a misdemeanor punishable by a fine of not less than \$100 and not exceeding \$250 or imprisonment not exceeding 30 days, or both.

History: L. 1949, ch. 242, § 78; L. 1963, ch. 267, § 1; L. 1965, ch. 277, § 8; L. 1985, ch. 173, § 1; July 1.

January 31, 1996

To: House Federal and State Affairs Committee

From: R.E. "Tuck" Duncan
Kansas Wine & Spirits Wholesalers Association

RE: HB 2675

We appear today in support of HB 2675. This bill, the product of months of work undertaken by a Beverage Alcohol Advisory Task Force appointed by the Director of the Alcoholic Beverage Control, is a recodification of the laws regulating beverage alcohol and cereal malt beverages. This recodification consolidates similar sections of existing law and eliminates outdated and redundant provisions. For those that regulate the industry and for those who are regulated, this revision is a major step in providing clarity and simplicity in the statutes.

We wish to thank the Director and his staff for their efforts in this endeavor. The collective labors of the Task Force in achieving simplification without substantive policy changes should be remunerated by your support of this legislation in its current form.

The mission of the Task Force was to "eliminate duplication among the various acts relating to beverage alcohol." That mission has been accomplished, and we trust that this legislation will move forward without amendments that would frustrate the mission which motivated HB 2675.

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



EXECUTIVE DIRECTOR
JIM SHEEHAN
Shawnee Mission

OFFICERS

PRESIDENT
SKIP KLEIER
Carbondale

1st VICE-PRESIDENT
MIKE BRAXMEYER
Atwood

2nd VICE-PRESIDENT
TREASURER
DUANE CROSIER
Seneca

ASST. TREASURER
JOHN CUNNINGHAM
Shawnee Mission

BOARD OF DIRECTORS

CHAIRMAN
J. R. WAYMIRE
Leavenworth

GLEN CATLIN
Herington

TOM FLOERSCH
Fredonia

ROY FRIESEN
Syracuse

ARNIE GRAHAM
Emporia

STAN HAYES
Manhattan

JOHN McKEEVER
Louisburg

LEONARD McKINZIE
Overland Park

CLIFF O'BRYHIM
Overbrook

BILL REUST
Parsons

LEROY WARREN
Colby

BILL WEST
Abilene

DIRECTOR OF
GOVERNMENTAL AFFAIRS

FRANCES KASTNER

January 31, 1996

HOUSE FEDERAL AND STATE AFFAIRS COMMITTEE

SUPPORTING HB 2675

I am Frances Kastner, Director of Governmental Affairs for the Kansas Food Dealers Association. Our membership consists of retailers, wholesalers and distributors of food products throughout the State of Kansas.

During this past summer and fall we participated in the discussions concerning the updating of the Alcohol Beverage Control Act and the Cereal Malt Beverage Act, which you have in HB 2675.

Our organization supports the recommendations made in this bill, and respectfully request your favorable consideration of the changes presented to you by Mr. Conant.

Thank you for the opportunity to appear before you.

Frances Kastner, Director
Governmental Affairs, KFDA



**League
of Kansas
Municipalities**

LEGAL DEPARTMENT · 300 S.W. 8TH TOPEKA, KS 66603 · TELEPHONE (913) 354-9565 · FAX (913) 354-4186

LEGISLATIVE TESTIMONY

TO: House Federal and State Affairs Committee
FROM: Don Moler, General Counsel
RE: Opposition to HB 2675
DATE: January 31, 1996

First I would like to thank the Committee for allowing the League to testify today concerning HB 2675. As the League understands HB 2675, this bill constitutes an attempt to completely rewrite the Kansas Liquor Control and Club and Drinking Establishment Acts of the State of Kansas. On its face it appears to simply reduce the clutter in the alcoholic liquor statutes and that is a very admirable goal. However, it has come to the attention of the League that HB 2675 may do much, much more in its current form. Specifically, we believe that rewriting under a single piece of legislation the statutes relating to clubs and drinking establishments may constitute a preemption of local action in this area. Under current law cities across the State of Kansas routinely license and regulate clubs and drinking establishments under local ordinance. Included within these local ordinances in many communities are prohibitions against nudity in liquor establishments. We believe that this rewrite and recodification of the alcoholic liquor and club and drinking establishment acts may well serve to preempt not only local fees which may be higher than those provided for by state statute, but also preempt local licensure and local regulation in the areas of nude dancing, and other types of lewd and lascivious behavior on premises where alcoholic liquor is served.

Without bogging down in a long dissertation on the constitutional home rule amendment in Kansas, suffice it to say that the League and its member cities continue to believe that the current club and establishment act is nonuniform and allows for local licensure and regulation of these activities. We believe that this enactment, as written, may serve to remove that nonuniformity, and create a preemption of local regulation. Since we do not believe that this is the intent of the Committee, to remove local government from the regulation of clubs and drinking establishments, and to preempt the ability of cities to establish local policies representing community standards within these establishments, we would suggest three amendments to HB 2675. These amendments are summarized as follows:

- (1) A section that specifically authorizes local licensure of clubs and drinking establishments by cities throughout Kansas. We believe that specifically allowing dual licensure would allow for the control of these establishments at the local level and allow community standards to be enforced.
- (2) A specific statement that local regulations relating to activities within clubs and drinking establishments could be established by cities and counties and that violation of these local regulations could lead to suspension or revocation of the local license which would have the

*FedeState
1-31-96
Atch#4*

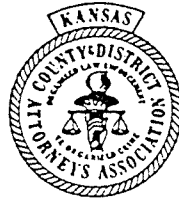
effect of closing down the establishment. We believe that without this provision, and provision (1) dealing with local licensure, that essentially we are removing the ability of local governments to enforce community standards relating to decency and appropriate behavior in the community.

- (3) Finally, we would request that a section be added specifically authorizing cities to exceed the statutory license fee of \$250 for a club or drinking establishment which has been placed in Section 28 of HB 2675, when the city complies with the provisions of K.S.A. 12-137. This statute requires a 2/3rds vote of the governing body, two newspaper publications, and is subject to protest petition and election of the public. We believe this is a reasonable request in that it would allow local determination and regulation of these establishments. This would seem prudent in light of the fact that the expenses of regulating clubs and drinking establishments throughout Kansas typically do not fall directly on the State of Kansas but rather are borne by local governments and their taxpayers. Thus, more reasonable license fees, as determined at the local level, would seem to be appropriate.

Thank you very much for allowing the League to appear today to discuss HB 2675.

OFFICERS

Paul J. Morrison, President
Nanette L. Kemmerly-Weber, Vice-President
William E. Kennedy, Sec.-Treasurer
Dennis C. Jones, Past President



DIRECTORS

Julie McKenna
David L. Miller
Jerome A. Gorman
James T. Pringle

Kansas County & District Attorneys Association

827 S. Topeka Blvd., 2nd Floor • Topeka, Kansas 66612
(913) 357-6351 • FAX (913) 357-6352

EXECUTIVE DIRECTOR, JAMES W. CLARK, CAE • CLE ADMINISTRATOR, DIANA C. STAFFORD

TESTIMONY IN OPPOSITION TO

HOUSE BILL NO. 2675

The Kansas County and District Attorneys Association is supportive of efforts to update the generally outdated, duplicitous, and sometimes ridiculous laws dealing with regulation of alcohol in Kansas. We are also most appreciative of the importance of regulation of the consumption of alcoholic beverages, and the potential threat to public safety that could result if there were no regulation by the State of Kansas. Most importantly, we appreciate the continued cooperation that exists between the Alcoholic Beverage Control division and local law enforcement officials and prosecutors. However, there are certain provisions in HB 2675 which which harken back to the days when a dry Kansas had nothing to do with annual rainfall.

We are particularly concerned with what appears as New Section 40, but is really current law which appears in K.S.A. 41-324 (p. 36); and Section 104 (p. 71). These provisions of the bill should be eliminated for the following reasons:

1. **COST SHIFTING** - Section 40 allows employees of a state agency (who receive more than \$25 per day) to impose duties on a locally elected official with inadequate compensation (i.e. district attorneys receive the same salary as a district judge). It should be noted that the Kansas Supreme Court has held that requiring attorneys to accept less than \$50 per hour when appointed to represent indigent defendants is unconstitutional.
2. **PROSECUTOR DISCRETION** - Both sections give the unelected head of a state agency the power to dictate how a locally elected prosecutor conducts his or her office. The provisions detract from the concept of prosecutorial discretion, and violate the separation of powers doctrine.
3. **ATTORNEY ETHICS** - The provisions also conflict with ethical rules that govern attorneys in Kansas. While these rules are generally promulgated for the benefit of the public in its relationship with privately retained attorneys, they are also applicable to public sector attorney, and are increasingly being used against prosecuting attorneys.

For these reasons, KCDAА opposes the bill as written, and would urge deletion of Sections 40 and 104 from the bill.

Testimony of James W. Clark, KCDAА Executive Director
House Federal and State Affairs Committee, January 31, 1996

Fed & State
1-31-96
Atch # 5

TESTIMONY FOR 1996 KANSAS LEGISLATURE
HOUSE FEDERAL AND STATE AFFAIRS COMMITTEE

FROM
MIKE TAYLOR, CITY OF WICHITA, GOVERNMENT RELATIONS DIRECTOR

While efforts to consolidate and cleanup the statutes controlling liquor and drinking clubs is probably positive overall, the City of Wichita is opposing House Bill 2675 as it is being proposed.

The proposal appears to end non-uniformity in Kansas liquor laws. The end result of that action takes away local control of nightclubs, taverns and a host of other businesses which serve alcohol. In addition to pre-empting local control, House Bill 2675 would also eliminate a City's ability to charge local fees on these businesses.

Wichita has hundreds of nightclubs, bars, taverns and establishments which serve alcohol. Wichita Police spend an enormous amount of time and energy enforcing liquor laws for the ABC. The large number of drinking establishments in Wichita also produces a large number of disturbance calls and other police responses. Wichita Police will be dealing with these problems and enforcing liquor laws for the State, yet local fees to help offset those costs will be eliminated. An argument could be made that this proposal results in an unfunded mandate imposed by the State on its Cities.

But the arguments against House Bill 2675 as now written go far beyond money. This again gets back to that age old debate over who is best prepared to deal with local issues: the citizens and elected officials in each community or State officials. The citizens of Wichita will have to live with any problems these establishments cause. We respectfully request the right to impose local regulations which our community decides can help us best deal with those problems.

Thank You.

*Fed. State
1-31-96
Atch #6*

Flawed process generates inconsistent & ineffective but lucrative
"patchwork" laws, and therefore Rules and Regulations.

Especially because of the "nature of the product" - (Califano Article)

"Government Of The People
By The People
For The People",

NOT

Government Of The People
By Lobbyists, Politicians & Bureaucrats
For The Special Interests

Recent History:

Last year, disallowance of "quantity discounts" from all exclusively franchised Kansas wholesalers to all Kansas retailers only benefited Kansas wholesalers.

Within a few days of the disallowance of "quantity discounts" being made law, the Alcoholic Beverage Control arbitrarily gave their blessing for the liquor wholesalers (Standard, Famous, Premier & AB Sales) to significantly increase "split case charges".
Only four individuals in the State benefited economically.

HOW CAN THIS TYPE OF LEGISLATION & RULES AND REGULATIONS BE
CONSIDERED "FOR THE PEOPLE"?

Because of the nature of the product, special attention must always be given to the controlled sale of the product with regard to availability, age, and obvious condition of the purchaser.

FediSte
1-31-96
Atch # 7

PEOPLE, PROGRAMS, AND PARTNERSHIPS



Legalization: The Reality

by Joseph A. Califano, Jr.



Joseph A. Califano, Jr.

Federal and local politicians want to end welfare dependency, reduce crime, trim health care costs, curb teen pregnancy, and make it safe to walk the streets again. It will take lots of time, energy, and money to achieve these goals as well as a renewal of fundamental values. Each goal has special requirements for achievement: better trained teachers, more effective police protection, recreational facilities, rehabilitated housing, more jobs.

But every one of these goals has a common requirement: none can be achieved without an all-fronts assault on substance abuse and addiction. That's why we at CASA say to anyone who will

listen, "It's drugs, alcohol, and tobacco, stupid!" A major attack on addiction and abuse involving all substances—tobacco, alcohol, and legal and illegal drugs—is essential to reduce crime, health care costs, teen pregnancy, and homelessness.

You can't pick up a newspaper or view an evening news program without hearing about the need to cut Federal entitlement programs like Medicare, Medicaid, welfare, Social Security, and disability payments. But do you ever see newspapers or television news report the amount that Federal entitlement programs pay out because of substance abuse?

The answer is a colossal \$77.6 billion dollars this year—an amount equivalent to 40 percent of the Federal deficit. Some \$11.2 billion of that amount are payments to public assistance recipients who are drug and alcohol abusers and addicts. The remaining \$66.4 billion are health and disability payments: 66 percent (\$44 billion) due to diseases and disabilities from smoking tobacco, 18 percent (\$12 billion) due to alcohol, 16 percent (\$10 billion) due to illegal drugs. And these figures do not include the costs of crime, courts, or prisons or the amount of the State and city share of those programs.

A major attack on addiction and abuse . . . is essential to reduce crime, health care costs, teen pregnancy, and homelessness.

There's an important signal here for those who would legalize drugs like cocaine, marijuana and heroin. Easy availability is why the costs that tobacco and alcohol put on society are so much greater than the costs of drug abuse. Tobacco use kills more than 400,000 Americans each year, alcohol abuse some 100,000, and illegal drug use 20,000.



We cannot be blind to how universal access to cigarettes, beer, and other kinds of alcohol has hooked so many Americans on these substances and caused so many premature deaths. And we cannot ignore the red flags of danger this experience waves in front of any move to make marijuana, cocaine, and heroin more readily available.

In Holland, anyone more than 15 years old can buy marijuana as easily as different blends of coffee or flavors of ice cream. Those who sing the praises of this policy skip over the 250 percent increase in adolescent marijuana use from 1984 to 1992. Over that same period, marijuana use among American adolescents plummeted 66 percent.

This summer, the Amsterdam City Council is expected to prohibit any new pot-selling shops from opening, raise the minimum age to 18, and close shops earlier in the evening.

The objective is to cut in half the number of pot-dealing shops in the city.

We need not experiment with drug legalization in the United States. Experiences in Holland, Great Britain, Italy, Switzerland, and Sweden provide ample evidence of its failure in similar nations.

Legalizing marijuana, cocaine, heroin, and other drugs would make them easily available to our children, and millions of them would get hooked, just as millions have become tobacco and alcohol addicts.

Those who propose drug legalization argue that the Nation's various wars on drugs have failed. They ignore the sharp decline in casual drug use since 1979 (though use among adolescents has crept up in the past 2 years), and they focus on the continuing crime and violence on city streets.

Those of us who strenuously oppose legalization have an obligation to propose policies that will tackle the substance abuse scourge in our Nation. We must recognize that America's drug policies

We need not experiment with drug legalization in the United States.

need a fix. The Nation's lopsided obsession with law enforcement and interdiction feeds the despair that makes some Americans argue in favor of legalization. Of course, we need strong law enforcement, and we need to make it difficult and

... drugs come to America not by invasion but by invitation.

expensive, if not impossible, to get drugs into this country or to produce them here.

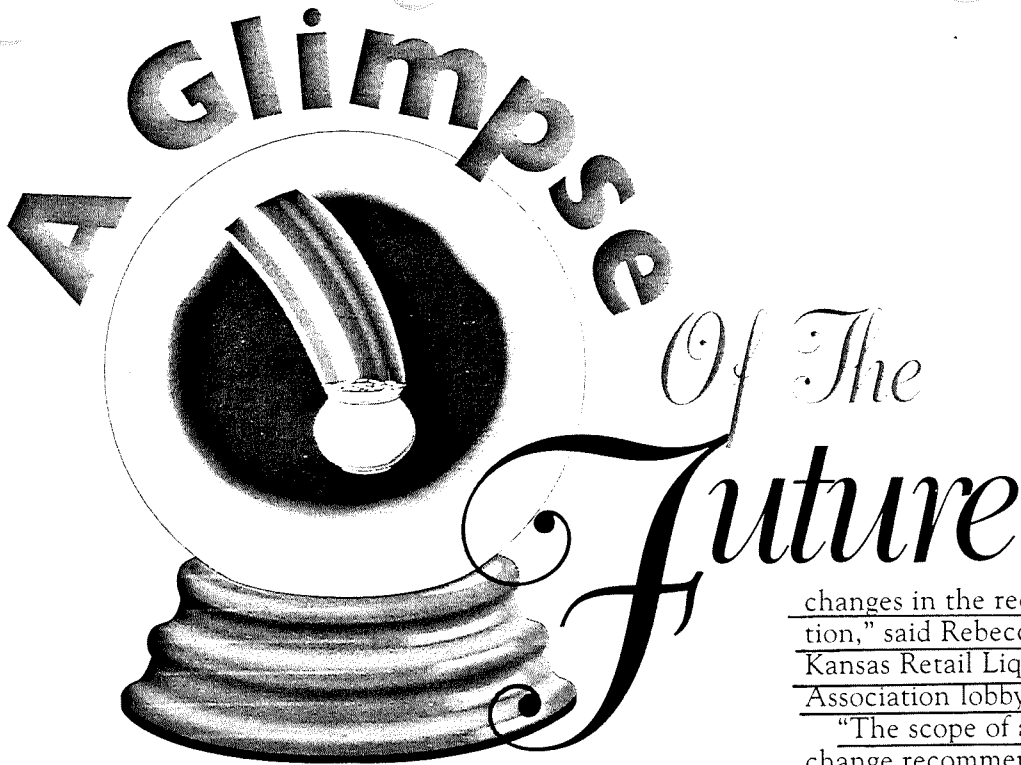
We also must recognize that drugs come to America not by invasion but by invita-

tion. We are 5 percent of the world's population, but we consume 50 percent of the world's cocaine. That stark reality speaks to matters beyond law enforcement.

It speaks to lifestyles, values, materialism, hedonism, wealth, poverty, loss of faith, and loss of pride in ourselves. It speaks to the need for each of us to look inside, not outside, to see what we can do to be part of the solution and not part of the problem. It speaks to the need for an end to personal denial and an end to the myth that drugs are someone else's problem.

We are our brothers' and sisters' keepers. But even citizens who don't share that belief can at least keep in mind how narrow the difference is between those who are hooked on alcohol and drugs and those who are not. Understanding the hairline nature of that difference may be key to mounting the kind of cultural, legal, prevention, treatment, education, research, and law enforcement efforts needed to attack the substance abuse epidemic in America. ♦

—Mr. Califano is founding Chairman of the Board and President of CASA, an independent nonprofit research center affiliated with Columbia University in New York City. He is an expert in health care delivery and cost containment and consults and lectures about America's health care system. He is Adjunct Professor of Public Health at Columbia University's Medical School and School of Public Health and a member of the Institute of Medicine of the National Academy of Sciences.



Legislative Session Likely To Start With Clean Up Bill

By Kathy Decker

Alcohol beverage issues were waiting on the desks of Kansas legislators as they returned to Topeka earlier this month. First up will likely be a clean-up bill recommended by the Beverage Alcohol Advisory Task Force, that seeks to consolidate, clarify, and simplify all the laws regarding beverage alcohol in Kansas. Beyond that, the issues could be many. Keg registrations may come up again, as may Sunday sales, holiday sales, and quantity discounts. Some expect to see a move

for single strength beer in the state, and some predict that multiple licenses will come to the fore. But the hope is all these issues will come after the clean-up bill - to give the legislature a clean base upon which to base its policy decisions.

"We're hoping to get this on the books and signed into law early," said Jim Conant, Chief Administrative Officer of Alcohol Beverage Control. The Beverage Alcohol Advisory Task Force is made up of representatives from all the industry tiers, under the leadership of the ABC. It's task, as assigned by the Legislature at the end of last session, was to review the liquor laws and eliminate outdated, unnecessary, unenforceable and duplicate laws and regulations. It was also charged with identifying related policy issues for separate consideration by the Legislature, but the recommended bill deals strictly with the housekeeping issues.

"Jim has been very careful not to put any policy

changes in the recommendation," said Rebecca Rice, Kansas Retail Liquor Dealers Association lobbyist.

"The scope of actual change recommended is very very small," said Conant. "It should have almost no operational impact." It should, however, make the liquor laws easier to understand and easier to enforce, said Conant.

The recommended bill takes the four alcohol beverage laws currently on the books and consolidates them into two: One deals with all aspects of liquor, both on-premise and off-premise, and the other deals with cereal malt beverages in the same way.

The recommendation calls for repealing the sections of the law that govern advertising, and that prohibit sale of alcohol to intoxicated persons. It's not that the task force disagrees with these provisions said Conant. It's that as the law is currently written, both sections are unenforceable.

"We just want to bring it to the Legislature's attention that they might want to deal with this," said Conant. "They may choose to leave the law as it is, they may choose to change it, or they

may decide to repeal these sections entirely.”

The Task Force recommendation also touches on another area of concern -- quantity discounts. Last year the Legislature passed a measure that outlawed quantity discounts on cereal malt beverages. Task Force members believe the Legislature intended uniform pricing among all 3.2 beer retailers -- but that's not how it's worked out. Cereal malt beverage distributors continue to offer different pricing for different customers -- from case one. It's perfectly legal now, but the Task Force is recommending tightening the restrictions even further.

“The Legislature intended uniform pricing among 3.2 retailer,” said Conant. “The recommendation goes one step further and makes it illegal to discriminate.”

Keg registration is another question likely to come up in the Legislature this year, according to Neal Whitaker, Executive Director of the Kansas Beer Wholesalers Association. It requires that every beer keg have an identifying number and that retailers keep records of who bought each keg. Then, if there's any kind of trouble -- like underage drinking -- the keg can be traced back to its purchaser and ultimately to the retailer who sold it. The question's been defeated by the Legislature before, and the beer whole-

salers are hoping it won't get any further this year.

“It's one of the more simplistic solutions that really doesn't solve anything,” said Whitaker. “One of the things we worry about is these records falling into the wrong hands.”

Rice said she'd be surprised if the issue even came up this year.

“The public in general is



**For The Complete Text
Of The Task Force
Proposal, Check Our
Internet Site.**

[http://www2.southwind.net/
~kdecker/bevnews.html](http://www2.southwind.net/~kdecker/bevnews.html)

not leaning toward making people less responsible for what they do,” said Rice. “If a truly bad situation came up in the next few weeks then you might see a move for keg registration, but otherwise I don't expect to see it. Retailers have been very effective in explaining to the Legislature that we are not policemen.”

It's Rice's view that this is probably not the year that retailers will see a lot of law changes in their favor -- not after credit card sales were approved last year. She predicts multiple licenses will come up again this year.

And the idea of offering quantity discounts for liquor might be introduced -- but she rates its chances of becoming law as slim at best.

“I just can't imagine a scenario where this legislature or any legislature would do that,” said Rice. “The only one to gain from quantity discounts is the largest retailer of a particular brand. If the price goes down for one person it goes up for another. And rarely would you find a retailer who's the largest in every brand.”

There's always speculation that someone will bring up single strength beer -- particularly since Kansas is one of only five states where 3.2 beer is still available. But if it comes up this year, it isn't going to come from the beer wholesalers.

“We took a vote at our annual meeting in September,” said Whitaker. “We're not bringing it up.”

In general, this could be a very busy session for the legislature -- school funding and the related property tax issues could keep Legislators occupied until spring. But it could be a relatively quiet year for liquor law changes.

“This is a new Legislature. There have been some changes on the House State And Federal Affairs Committee that probably make it a little more conservative on liquor issues. Throw in an election year, and I just don't see much happening,” concluded Rice.

BOSTON BEER FILES WITH SEC

Boston Beer Co. has filed registration statements with the Securities and Exchange Commission (SEC), outlining the company's plan to sell a total of 5.3 million class A common shares of stock in an initial public offering (IPO).

Boston Beer will sell 4.3 million shares in an underwritten offering, following a best efforts offering of 990,000 shares targeted to consumers of its products, the brewer said. Of the underwritten offering, according to news reports, the company itself plans to sell 1.55 million of the shares for \$10 to \$15 per share, while company executives plan to sell another 2.77 million shares.

Boston Beer is one of several specialty brewers to go this route recently, following the rousing reception Seattle-based Redhook Ale Brewery's IPO received on Wall Street in August (see page 46).

COURT UPHOLDS BAN ON OUTDOOR ALCOHOL ADS

A U.S. Circuit Court of Appeals has upheld a ban on outdoor advertising of alcoholic beverages passed by the Baltimore City Council in late 1993.

Anheuser-Busch challenged the city's legislation last year with a lawsuit arguing that the ban was unconstitutional. The suit was originally dismissed by a lower court. In affirming that decision, the circuit court ruled that the ban was legal because it "directly and materially advances" Baltimore's interest in discouraging underage drinking.

A-B said it will appeal the circuit court's decision to the U.S. Supreme Court. Calling the ruling "regrettable," A-B president Patrick Stokes said, "Advertising doesn't cause people to drink. [Advertising] is about brand choice."

The Center for Science in the Public

Interest (CSPI), which had filed a friend of the court brief in support of Baltimore, praised the circuit court's ruling, saying it demonstrated that the First Amendment does not protect alcoholic beverage advertising. At the Beer Institute's recent meeting in Washington, D.C., institute president Ray McGrath said similar initiatives are expected in other cities.

KENDALL-JACKSON SEEKING HIGHER VARIETAL CONTENT

Kendall-Jackson Vineyards & Winery has filed a petition with the Bureau of Alcohol, Tobacco and Firearms (ATF) to raise the minimum varietal content requirement for wine labels. The Santa Rosa, California-based company stated that domestic wines should have to contain at least 85 percent of the grape varietal on the label, not just the 75 percent currently required.

In a recent letter to winery owners, Kendall-Jackson proprietor Jess S. Jackson argued that the lower requirement allows "the world to make the false claim that U.S. standards and wines are inferior."

According to ATF, if the petition is found to have merit, the bureau will announce a 90-day period for public comment about the proposal. The Wine Institute said it has not yet formally discussed the petition with its members and has no official position on it.

PANEL RECOMMENDS MORE BALANCED VIEW OF ALCOHOL

The scientific advisory committee for the 1995 U.S. Dietary Guidelines has submitted revisions to the U.S. Department of Agriculture (USDA) and the Department of Health and Human Services (HHS) which delete the current government statements that alcoholic beverages "have no net health benefit" and are "not recommended."

Other proposed changes to the guidelines include a new introductory statement which notes that alcoholic beverages have been used by many societies to "enhance the enjoyment of meals." The proposed changes also specify that "higher levels of alcohol intake," not alcoholic beverage consumption in general, can have negative consequences.

The Wine Institute praised these guidelines for their "more balanced wording," and called them "a landmark development." The institute added, however, that it will urge the government to remove references to alcohol's "drug effects" and alleged contribution to weight gain.

The Distilled Spirits Council of the United States (DISCUS) stated, "Overall, the industry should be pleased" with the potential changes, but added that the guidelines should have contained more information about alcoholic beverage consumption's potential health benefits.

The USDA and HHS are expected to issue the final dietary guidelines by the end of the year. The guidelines, which are revised every five years, represent official U.S. nutrition policy.

U.S. HIGHWAY BILL MANDATES UNDERAGE BAC LEVEL

The National Highway System bill, which includes a blood alcohol content (BAC) requirement for drivers under 21 years, is being discussed by a Congressional conference committee. The bill contains an amendment which would withhold 5 percent of highway funds after October 1, 1998, from states that have not passed laws setting a maximum .02 percent BAC level for people under 21.

The bill was passed by the House in late September and was then incorporated into a similar Senate measure. At

pre: , the bill was expected to soon move out of committee, according to the National Licensed Beverage Association (NLBA).

The .02 BAC amendment was sponsored in the House by Rep. Nita M. Lowey (D-New York) and opposed by Rep. Bud Shuster (R-Pennsylvania) and Rep. Jack Quinn (R-New York). Shuster called the amendment "counterproductive," arguing that states should be given incentives, not mandates, for passing tougher drunken driving laws.

FDA TOBACCO PROPOSALS POSE POTENTIAL AD THREAT

The tighter restrictions on tobacco sales and advertising proposed recently by the Food and Drug Administration (FDA), and publicly endorsed by President Clinton, pose a potential threat to the alcoholic beverage industry, trade allies and opponents say.

In an effort to curtail teenage smoking, the FDA said its proposed rules would, among other things, forbid brand name advertising by tobacco companies at sporting events and products not related to tobacco use, such as clothing. The FDA also proposed prohibiting outdoor tobacco ads within 1,000 feet of schools and playgrounds, as well as tobacco ads in publications which are read by a large number of children. In addition, the FDA wants cigarette manufacturers, distributors and retailers to assume responsibility for underage sales of tobacco.

Commenting on the precedent the FDA's proposals may set, Jack MacDonough, chairman and CEO of Miller Brewing Co., a subsidiary of Philip Morris, recently said, "Who can say

that our turn in the alcohol beverage industry will not be next?"

A spokesman for the Association of National Advertisers stated the group was unaware of any current movement by the federal government against alcoholic beverage marketing, but added, "If you can do it for tobacco today, you can do it for alcohol or anything else tomorrow."

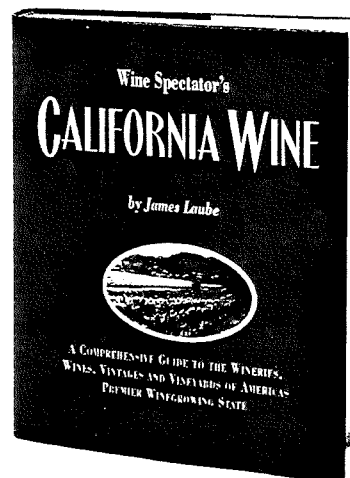
The Distilled Spirits Council of the United States (DISCUS), however, said the proposals are an "opportunity to further distinguish alcohol from tobacco" and will probably not be applied to alcoholic beverages. President Clinton seemingly agreed, refusing to say at a recent press conference that the tobacco proposals should be applied to alcoholic beverages.

The Center for Science in the Public Interest, on the other hand, noted that future restraints on alcoholic beverages depend on the success of the FDA's recent proposals. "More controls on tobacco would give this administration or future administrations greater opportunity to take on alcohol," says George Hacker, director of the Alcohol Policies Project at the center.

CLINTON URGED TO PROHIBIT DRINKS ADS TARGETING KIDS

The Coalition for the Prevention of Alcohol Problems, a consortium of 40 organizations that support initiatives to "deglamorize" alcoholic beverage consumption, has urged President Clinton to support the prohibition of alcoholic beverage advertising and marketing that "targets youth."

In a letter to Clinton, the coalition, which includes the Center for Science in the Public Interest and the National



New California Wine Book From Wine Spectator Press

James Laube, a senior editor of *Wine Spectator* and author of two bestselling books about California wines, has written a comprehensive new book entitled *Wine Spectator's California Wine*.

Published in time for the holidays by Wine Spectator Press, a division of M. Shanken Communications, Laube's book covers everything about the wineries, wines, vintages and vineyards of America's premier winegrowing state. More than 7,000 individual wines are described and rated using the *Wine Spectator's* 100-point scale.

To order, call (800) 761-4099.

MARKET WATCH

STATEMENT OF OWNERSHIP, MANAGEMENT AND CIRCULATION

1. Publication Title: MARKET WATCH. 2. Publication No.: 0227-9277. 3. Filing Date: October 2, 1995. 4. Issue Frequency: Monthly with combined issues in January and February, March and April, July and August, and November and December. 5. No. of Issues Published Annually: 8. 6. Annual Subscription Price: \$60.00 7. Complete Mailing Address of Known Office of Publication: 387 Park Avenue South, New York, NY 10016. 8. Complete Mailing Address of the Headquarters or General Business Office of Publisher: 387 Park Avenue South, New York, NY 10016. 9. Full Name and Complete Mailing Address of Publisher: Marvin R. Shanken, M. Shanken Communications, 387 Park Avenue South, New York, NY 10016; Editor: Michael Moaba, M. Shanken Communications, 387 Park Avenue South, New York, NY 10016; Managing Editor: David Ross, M. Shanken Communications, 387 Park Avenue South, New York, NY 10016. 10. Owner Name and Address: Marvin R. Shanken, M. Shanken Communications, 387 Park Avenue South, New York, NY 10016. 11. Known Bondholders, Mortgagees, and Other Security Holders Owning 1 Percent or More of Total Amount of Bonds, Mortgages or Other Securities: None. 12. For Completion by Nonprofit Organizations Authorized to Mail at Special Rates: not applicable. 13. Publication Name: MARKET WATCH. 14. Issue Date for Circulation Data Below: October 1995. 15. Extent and Nature of Circulation. Average No. Copies Each Issue During Preceding 12 Months. A. Total No. Copies: 56,830. B. Paid and/or Requested Circulation. 1. Sales through dealers and carriers, street vendors and counter sales: 0. 2. Mail Subscription: 52,317. C. Total Paid and/or Requested Circulation: 52,317. D. Free Distribution by Mail: 646. E. Free Distribution Outside the Mail: 1,319. F. Total Free Distribution: 1,965. G. Total Distribution: 54,281. H. Copies Not Distributed. 1. Office use, leftovers, spoiled: 2,549. 2. Return from News Agents: 0. I. Total: 56,830. Percent paid and/or Requested Circulation: 92%. Actual No. Copies of Single Issue Published Nearest to Filing Date: A. 59,744. B1. 0. B2. 56,157. C. 56,157. D. 617. E. 1,050. F. 1,677. G. 57,824. H1. 1,920. H2. 0. I. 59,744. Percent paid and/or Requested Circulation: 94%. I certify that the statements made by me above are correct and complete. Marvin R. Shanken, Editor & Publisher.

7-7



Grand Marnier, slightly less mysterious than love.

Schieffelin & Somerset Co. has launched a colorful, sensual print advertising campaign for Grand Marnier, tagging it as SLIGHTLY LESS MYSTERIOUS THAN.... (See page 76.)

This cast of characters is causing quite a commotion.

"I'm the one with the award-winning personality! I've picked up medals and friends all over the world."

"Who are you kidding? I'm the only one with a whisper of talent? Don't listen to him!"

"Don't give those guys the time of day! I've got the most patience. That's why they call me 'the bourbon that doesn't' watch the clock."

"The guys should learn to chill out. Of course if you were craft filtered like me, you'd do it instinctively!"

"Hey, I've got a reputation for being 'the most expensive bourbon in the world'! I earned it! I'm made from the highest quality ingredients."



Introducing The Bourbon Heritage Collection.

The unique, hand-crafted formulas in each of these award-winning bourbons are the result of centuries of expertise. Each is a true American classic, and the result of a long and proud tradition. They are the only ones with a whisper of talent. Don't listen to him!



The Bourbon Heritage Collection
Not A Bashful Character In The Ranch.

© 1995 Schieffelin & Somerset Co. All rights reserved. Grand Marnier is a registered trademark of Schieffelin & Somerset Co. in the U.S. and other countries.

United Distillers Glenmore has introduced its first national print campaign for its portfolio of premium Bourbons, above. (See page 76.)

Coalition on Alcoholism and Drug Dependence, argued that alcoholic beverage companies "entice young people to use their products before it is legal for them to do so" because people who don't drink before the age of 21 are not likely to drink regularly as adults. The coalition also accused companies of marketing alcoholic beverages "to look like soft drinks" and to appeal to children.

The Beer Institute, in response, pointed out that existing research does not indicate that alcoholic beverage advertising "should be blamed for abusive or underage drinking." The institute added that underage consumption would be more effectively reduced by education and awareness programs "grounded in common sense."

- Anheuser-Busch has introduced Busch and Busch Light beers into a California market for the first time. The beers have been released in Kern County, which includes Bakersfield. According to A-B, the brands, which are available in 12-ounce cans and longneck bottles, are being supported in Kern County by the "Head for the Mountains" broadcast, print and outdoor ad campaign.

- Pittsburgh Brewing Co. was recently acquired for \$29.4 million by Joseph R. Piccirilli, the former president of Piccirilli Disposal Services. His partners in the deal are James Gehrig, the former managing director of RRZG Holdings of Pittsburgh, and Ventana Global Capital Group of Irvine, California.

The brewing company had been put up for sale by Larry Ranallo, the trustee of the brewer's parent company, Pittsburgh Food and Beverage Co., which entered bankruptcy proceedings last March. According to the trustee, Pittsburgh Brewing's sale included \$16.8 million in liabilities.

- The American Vintners Association (AVA) recently took over the administrative and membership services of the American Wine Alliance for Research and Education (AWARE). According to AVA, the consolidation of the organizations' activities could

increase AWARE's funding because AVA members now have the option of paying additional dues to support AWARE's work. AVA, which is based in Washington, D.C., added that AWARE's research library and project base will remain in San Francisco.

- President Clinton recently stated that he does not support excessive federal excise tax (FET) rates on distilled spirits. In a letter to the Distilled Spirits Council of the United States (DISCUS), Clinton wrote, "While taxes on alcohol products are a traditional source of revenue in many countries, I am aware that high rates could be unduly burdensome." The letter was in response to information the trade group had sent to Clinton.

DISCUS praised Clinton for acknowledging that increasing the FET on spirits would be "unsound economic policy." According to DISCUS, spirits are already the most heavily taxed consumer product in the country.

- The Bureau of Alcohol, Tobacco and Firearms (ATF) has proposed changes in its regulations of alcoholic beverage labels that would specify formal procedures to be followed after the denial or revocation of an alcoholic beverage label certificate.

Under the proposed changes, ATF would present written notice of the revocation to the company holding the certificate, which would then have 45 days to state why the revocation should not occur. However, according to the proposals, ATF would not have to give notice of revocation if the certificate holder had failed to "comply with new laws or regulations." In either case, any revocation by the bureau could be appealed.

ATF said the changes would "afford more than adequate due process of law" to certificate holders and applicants. Comments on the proposals by the public can be submitted to ATF until December 12.

- Anheuser-Busch has expanded distribution of Busch NA to 16 more states, including Vermont, New Jersey, Maryland, Louisiana, Nebraska and Colorado. The non-alcoholic

breach is available in six-packs and packs of 12-ounce cans, had been launched in 15 states in November. The expansion follows A-B's recent introduction of Busch and Busch Light beers in one California market.

- Geyser Peak Winery, based in Geyserville, California, recently formed a marketing company, Peak Wines International, which is headed by the winery's president, Dennis Pasquini. The new company will distribute Geyser Peak, Canyon Road and Venezia wine brands. According to Peak Wines, the company also plans to begin distributing imported wines early next year.

- The Gambrinus Co., based in San Antonio, Texas, has purchased BridgePort Brewing Co. of Portland, Oregon. Gambrinus, an importer of Corona Extra beer, would not disclose the acquisition price.

BridgePort, a microbrewery, produces beers such as Blue Heron Pale Ale and Coho Pacific Extra Pale Ale. The small brewery acquisition is Gambrinus' second as it purchased the Shiner, Texas-based Spoetzl Brewery, the producer of Shiner Bock, in 1989.

STATE NEWS

- Georgia: Speaker of the House Newt Gingrich (R-Georgia) recently praised the introduction of anti-underage alcohol abuse activities by the Century Council in the metro-Atlanta area. The council's efforts in the state will include education, prevention and enforcement programs about underage drinking problems. Among the council's activities will be presentations to high school students about drunken driving.

- New York: Reciprocal shipments legislation which passed both the Senate and Assembly has not been sent to Gov. George Pataki for his signature. The measure's sponsor, Sen. John R. Kuhl, has not yet decided when to send it to the Governor, Kuhl's spokesman said, though the Senator still planned to do so before the start of the next legislative session in January.

Under the measure, New York residents would be able to order up to two cases of wine a year directly from wineries located in other states with reciprocity legislation.

CONTROL STATE NEWS

- Alabama: Legislation which lowers the state's maximum Blood Alcohol Content (BAC) level to .08 percent from .10 percent became effective August 9. In addition, the law doubles the state's previous minimum and maximum penalties for drunken driving. Alabama joins 13 other states with a .08 percent BAC.

- Ohio: The Enforcement Operations Division of the state's Department of Liquor Control was transferred to the Ohio Department of Public Safety on October 29. The remaining functions of the Department of Liquor Control will be merged with the Ohio Department of Commerce to form the Division of Liquor Control, effective July 1, 1997. The changes were part of a measure signed into law by Gov. George V. Voinovich on July 26.

AGENCY CHANGE

- David Sherman Corp. of St. Louis has acquired the trademarks to five brands from Todhunter International Inc., the parent company of Todhunter Imports Ltd., which was formerly known as Blair Importers Ltd. The brands are Barbella Italian wines, Boucheron French wines, Yago wines and sangria and Delacour French brandy. David Sherman also acquired from Todhunter the American distribution rights to the Macdonald Martin line of Scotch whiskies and Pescevano wines.

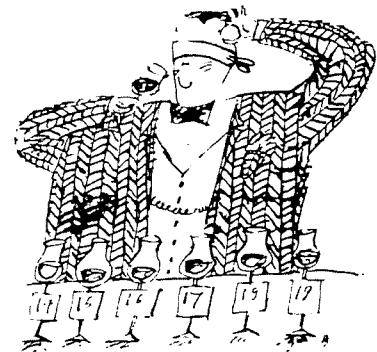
David Sherman received the trademarks and marketing rights for \$6 million. The company has opened two new sales divisions in New York and Norwalk, Connecticut, as a result of the acquisitions.

- Palace Brands Co., of Farmington, Connecticut, has purchased the national distribution rights to the Armagnac Sempé line of distilled spirits. The products, which are produced by

IN A 'BLIND' TASTING of the most popular malt whiskies conducted by the Sunday Times, we are pleased to record that The Macallan premium brand emerged with an 'Excellence Quotient' of 93.78%. Its nearest competitor achieved no *more than 62.8%*.

If further confirmation of The Macallan's pre-eminence is needed, why not let your own lips pronounce on the subject?

But sip with your eyes open. For the colour (voluptuous sherry-gold) adds at least an extra 6.22% to the pleasure. Thus raising the Quotient to a tidy *one hundred per cent*.



THE MACALLAN. THE SINGLE MALT SCOTCH.

Sole U.S.A. Distributor, Remy Amerique, Inc., NY, NY
Scotch Whisky 86 Proof, 43% Alc./Vol. © 1995

A REQUEST FOR IMMEDIATE ATTENTION
TO THE
KANSAS BEVERAGE ALCOHOL INDUSTRY

AND

A RECOMMENDATION OF CRITERIA TO BE CONSIDERED
REGARDING FUTURE CHANGES WITHIN THE
KANSAS BEVERAGE ALCOHOL INDUSTRY

First, it is necessary to review the history of the Kansas Beverage Alcohol Industry to understand our present day situation. Once it was concluded that prohibition was a failure, the Federal Government relinquished most of the responsibility for the distribution and sale of beverage alcohol to the individual states. This is the reason we see so many different sets of laws from state to state. i.e. Control States, Open States, so forth.

In Kansas, we elected not to sell beverage alcohol until 1949. But since the 1930s we have been doing exactly that, just under a different name; Cereal Malt Beverage. This was a subversion of the law from its inception. This product is identified by a different name, and the alcohol content is measured in a different manner than all other alcoholic beverages (by weight) in order to allow a higher alcohol content but not seem that way when compared to similar products measured in the traditional way (by volume). In Kansas, to this day it is still not considered an alcoholic beverage. But this is simply not true. Cereal Malt Beverage is an alcoholic beverage. (See enclosed data sheet)

What we have discovered here is that the State of Kansas, i.e. The Legislature, The Department of Revenue, and The Alcoholic Beverage Control, have the absolute right to control the distribution and sale of all beverage alcohol within the state of Kansas. Yet we find two completely different sets of laws, rules and regulations, pertaining to products which, for all intent and purpose, we know to be the same.

At this point it is plain to see that Kansas currently has several indefensible inconsistencies present in its Beverage Alcohol Industry. The main reason for the inconsistent nature of Kansas Beverage Alcohol laws, rules and regulations, is the year-in and year-out special interest politics which fosters it.

In an attempt to address these inconsistencies, I think it is necessary to accept the fact that the State has the right to control the distribution and sale of this State's largest drug. But at the same time it is also necessary to realize that the State has a responsibility to the citizens of Kansas, as well as to all levels of the Beverage Alcohol Industry, to ensure that all laws, rules and regulations in effect:

- 1: Are socially responsible.
- 2: Effectively control the distribution and sale of all Beverage Alcohol.
- 3: Foster voluntary compliance at all levels of the industry.
- 4: Are economically equitable at all levels of the industry.

At this juncture, I would like to suggest a solution regarding any future legislative consideration affecting the Beverage Alcohol Industry.

I would recommend that any consideration of change in the future of the Beverage Alcohol Industry be subjected to the following set of questions:

I: Is this socially responsible public policy?

A. How will it affect the public in general?

B. How will it affect future health care expenses?

i.e. alcohol-related birth defects, youth problems, addiction problems, etc.

C. How will it affect future crime statistics?

i.e. alcohol-related youth problems, domestic violence, violent crimes, etc.

D. How will it affect the non-consuming public?

i.e. youth, minors, and non-consumers.

E. How will it affect the consuming public?

i.e. people who drink alcoholic beverages.

F. How will it affect State Revenues?

i.e. Revenue income minus Alcoholic Beverage Control expenses for control of distribution and sale.

II: How will this affect the Beverage Alcohol Industry?

A. How will this affect the various levels of the Industry?

1. Kansas Clubs (On-Premise)

a. How will this level of the market be affected by the proposed change?

b. How will the control of distribution and sale be affected by the proposed change?

c. How will efficiency at this level be affected by the proposed change?

1. Kansas Clubs (On-Premise) cont'd

d. How will profitability at this level be affected by the proposed change?

2. Kansas Beverage Alcohol Merchants

a. How will this level of the market be affected by the proposed change?

b. How will the control of distribution and sale be affected by the proposed change?

c. How will efficiency at this level be affected by the proposed change?

d. How will profitability at this level be affected by the proposed change?

3. Kansas Cereal Malt Beverage Dealers

a. How will this level of the market be affected by the proposed change?

b. How will the control of distribution and sale be affected by the proposed change?

c. How will efficiency at this level be affected by the proposed change?

d. How will profitability at this level be affected by the proposed change?

4. Kansas Wine & Spirits Wholesalers

a. How will this level of the market be affected by the proposed change?

b. How will the control of distribution and sale be affected by the proposed change?

c. How will efficiency at this level be affected by the proposed change?

4. Kansas Wine & Spirits Wholesalers, cont'd
 - d. How will profitability at this level be affected by the proposed change?
5. Kansas Beer Wholesalers
 - a. How will this level of the market be affected by the proposed change?
 - b. How will the control of distribution and sale be affected by the proposed change?
 - c. How will efficiency at this level be affected by the proposed change?
 - d. How will profitability at this level be affected by the proposed change?
6. Out-of-State Wine & Spirits Suppliers
 - a. How will this level of the market be affected by the proposed change?
 - b. How will the control of distribution and sale be affected by the proposed change?
 - c. How will efficiency at this level be affected by the proposed change?
 - d. How will profitability at this level be affected by the proposed change?
7. Out-of-State Breweries
 - a. How will this level of the market be affected by the proposed change?
 - b. How will the control of distribution and sale be affected by the proposed change?
 - c. How will efficiency at this level be affected by the proposed change?

7-15

7. Out-of-State Breweries, cont'd

- d. How will profitability at this level be affected by the proposed change?

Using this logical progression of reasoning, we can examine, discuss, and make logical, consistent conclusions on all subjects (past, present and future) pertinent to the Kansas Beverage Alcohol Industry. I am confident that you will understand and agree on the importance of using this logical and consistent procedure if we are to guarantee that the State of Kansas is headed in the right direction to voluntary compliance with socially responsible Beverage Alcohol Laws, and Rules and Regulations.

**Kansas House of Representatives
Federal and State Affairs Committee
19 January 1995**

KANSAS BEVERAGE ALCOHOL LAW HAS A TREMENDOUS AMOUNT OF INCONSISTENCY.

A more stable and profitable retail market would promote a more socially responsible market with voluntary compliance.

When the United States Government realized that prohibition was a failure, most all responsibility for the distribution and sale of beverage alcohol was given to the individual states with basic BATF rules and regulation guidelines.

Kansas first allowed beverage alcohol under the name of "Cereal Malt Beverage" in the mid 1930's. There are now approximately 4000 cereal malt beverage licenses in the state of Kansas.

The sale of beverage alcohol in Kansas, as such, was first allowed in 1949. There are approximately 735 retail liquor licenses in the state of Kansas at this time.

In the last 8 years, we have lost over 500 retail liquor stores!

Kansas liquor stores are NOT allowed to sell items other than beverage alcohol.

Cereal malt beverage licenses ARE allowed to sell all other items and cereal malt beverages.

Cereal malt beverages are allowed to be sold in gas stations, bait shops, convenience stores, grocery stores, and virtually anywhere.

To arrive at a socially responsible, stable and profitable retail beverage alcohol market, the following inconsistencies will need to be addressed:

- * What constitutes a beverage being considered beverage alcohol?
- * Which locations will be the most socially responsible outlets to the public?
- * What are the most socially responsible days and times of day to sell beverage alcohol?

These statements and questions respectfully submitted for consideration.

John A. Webb
Webb's Fine Wine and Spirits
800 West 23rd Street
Lawrence, KS 66046-4407
(913) 841-2277

7-17

7-13

Gallons of Alcoholic Beverages Shipped into Kansas

Alcohol Type	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92	9 Year Trend
Spirits	3,037,866	3,002,683	2,919,682	2,710,292	2,718,939	2,654,234	2,584,771	2,557,744	2,615,724	-13.90%
Fortified Wine	160,074	148,707	171,337	152,377	159,477	147,307	150,897	153,987	122,817	-23.27%
Light Wine	1,799,085	2,125,134	2,207,896	2,567,727	2,290,187	1,906,735	1,868,130	1,864,873	1,919,016	6.67%
Strong Beer	22,324,246	21,978,266	23,130,470	24,534,916	26,092,762	29,492,634	30,035,550	32,082,816	33,099,056	48.27%
3.2 Beer	28,474,112	28,203,908	25,678,264	23,799,929	19,833,758	18,445,885	17,667,211	17,211,138	16,367,011	-42.52%
Gallonage Revenue	\$17,298,150	\$17,288,570	\$16,567,205	\$16,360,604	\$16,170,785	\$15,947,018	\$15,772,037	\$15,942,224	\$16,111,020	-6.86%
Alcohol Type	% Chng 84	% Chng 85	% Chng 86	% Chng 87	% Chng 88	% Chng 89	% Chng 90	% Chng 91	% Chng 92	
Spirits	0.51%	-1.16%	-2.76%	-7.17%	0.32%	-2.38%	-2.62%	-1.05%	2.27%	
Fortified Wine	-6.31%	-7.10%	15.22%	-11.07%	4.66%	-7.63%	2.44%	2.05%	-20.24%	
Light Wine	3.47%	18.12%	3.89%	16.30%	-10.81%	-16.74%	-2.02%	-0.17%	2.90%	
Strong Beer	-1.57%	-1.55%	5.24%	6.07%	6.35%	13.03%	1.84%	6.82%	3.17%	
3.2 Beer	2.94%	-0.95%	-8.95%	-7.31%	-16.66%	-7.00%	-4.22%	-2.58%	-4.90%	

**Kansas House of Representatives
Federal and State Affairs Committee
16 March 1995**

KANSAS BEVERAGE ALCOHOL LAW HAS A TREMENDOUS AMOUNT OF INCONSISTENCY.

A more stable and profitable retail market would promote a more socially responsible market with voluntary compliance.

When the United States Government realized that prohibition was a failure, most all responsibility for the distribution and sale of beverage alcohol was given to the individual states with basic BATF rules and regulation guidelines.

Kansas first allowed beverage alcohol under the name of "Cereal Malt Beverage" in the mid 1930's. There are now approximately 4000 cereal malt beverage licenses in the state of Kansas.

The sale of beverage alcohol in Kansas, as such, was first allowed in 1949. There are approximately 735 retail liquor licenses in the state of Kansas at this time.

In the last 8 years, we have lost over 500 retail liquor stores!

Kansas liquor stores are NOT allowed to sell items other than beverage alcohol.

Cereal malt beverage licenses ARE allowed to sell all other items and cereal malt beverages.

Cereal malt beverages are allowed to be sold in gas stations, bait shops, convenience stores, grocery stores, and virtually anywhere.

To arrive at a socially responsible, stable and profitable retail beverage alcohol market, the following inconsistencies will need to be addressed:

- * What constitutes a beverage being considered beverage alcohol?
- * Which locations will be the most socially responsible outlets to the public?
- * What are the most socially responsible days and times of day to sell beverage alcohol?

These statements and questions respectfully submitted for consideration.

John A. Webb
Webb's Fine Wine and Spirits
800 West 23rd Street
Lawrence, KS 66046-4407
(913) 841-2277

Gallons of Alcoholic Beverages Shipped into Kansas

Alcohol Type	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92	9 Year Trend
Spirits	3,037,866	3,002,683	2,919,682	2,710,292	2,718,939	2,654,234	2,584,771	2,557,744	2,615,724	-13.90%
Fortified Wine	160,074	148,707	171,337	152,377	159,477	147,307	150,897	153,987	122,817	-23.27%
Light Wine	1,799,085	2,125,134	2,207,896	2,567,727	2,290,187	1,906,735	1,868,130	1,864,873	1,919,016	6.67%
Strong Beer	22,324,246	21,978,266	23,130,470	24,534,916	26,092,762	29,492,634	30,035,550	32,082,816	33,099,056	48.27%
3.2 Beer	28,474,112	28,203,908	25,678,264	23,799,929	19,833,758	18,445,885	17,667,211	17,211,138	16,367,011	-42.52%
Gallonage Revenue	\$17,298,150	\$17,288,570	\$16,567,205	\$16,360,604	\$16,170,785	\$15,947,018	\$15,772,037	\$15,942,224	\$16,111,020	-6.86%
Alcohol Type	% Chng 84	% Chng 85	% Chng 86	% Chng 87	% Chng 88	% Chng 89	% Chng 90	% Chng 91	% Chng 92	
Spirits	0.51%	-1.16%	-2.76%	-7.17%	0.32%	-2.38%	-2.62%	-1.05%	2.27%	
Fortified Wine	-6.31%	-7.10%	15.22%	-11.07%	4.66%	-7.63%	2.44%	2.05%	-20.24%	
Light Wine	3.47%	18.12%	3.89%	16.30%	-10.81%	-16.74%	-2.02%	-0.17%	2.90%	
Strong Beer	-1.57%	-1.55%	5.24%	6.07%	6.35%	13.03%	1.84%	6.82%	3.17%	
3.2 Beer	2.94%	-0.95%	-8.95%	-7.31%	-16.66%	-7.00%	-4.22%	-2.58%	-4.90%	

COMPARISON OF:

LIQUOR LAWS vs CEREAL MALT BEVERAGE LAWS

LIQUOR STORES

Licensing.....

Licensee must be a resident of the state for a minimum of 5 years.

One License Per Owner (owner & spouse)

No Drug or Alcohol Convictions

If Business is a corporation the corporation must meet the same guidelines as the individual.

Bonded

Employees.....

ALL Employees must be 21 yrs. old. This means they must be 21 yrs. old to simply work as a stocker or to merchandise and price product.

No Alcohol or Drug convictions

Signature Card must be on file with ABC (State Alcoholic Beverage Control). ABC then conducts a background check.

Employees that are a minimum of 21 yrs. old are responsible for the proper sale to customers that are at least also 21 yrs. old.

Hours of Operation.....

9:00 a.m. - 11:00 p.m. Mon. thru Sat.

Must be closed: Memorial Day, July 4th, Labor Day, Thanksgiving and Christmas.

Closed Sundays

GROCERY/CONVENIENCE STORES

No requirement of residency.

No limit on number of Licenses that owner(s) can have.

Corporations allowed - Under enforcement penalties that would be effective.

Not Bonded

Currently this is a problem

Employees can be as young as 18 yrs. old to sell, merchandise, price, sack and carry out a Beer purchase.

There are no qualifications to be eligible for employment, such as no alcohol or drug convictions. This means there are no background checks done.

18, 19 and 20 year olds (minors) are responsible for the proper sale of the Beer. This means they are responsible for checking that the customer is 21 yrs. old and has proper ID. They can not succumb to peer pressure and sell to friends or relatives that are not 21 yrs. old.

Currently this is a problem -

6:00 a.m. - 12:00 Midnight Mon. thru Sat.

Must be closed Thanksgiving and Christmas

Closed Sundays

Items For Sale.....

Alcoholic Beverages

Can sell Beer and ANYTHING ELSE except other Alcohol Beverages

Lottery Tickets

Wholesaling.....

No quantity discounts

Any kind of discounts (on Beer) at the wholesalers discretion.

Consumer Retail Price.....

Can not advertise items below cost.

CAN advertise items (Beer) below cost and many businesses do.

Can not sell below cost.

CAN sell items (Beer) below cost and many businesses do.

State Revenues.....

State receives 8% on all sales,

State receives only 4.9% on all sales.

Profits remain in state - all state residents

Jurisdiction.....

Kansas Department of Revenue; Alcoholic Beverage Control.

Local Cities and/or Counties if Licensee is located outside of city limits.

Constant Policing.

Policing / Enforcement of Laws.....

Approximately 735 Retail outlets to police.

Check with any law enforcement agency only police when there are complaints

Approximately 4000 Retail outlets to police.

Penalties for violations of Selling To Minors or other violations: Fines, Requiring the Business to be CLOSED for a specified number of days, and/or Revocation of License.

(State Does not know - because of Licensing)

Penalties for violations of Selling To Minors or other violations: Fines only

Probable Cause - Everyone leaving a Liquor Store with product MUST BE 21 YRS. OLD. In other words ANYONE with a grocery sack must be 21 yrs. old. For this reason the ABC Agents have reason to ask for identification as proof the customer is 21.

Probable Cause - Does Not Exist since grocery and convenience stores sell such a variety of goods and can sell products other than Beer and Cigarettes to customers any age. Thus a law official has no cause to check someone's ID or to search the grocery sack if that person is NOT 21. The exception is if the officer sees the sale take place. Tax payers can not and should not have a officer placed inside over 4000 outlets to police the enforcement of our Laws.

WEBB'S FINE WINE AND SPIRITS

800 West 23rd Street
Lawrence, KS 66046
(913) 841-2277

April 3, 1995

The 1995 Kansas legislative session has given me a great opportunity to observe how the Legislature processes beverage alcohol law. This session has been a very good example of why Kansas has a "patchwork" of inconsistent and economically unbalanced beverage alcohol law. Dealing with individual issues without consideration of their complete effect in a highly structured and inter-related industry will only benefit the economically and therefore politically strong. The Kansas beverage alcohol industry is a great example of this scenario.

Kansas liquor and beer wholesalers are required by State law to be "exclusively franchised". That means that only certain wholesalers can sell certain products in specific trade areas. They are also allowed to have "payment terms" and "quantity discounts". It is required by law that when Kansas wholesalers sell to Kansas retailers the retailers pay on delivery. Standard Liquor and Famous Brands are the only two statewide wholesalers in Kansas. As you can see, just a few protected economic factors can give one level of the market (wholesalers) quite an advantage over another level of the same market (retailers). This is demonstrated very well by House Bill #2557 and now Senate Bill #256. These bills that are being promoted as "clean-up" legislation, have devastating ramifications for Kansas consumers and the State's highest volume and most efficient retailers. At the same time, there are long-term economic advantages for the State's wholesalers.

- * **CONSOLIDATION OF WHOLESALE STORAGE AND DISTRIBUTION:**
 1. Allows the two statewide wholesalers competitive advantage against other wholesalers.
 2. Drastically reduces the competition at the wholesale level.
 3. Big step toward one statewide wholesaler.

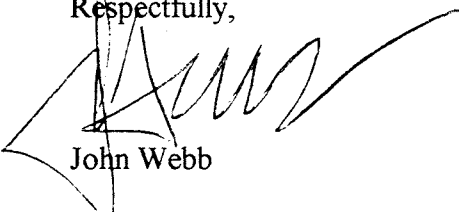
- * **DIRECT SALES TO CLUBS:**
 1. Would allow liquor wholesalers to "cherry pick" the best "on-premise" accounts and leave the less desirable accounts for the retailers.
 2. Would be a complete departure from the past market without adequate warning.
 3. How would club and retail pricing be determined?

- * DISALLOWANCE OF QUANTITY DISCOUNTS:
1. What justification is there?
 2. Wholesale profit protection?
 3. Once the wholesalers have the better brands, the only problem an "exclusively franchised" wholesaler has is the competition and we see how "ferocious" that is (cooperative storage and distribution with your competition?) and minimizing discount or low margin sales (disallowance of quantity discounts).

Even the consideration of legislation like this demonstrates one or two things. It is either a) a total lack of understanding of the present state of the Kansas beverage alcohol industry, or b) special interest politics that is absolutely not in the best interest of the people of this State. No one in the Kansas beverage alcohol industry except for the wholesale ownership and the lobbyists who represent them benefit from this.

I strongly recommend the reinstatement of the Alcohol Beverage Control Board of Review. This board should be appointed with professionals from various appropriate backgrounds, not vested in the industry. This board should review all aspects of the distribution and sale of all beverage alcohol in this State and recommend appropriate legislation. This same board should be kept in place to monitor the transition from the present market to an "economically balanced" and "stable" market that realizes the desired goal of voluntary compliance, with consistent and socially responsible beverage alcohol law.

Respectfully,



John Webb

STATE OF KANSAS
BILL GRAVES, GOVERNOR

Bernie Norwood
Director
4 Townsite Plaza, Ste 210
200 SE 6th Street
Topeka, Kansas 66603-3512



(913) 296-3946
FAX (913) 296-0922

Department of Revenue
JOHN D. LaFAVER, SECRETARY

Division of Alcoholic Beverage Control

*RECEIVED
10 July 95*

TO: Kansas Liquor Industry Members and Interested Parties
FROM: Bernie Norwood, Director
DATE: July 5, 1995
SUBJECT: Beverage Alcohol Advisory Task Force

In preparation for the 1996 Session of the Kansas Legislature, the ABC Division is planning a comprehensive review of the state's liquor laws. I am establishing a Beverage Alcohol Advisory Task Force to assist this agency in formation of potential recommendations for submission to the Legislature. You have previously expressed an interest in participating in a review of the laws which govern the beverage alcohol industry in Kansas. The purpose of this letter is to request written comments from you, including suggestions for improvement, on any aspect of the liquor laws with which you are familiar or concerned. Your comments and suggestions will be submitted to the Task Force and considered as the group seeks to identify opportunities for improvement which will benefit the entire industry and the citizens of Kansas.

Formally stated, I have established the mission of the task force as follows:

MISSION: The Beverage Alcohol Advisory Task Force shall review Kansas Statutes relating to the manufacturing, bottling, sale, transportation, furnishing, possession and taxation of alcoholic liquor, cereal malt beverages and nonalcoholic malt beverages and shall recommend amendments to those statutes intended to:

1. Eliminate outdated, unnecessary and unenforceable laws and regulations;
2. Eliminate duplication among the various acts relating to beverage alcohol;
3. Identify related policy issues for separate consideration by the Legislature.

Items 1 & 2, listed as intended outcomes, are directed at streamlining and simplifying what has become a piecemeal and confusing body of law over the past 45 years. This can be accomplished to a limited degree, and will result in significant benefit to the state and the industry, without major modifications of the basic state policies currently in place. It is anticipated, however, that a comprehensive review of the statutes may reveal opportunities for further improvement by way of updating some or all of the basic regulatory policies which are supported by the current body of

7-25

aw. Item 3 recognizes that these issues should be considered parately on their own merits and not be allowed to deter the less intrusive cleanup and simplification effort.

The core body of the task force will meet on a limited basis as needed to review written input. This group will be limited to a representative from each major level of the industry in Kansas, including:

- The Kansas Retail Liquor Dealer's Association
- The Kansas Beer Wholesaler's Association
- The Kansas Wine and Spirits Wholesaler's Association
- The Kansas Food Dealer's Association
- The Kansas Restaurant and Hospitality Association

The initial priority will be to identify opportunities for simplification, eliminate duplication and clarify existing law based on consensus input from all aspects of the industry. Topics which involve a significant shift in state policy will be deferred for later consideration unless there is clear agreement among all interested parties as to an appropriate course of action. Your comments and suggestions, which should be submitted no later than July 31, 1995, will help to ensure that the work of the Task Force is representative of the entire industry. Please direct your written comments and any questions you may have to the attention of Jim Conant in our Topeka office. Thank you for your careful consideration and cooperation in this important undertaking.

**The Beverage Alcohol Advisory Task Force
Position Paper
Kansas Beverage Alcohol Industry
John Webb - Beverage Alcohol Merchant
31 July 1995**

I appreciate this opportunity to express my position regarding past, present and future Kansas beverage alcohol policy. I feel that this state has a unique opportunity to become a leader among the states in the responsible distribution and sale of beverage alcohol. **With a few basic changes, Kansas can realize an improved market which promotes both a responsible and consistent "social policy" as well as "economic policy" by fostering competitive and balanced markets at all levels within the beverage alcohol industry.**

At this point it is clear that there are two completely separate aspects of the industry that should not be confused; "social policy" and "economic policy". Because of the unique characteristics of all forms of beverage alcohol (they all are depressants and all are mind and mood altering substances), these completely different disciplines must always be considered separately. Responsible and consistent "social" and "economic policy" should not be derived from patchwork "special interest" politics. Obviously, because of the unique nature of beverage alcohol, it is advantageous to clearly define "social policy" principles which become the primary considerations for all subsequent "social" and "economic policy" decisions. The interrelations of both disciplines must be completely understood to realize effective and efficient state policy. **Because of the unique characteristics of beverage alcohol, "social policy" must always be the principal and priority consideration when contemplating any change in the distribution and sale of beverage alcohol.**

Social Policy Considerations

On a social scale, beverage alcohol consumption clearly has more negative aspects than positive, both to the consuming and non-consuming public. The consumption of beverage alcohol affects society in many adverse and expensive ways:

- * **reduced productivity**
- * **domestic violence**
- * **criminal activities**
- * **drunken driving**
- * **birth defects**
- * **cumulative physical health problems**
- * **cumulative mental health problems, etc.**

Therefore, any time we are considering "social policy" concerning the distribution and sale of beverage alcohol, it is not responsible or rational to foster increased demand, convenience of sale or consumption.

However, we have learned that prohibition is not the solution. When the federal government decided that prohibition was not the answer, it gave each individual state the right and responsibility to develop and implement its own beverage alcohol distribution and sales system. Understanding what clinicians know about beverage alcohol consumption, several "social policy" considerations become obvious.

- * **Since alcohol is the operative substance**, should all forms of beverage alcohol be taxed, distributed and sold in the same manner?
- * Cereal malt beverage is a beverage that contains alcohol. Therefore, **cereal malt beverage is beverage alcohol**. Beverage alcohol is different than bread and milk and should not be sold in the same manner or by the same business.
- * **Convenience or ease of purchase should not be a priority consideration.**
- * **The purchase of beverage alcohol in conjunction with motor fuels does not seem consistent** when considering recent attention to laws regarding operating under the influence of alcohol.
- * **This society's largest selling drug should not be used as a loss-leader or traffic enhancer** for mass merchandisers and/or grocery stores (where the public must go to purchase essentials).
- * Understanding that beverage alcohol consumption has many adverse and expensive social consequences, **advertising and promotion of beverage alcohol consumption is not consistent with responsible "social policy"**.
- * When considering the cumulative life effect of beverage alcohol consumption (the younger one starts to consume beverage alcohol, the more likely abusive or addictive behavior will result), **advertising and promotions targeting youth groups through sporting events and/or society's role models does not seem consistent with responsible "social policy"**.
- * Over time, **availability of beverage alcohol without promotion** would realize a considerably different consumption result than if it continues to be advertised and promoted.

As you can see, to realize responsible and consistent "social policy", all aspects of the market must be understood and taken into consideration. The reduction of advertising and promotion (where significant demand begins), is a key to moderate and responsible consumption. **Reasonable availability, not convenience, should be the primary consideration when determining the "point of sale" for all beverage alcohol.**

Economic Policy Considerations

To realize a responsible and consistent "social policy" through an effective and efficient "economic policy", it is clear that one must always keep in mind the principles of a well-founded "social policy". As discussed earlier, these "social policy" principles seem evident:

- * Since alcohol is the operative substance, all forms of beverage alcohol should be taxed, distributed and sold in the same manner.
- * Cereal malt beverage is beverage alcohol and should be taxed, distributed and sold like all other beverage alcohol.
- * "Point of sale" **availability, not convenience**, should be the consideration.
- * The sale of beverage alcohol in conjunction with motor fuels is inconsistent.
- * Beverage alcohol should not be used as a loss-leader or traffic enhancer for mass merchandisers and/or grocery stores.
- * Advertising and promotion of beverage alcohol should be minimized.
- * Because of the unique characteristics of beverage alcohol, the "point of sale" must be strictly controlled, ie: age verification, sobriety, etc.

In addition to these "social policy" principles, to realize a truly dynamic and efficient beverage alcohol market, the state must include proven traditional competitive business practices at all levels within the industry. The government of the state of Kansas has the **right** to develop and implement this state's beverage alcohol distribution and sales system. It also has the **responsibility** to monitor and modify this state's beverage alcohol market to assure all consuming and non-consuming Kansans of a responsible, consistent and efficient industry. **Also, the government has a responsibility to all Kansans involved in the state's beverage alcohol industry to create a effective, competitive, and therefore efficient market that offers all members of the industry opportunity to responsibly and profitably serve the Kansas consumer.**

The principal problem in the Kansas beverage alcohol industry is the economic and therefore political domination of the entire state industry by the wholesale level of the market. This domination has become a reality because of the skillful "special interest" manipulation of legislative and alcoholic beverage control affairs.

Historical Considerations

For those who are not familiar with Kansas' beverage alcohol history, I believe that it is necessary to provide a brief review of events to better understand why we are where we are today. From 1920 - 1933 the federal government prohibited the manufacture, transportation, sale and possession of alcoholic beverages. Once prohibition was determined to have had the adverse effect of its intent with regard to beverage alcohol consumption and many of the related social problems, the federal government decided that the individual states would be the best government entities to control the distribution and sale of beverage alcohol. This is the reason we see so many different market configurations from state to state, ie: control states, open states, etc. **At this point, I feel that it is necessary to emphasize that the federal government gave each of the individual states almost absolute control over all aspects of the manufacture, distribution and sale of all beverage alcohol within the state.** There is a great deal of precedent to support this. Because of this unique situation, beverage alcohol has been treated differently than all other products. For this reason, Kansas absolutely has the right and responsibility to control the manufacture, distribution and sale of all beverage alcohol within the state.

In the mid 1930's, with the introduction of cereal malt beverage to Kansas, so began the inconsistencies in Kansas' beverage alcohol law. **The entire concept of cereal malt beverage was a subversion of the intent of the existing law from its inception.** This product is identified by a different name, and the alcohol content is measured in a different manner than all other beverage alcohol (by weight; alcohol being lighter than water), in order to allow a higher alcohol content but not seem that way when compared to similar products measured by the traditional method (percent by volume). To this day cereal malt beverage is still not considered beverage alcohol in Kansas! This is simply not true. Cereal malt beverage is, for all intent and purpose, beverage alcohol. Not until 1949 did Kansas allow the sale of beverage alcohol.

Originally the market consisted of open wholesaling (all wholesalers were allowed to sell all products) and pricing at wholesale and retail was controlled by the state. Through the years there have been many inconsistent changes leading us to the imbalanced market that we have today! In the past, the wholesalers being fewer in number and more cohesive, have been the "special interest" group with influence. The state government has held on to many outdated "economic policies": freight rates set by the state, wholesale confirmation pricing, split case pricing, and disallowance of quantity discounts. Some of these policies are still in place today! Even after decontrol of retail beverage alcohol pricing, the state continues to protect the exclusively franchised wholesale level of the market from open market competition. Is this wholesale price protection? If it is not, what is the reason for it? **This lack of open market competition has many adverse affects on the total market and benefits a very small number of Kansans.**

Current Market Considerations

Licensing

First, let us analyze the present market from a licensing point of view. All suppliers selling products in Kansas must be licensed. It is mandatory that all Kansas wholesalers (liquor, wine and beer) have exclusive franchise agreements with all suppliers selling products in the state of Kansas. **Wholesalers are allowed to have more than one license and are allowed to be incorporated with no residency requirements. Off-premise retailers (liquor stores) are allowed to have only one license, therefore one location and cannot be incorporated but have residency requirements.** On-premise retailers (clubs) can have more than one license and are allowed to be incorporated. Liquor and wine wholesale licenses allow the licensee to do business anywhere in the state and the only requirement is that a license be purchased for each business location. Beer wholesale licenses are also purchased per business location, but only allows the licensee to do business in a defined trade area. Retail licenses only allow one location and delivery to club customers in the county in which the retail license is held, and adjoining counties. Currently there are approximately 4,000 cereal malt beverage licensees, 730 liquor stores and 2,000 clubs in the state. Kansas beer wholesalers are allowed to do business with all of these licensees that are in their respective trade area. All liquor wholesalers are also beer wholesalers but not all beer wholesalers are liquor wholesalers. Standard Liquor Corporation and Famous Brands are the only two state-wide liquor wholesalers. **One of these state-wide exclusively franchised liquor wholesalers with a large share of the profitable liquor and wine brands, the lions share of the imported beer and micro-brewery brands, is approaching \$50 million in annual sales. The owner of these franchise agreements no longer lives in Kansas. Not only are they dominant in sales, but they have both off-premise and on-premise sales forces that both disseminate and gather market information that allows them to manipulate the entire market to their advantage.** This wholesale contact with the clubs puts them in direct competition with their largest customers, the retailers doing business with clubs. **How much is an exclusive franchise wholesale liquor, wine or beer license worth? Not much if you don't have the brands. If you do, it's worth quite a bit!**

Pricing

Wholesalers are allowed to receive quantity discounts and/or terms in their business relationship with their suppliers. Also, the state sets split-case charges for the exclusively franchised liquor and wine wholesaler. This is the only place where the state is still involved in influencing pricing. Why? **Retailers are disallowed quantity discounts and terms from those same wholesalers.** This does not seem consistent. The only pricing guideline that is set for the retail to ultimate consumer relation is that a product cannot be sold below the acquisition cost plus tax.

Other Market Considerations

Retailers are only allowed to purchase certain items from specified wholesalers. Since these wholesalers are exclusively franchised, and retailers are not allowed quantity discounts or terms, the consumer market forces the retailer to purchase items on sale at the last possible opportunity in order to keep per unit costs low and remain competitive. Cash flow problems arise when intentionally planned sales promotions from liquor, wine and beer wholesalers occur at the same time and the retailer must purchase marginally-profitable items for 30, 60, and 90 day periods at one time. The retailer is trapped between a very competitive retail and club market, and the very protected exclusively franchised wholesaler. Since decontrolled pricing became a reality, 500 liquor stores out of 1259 have gone out of business. With the recent legislative decision to disallow all quantity discounts and the Alcoholic Beverage Control decision to double split-case charges for liquor and wine, I would predict 100 more to be gone in less than two years. **The only consistent message that I can draw from these decisions is that wholesalers are allowed to increase profits while being protected from competitive markets and retailers are to be completely exposed to a very competitive consumer market without any participation from the wholesaler even though they are the state's exclusive franchisee for any given product.**

Conclusions

It is plain to see that the wholesale level has a very dominant economic position and total access to all facets of the market. Being trapped between the exclusively franchised wholesaler (who we are required to buy from) and the downward price pressure of the market (created by the mismanaged decontrol of beverage alcohol pricing), leaves the Kansas beverage alcohol merchant in a very subservient position. **This market needs oversight until it stabilizes. Recent events demonstrate the almost absolute control the wholesale "special interests" have over economic, legislative and agency affairs.** First of all, the legislature makes it law **disallowing quantity discounts** from wholesaler to retailer, both for cereal malt beverage and beverage alcohol, without addressing cereal malt beverage pricing. Wasn't this legislation supposed to level the playing field between cereal malt beverage merchants and beverage alcohol merchants? Maybe it just protected exclusively franchised wholesale pricing? The next move was when the wholesale "special interests" (Standard and Famous) asked the ABC to **double their split-case charge**. Granted! I'm not sure I understand the consistency of these two decisions, but I do understand which level of the market profits from both decisions. Then last but not least, Standard Liquor Corporation, the dominant statewide exclusively franchised liquor, wine and beer wholesaler announced that it had **purchased the only statewide beverage alcohol publication, Kansas Beverage News**. Recently there have been rumors in the market that Standard has made offers to purchase the Miller distributorships in the Wichita and Kansas City metro areas. **Are these actions consistent with developing the Kansas beverage alcohol industry into a more balanced and competitive market?**

Another immediate problem that has the potential of destroying the Kansas beverage alcohol industry as we know it today, is how the state will choose to handle the sale of cereal malt beverage and strong beer in the future. The primary forces behind this issue are the three major breweries, Anheuser Busch, Miller and Coors. Simply the production, distribution and sale of cereal malt beverage is not a profitable part of their business. But before they give up 4,000 "point of sale" locations, they want to be able to sell their strong product everywhere they are selling cereal malt beverage now. The problem with that scenario is that it would destroy the existing Kansas beverage alcohol merchants. Kansas beverage alcohol merchants are only allowed to sell items that contain alcohol. Beer is the largest single item we sell. See enclosures. Will the state remember the principal "social policy" considerations of not fostering increased demand, convenience of purchase or consumption? The distribution and sale of beverage alcohol in the future is not going to be an expanding market. It would be a "social" and "economic policy" disaster to expand the sale of all beverage alcohol to 4,000 locations from 730 marginally profitable locations. The retail level of the beverage alcohol industry in the state of Kansas would be ruined forever. **This state needs to establish the existing beverage alcohol merchants as the primary "point of sale" for all beverage alcohol.**

This all breaks down to two considerations:

- 1. What are the most responsible and controllable "point of sale" locations for the sale of beverage alcohol?**
- 2. What system is the most effective and efficient way to distribute and sell beverage alcohol?**

Recommendations

1. The state should establish a beverage alcohol industry review board, made up of non-vested professionals. ie: clinician, medical doctor, psychiatrist, attorney, business person.
2. All state licensing should be reviewed with consideration to potential market competition, balance, and profitability. ie: What is the value of a state wholesale liquor license where the state law makes it mandatory that all suppliers selling into the state are required to make exclusive franchise agreements with some licensee and the same state disallows quantity discounts from that wholesaler to all state retail licensees?
3. All state licensing should be reviewed with consideration to the number and types of licenses that are allowed to be controlled by an individual or business entity. ie: Merchants can have only one license while wholesalers can have many licenses.
4. Kansas should establish the existing beverage alcohol merchants (liquor stores) as the primary "point of sale" for all beverage alcohol.
5. Kansas should recognize cereal malt beverage as beverage alcohol.
6. Kansas beverage alcohol merchants should be allowed to sell cereal malt beverage.
7. If the state government is not allowed to control the retail price from retail licensee to the ultimate consumer, then the state government should not be involved in any pricing decision.
8. Existing beverage alcohol merchants should be allowed to buy and sell in an open and competitive market to establish an eventual stable beverage alcohol market.
9. Kansas should disallow the sale of beverage alcohol with motor fuels.
10. Kansas should allow beverage alcohol merchants to sell closely related items. Items for opening containers, preparation and consumption of beverage alcohol.
11. Kansas should minimize the advertising and promotion of beverage alcohol consumption, especially youth-oriented promotion. ie: sports promotions, ethnic promotions, billboards, etc.
12. Kansas should allow beverage alcohol merchants to be open on summer holidays. (Memorial Day, Independence Day and Labor Day)
13. Kansas should allow beverage alcohol merchants to be open on Sundays when it becomes politically feasible.
14. Since Kansas beverage alcohol merchants are allowed to extend credit to the ultimate consumer, it would seem reasonable that Kansas should make it legal for Kansas wholesalers to extend credit terms to Kansas beverage alcohol merchants.
15. The state should develop guidelines for computer standardization between different market levels and the state itself.
16. The state should standardize pricing for all beverage alcohol products with advanced written notice to all beverage alcohol merchants.
17. When re-writing the liquor law the term "retailer" should be changed to "merchant" to be more accurate in describing their role in the current and future market.
18. Kansas law should parallel BATF guidelines.

The previous suggestions would allow the existing retail licensees to become more palatable to the consuming public. This would be done in a completely open and competitive market situation. This would seem to be the most responsible way to establish a competitive, stable and therefore dynamic retail market. Once the merchants were allowed to be completely independent merchants and the market had stabilized, then a decision would need to be made to determine by whom and how the on-premise retailer would be supplied. Let competitive markets control the business of the business by implementing proper motivations.

In other words, allow the existing Kansas beverage alcohol merchants to become the accessible and acceptable point of purchase for all beverage alcohol before the market is opened up to mass merchandisers, convenience stores, grocery stores and gas stations. This is responsible and consistent "social policy" and "economic policy".

Thank you for your time and consideration.

Respectfully,

John Webb
Webb's Fine Wine & Spirits
800 West 23rd Street
Lawrence, Kansas 66046
Phone (800) 262-2680
Phone (913) 841-2277
Fax (913) 841-4420

**KANSAS LIQUOR AND BEER WHOLESALERS
(WHOLESALERS)**

FINANCIAL DISCLOSURE BEFORE LICENSING?

CAN HAVE PAYMENT TERMS
ARE NOT ALLOWED TO GIVE THEM

CAN HAVE QUANTITY DISCOUNTS
CANNOT GIVE THEM

CAN HAVE PROMOTION ALLOWANCES
CANNOT PARTICIPATE WITH MERCHANTS
CANNOT PARTICIPATE IN COOP ADVERTISING WITH
MERCHANTS

CAN SELL ANYTHING
STRONG BEER, 3.2% BEER, ETC.

CAN HAVE MULTIPLE LICENSES

CAN BE CORPORATIONS

DO NOT HAVE TO BE STATE RESIDENTS

HAVE MANDATORY EXCLUSIVE FRANCHISES
ECONOMICAL & FINANCIAL

HAVE PROFITABILITY

HAVE INDUSTRY DISSEMINATION

PRICE INFORMATION

WHOLESALE PRICE POSTING

ACCURACY OF PRICING INFO. FROM WHOLESALE TO RETAIL

**KANSAS BEVERAGE ALCOHOL MERCHANTS
(RETAILERS)**

FINANCIAL DISCLOSURE BEFORE LICENSING

TOTALLY OPEN MARKET

CANNOT SELL BELOW ACQUISITION

CANNOT SELL ANYTHING BUT BEVERAGE ALCOHOL

CANNOT SELL TOBACCO

CANNOT SELL CLOSELY RELATED PRODUCTS
IE: ICE, CUPS, TAPPING EQUIP., CORK SCREWS,
BOTTLE OPENERS

CANNOT SELL 3.2% BEER
THEY CAN SELL BELOW ACQUISITION

NO SALE WITH GAS
3.2 SALE WITH GAS

CANNOT HAVE COOP ADVERTISING

CANNOT HAVE MORE THAN ONE LICENSE / LOCATION

SPOUSES CANNOT HAVE LICENSE

CANNOT HAVE QUANTITY DISCOUNTS

CANNOT HAVE TERMS OF PAYMENT
CASH, WHOLESALE TO RETAIL

CANNOT BE CORPORATIONS

MUST BE COUNTY AND STATE RESIDENTS
FOR A CERTAIN LENGTH OF TIME

COMPARISON OF :

LIQUOR LAWS vs CEREAL MALT BEVERAGE LAWS

LIQUOR STORES

GROCERY/CONVENIENCE STORES

Licensing.....

Licensee must be a resident of the state for a minimum of 5 years.

No requirement of residency.

One License Per Owner (owner & spouse).

No limit on number of Licenses that owner(s) can have.

No Drug or Alcohol Convictions.

If Business is a corporation the corporation must meet the same guidelines as the individual.

Corporations allowed - Under enforcement penalties that would be effective.

Bonded.

Not Bonded.

Employees.....

ALL employees must be 21 yrs. old. This means they must be 21 yrs. old simply to work as a stocker or to merchandise and price product.

Employees can be as young as 18 yrs. old to sell, merchandise, price, sack and carry out a Beer purchase.

No Alcohol or Drug convictions.

There are no qualifications to be eligible for employment, such as no alcohol or drug convictions. This means there are no background checks done.

Signature Card must be on file with the ABC (State Alcoholic Beverage Control). ABC then conducts a background check.

Employees that are a minimum of 21 yrs. old are responsible for the proper sale to customers who are at least 21 yrs. old.

18, 19 and 20 year olds (minors) are responsible for the proper sale of the Beer. This means they are responsible for checking that the customer is 21 yrs. old and has proper ID. They cannot succumb to peer pressure and sell to friends or relatives that are no 21 yrs. old.

Hours of Operation.....

9:00 a.m. - 11:00 p.m. Mon. through Sat.

6:00 a.m. - 12:00 midnight Mon. through Sat.

Must be closed: Memorial Day, July 4th, Labor Day, Thanksgiving and Christmas.

Must be closed Thanksgiving and Christmas.

Closed Sundays.

Closed Sundays.

Items For Sale.....

Alcoholic Beverages

Can sell Beer and ANYTHING ELSE except other Alcohol Beverages.

Lottery Tickets

Wholesaling.....

No quantity discounts.

Any kind of discounts (on Beer) at the wholesaler's discretion.

Consumer Retail Price.....

Can not advertise items below cost.

CAN advertise items (Beer) below cost, and many businesses do.

Can not sell below cost.

CAN sell items (Beer) below cost, and many businesses do.

State Revenues.....

State receives 8% on all sales.

State receives only 4.9% on all sales.

Profits remain in state - all state residents.

Jurisdiction.....

Kansas Department of Revenue; Alcoholic Beverage Control.

Local Cities and/or Counties if Licensee is located outside of city limits.

Constant Policing.

Check with any law enforcement agency, only police when there are complaints.

Policing / Enforcement of Laws.....

Approximately 735 Retail outlets to police.

Approximately 4000 Retail outlets to police. (State does not know - because of Licensing)

Penalties for violations of Selling To Minors or other violations: Fines, Requiring the Business to be CLOSED for a specified number of days, and/or Revocation of License.

Penalties for violations of Selling To Minors or other violations: Fines only.

Probable Cause - Everyone leaving a Liquor Store with product MUST BE 21 YRS. OLD. In other words, ANYONE with a grocery sack must be 21 yrs. old. For this reason the ABC Agents have reason to ask for identification as proof the customer is 21.

Probable Cause - Does Not Exist since grocery and convenience stores sell such a variety of goods and can sell products other than Beer and Cigarettes to customers of any age. Thus a law official has no cause to check someone's ID or to search the grocery sack if that person is NOT 21. The exception is if the officer sees the sale take place. Tax payers can not and should not have an officer placed inside over 4000 outlets to police the enforcement of our Laws.

DISTILLED
SPIRITS
COUNCIL
OF THE
UNITED
STATES

July 31, 1995

Mr. Jim Conant
Department of Revenue
Division of Alcoholic Beverage Control
4 Townsike Plaza, Suite 210
200 SE 6th Street
Topeka, Kansas 66603-3311

Dear Mr. Conant:

This letter is in response to the invitation from Director Bernie Norwood in his July 5 memorandum to offer suggestions to the Division of Alcoholic Beverage Control on the recodification of the Kansas alcohol beverage code. The Distilled Spirits Council of the United States, Inc. (DISCUS) is a national trade association that represents manufacturers and marketers of distilled spirits in the United States.

DISCUS recognizes and is very appreciative of the achievements that the Division of Alcoholic Beverage Control has made in the area of opening up the beverage alcohol marketplace, increasing efficiencies, and generally improving the system. We appreciate the further effort along these lines that the current recodification effort represents and thank you for the opportunity to offer our comments. Please accept the following suggestions.

1. DISCUS recommends making no change to the code in the area of the primary American source of supply statute (KSA 41-306).

met new
DISCUS opposes a monopoly protection (franchise protection) law in any form. Although we would prefer the removal of this section from the code, at the least we would request that no further restrictions on the rights of suppliers and wholesalers to enter into free market contracts be enacted.

3. DISCUS recommends that the code be amended to permit the offering of samples to retailers and consumers at retail premises, especially off-sale premises. Current law hinders the consumer's ability to educate him/herself as to the quality and characteristics of new products. With the proliferation of new products, suppliers need a method to make consumers aware of new offerings.

4. Current law requires that any product used in a trade show be purchased from a retailer. We believe that this increases the cost and requires an unnecessary, additional procedure. DISCUS recommends that the statute permit such purchases from a wholesaler. For similar reasons of efficiency, we recommend that the code permit wholesalers to sell to clubs (current law requires clubs to purchase only from retailers).

5. DISCUS recommends amending the code to equalize the credit treatment of wholesalers and retailers. Wholesalers currently are granted up to thirty days credit on their purchases from suppliers, whereas retailers must pay wholesalers in cash on delivery. Short-term, account-receivable credit is a standard business practice in almost every industry. For reasons of efficiency and equity, we suggest its extension to the retail tier of the alcohol beverage industry.

6. We suggest that the code permit liquor stores to sell merchandise related to alcohol beverages, such as mixers, sodas, bar supplies, and snacks. This would increase convenience for the consumer, who would not have to make two stops in order to purchase spirits and related products.

7. DISCUS recommends that the statute direct the ABC to conform its regulations as closely as possible to the federal regulations contained in 27 CFR Part 6, Subpart D. Uniformity between Kansas and federal requirements, and among the requirements of the various states, significantly lessens the administrative burden on suppliers. Specifically, DISCUS recommends that the statute be amended to require a simplified procedure for the approval of co-packs. See ABC Regulations 14-10-11(a). The current regulatory procedure is somewhat cumbersome, which slows the ability of suppliers to respond to the fast-changing patterns of consumer demands.

In addition, we recommend that the statute remove the preapproval requirements for industry seminars, consumer refund offers, consumer merchandise offers, sweepstakes, and other product promotions at retail premises. Although under the current system approval is generally granted quickly when requested, it would be most efficient to permit product promotions without the necessity of requesting permission. Alternatively, to maintain supervision of the product promotions process, the ABC may wish to consider a statute requiring suppliers to notify the state within thirty days of holding a promotion, or to maintain records of the promotion on their premises, such records being available for inspection by ABC personnel.

8. We suggest that a graduated quantity discount rate for purchases by retailers be permitted. See Atty. Gen. Op. No. 89-34, March 21, 1989. The current law does not allow retailers who make larger purchases to receive larger discounts. This discourages the retailer with greater efficiencies from passing those discounts on to consumers.

DISTILLED
SPIRITS
COUNCIL
OF THE
UNITED
STATES

STATE GOVERNMENT RELATIONS
CLAUDIA BREWINGTON
North Central Area Director

October 4, 1995

Pat Oppitz
Kansas Retail Liquor Dealers Association
901 Southwest Fairlawn Road
Topeka, Kansas 66606

Dear Pat:

It has come to my attention that there remains some misunderstanding amongst your members concerning the inclusion in DISCUS' submission to the Kansas Division of Alcohol Beverage Control a suggestion that sales of product be allowed in grocery stores. I had hoped that our discussions at the last recodification task force meeting had addressed your concerns.

Let me reiterate, DISCUS does NOT intend to introduce any legislation in Kansas that would allow the sale of spirits in grocery stores. However, be advised that should a proposal be put forth by others to allow the sale of wine and/or beer in grocery stores, we will push to include distilled spirits in the language. In such an event, we would seek only to be treated on an equal basis with other alcohol beverages.

Pat, your conveyance of this information to your members, as you had previously indicated to me at the last task force meeting, would be much appreciated. I am eager to put this issue behind us so that we can continue our cooperative efforts in updating and streamlining Kansas' liquor statutes.

Sincerely,



Claudia Brewington

9. DISCUS recommends that retail liquor stores be permitted to sell spirits on Memorial Day, Independence Day, Labor Day, Thanksgiving, and Christmas. See KSA 41-712. The current holiday prohibition is outdated and has been abandoned in a number of states. Alternatively, the ABC may wish to consider at least eliminating the prohibition on sales on Memorial Day, Independence Day, and Labor Day. In addition to increasing convenience to consumers, Kansas would cease to lose sales to surrounding states, particularly in the Kansas City area, where crossing the border is particularly convenient for consumers.
10. DISCUS recommends the adoption of the federal regulations with regard to container sizes that may be sold in the state.
11. Kansas is one of a small number of states that require provision of the UNIMERC number as part of the label registration process. This may be an outdated requirement that the ABC would want to recommend eliminating.
12. It is our understanding that depletion allowances and per-case promotional allowances are considered by the ABC to be rebates and are thus not allowed. Both types of allowances are common promotional tools allowed in most other states. We believe that it would be helpful to address these issues in statute and to permit these practices.
13. We recommend that the code be amended to permit grocery and convenience stores to sell all alcohol beverages that are currently sold at retail in the state, without regard to their ingredient base. In addition, we recommend that the code treat spirits-based, low-alcohol beverages as wine for purposes of taxation and distribution. We believe that to regulate and tax spirits-based coolers differently from those produced with a different manufacturing process discriminates against the spirits-based product without furthering any policy goal of the code.

Again, we being appreciate being included in the code revision process. If you have any questions or wish further information, please contact me or Thomas Shimkin of my staff. We would be most pleased to provide any information that you require.

Sincerely,



Monita W. Fontaine
Director, State Government Relations

RECEIVED

AUG 3 1995

OFFICE OF DIRECTOR
ABC DIVISION



Retail GO LLIATHS

**Nation's Top 10 Chains Sold \$5.75 Billion
In Beer, Wine And Spirits In 1994**

“National and super-regional retailers are controlling larger and larger numbers of stores across the nation.”

Daniel O'Connor
Management Ventures Inc.
Cambridge, Massachusetts



PHOTO: JOHN HARDING

by David L. Ross

In the world of alcoholic beverage retailing, the biggest players are genuine Goliaths. In 1994, the nation's 10 largest chain retailers of alcoholic beverages rang up more than \$5.75 billion in combined sales of beer, wine and spirits, according to exclusive research by MARKET WATCH.

The top 10 alcoholic beverage retailers alone accounted for an estimated 10 percent of total consumer off-premise retail purchases, which reached more than \$50

billion in 1994, according to Impact Databank. (This latter figure excludes 1994 on-premise sales of alcoholic beverages, which totaled almost \$40 billion, according to Impact Databank.)

Of the top 10 players, grocery chains dominate the exclusive MARKET WATCH list, with seven companies active in that challenging retail sales channel, including No. 1 ranked American Stores, whose two divisions include a 925-store grocery group and a 781-store drug store group. (Some chains like Wal-Mart or American Stores are counted twice because they compete in more than one retail sales channel.)

There are two entries in the warehouse club category—PriceCostco and Wal-Mart (Sam's)—and two in the drug store category—American (Osco) and Walgreens. Rounding out the MARKET WATCH top 10 retail list is the nation's leading convenience store operator—Southland Corp., parent company of the 7-Eleven chain.

Although not on MARKET WATCH's top 10 retail list, an honorable mention should go to the country's largest independent, family-owned chain of alcoholic beverage stores: Orlando, Florida-based ABC Wine & Spirits, a statewide chain of more than 200 stores whose estimated 1994 revenues hit \$220 million, according to MARKET WATCH research. The chain is owned by the Bailes family.

7-44

CONVENIENCE AND VALUE

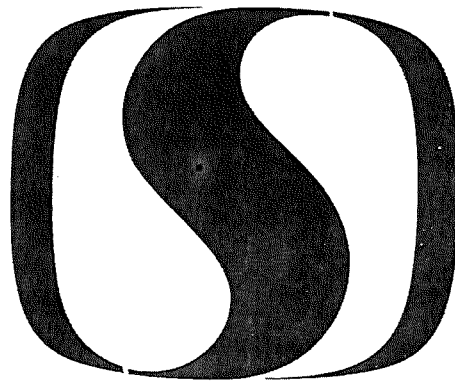
The American shopper's relentless search for convenience and value are two key forces driving the rapid expansion of these multi-state chains. Over the past decade, American consumers of beer, wine and spirits have turned in ever greater numbers to large chain retailers, seeking a one-stop shopping experience that combines enough selection at a friendly enough price to avoid an additional trip somewhere else to pick up a six-pack of beer or a bottle of wine or spirits.

"National and super-regional retailers are controlling larger and larger numbers of stores across the nation," says Daniel O'Connor, president of Management Ventures Inc., a Cambridge, Massachusetts-based management consulting firm whose clients include many leading chain retailers as well as top brewers, vintners and distillers.

During the past decade, literally thousands of new national and super-regional warehouse clubs, drug and grocery stores, super stores and convenience stores have all mopped up sales volume once controlled by the local retailer. And while laws restrict or forbid the entry of chains into the

alcoholic beverage business in many states, where legal, discount, drug, grocery and convenience chains are moving aggressively to build their beer, wine and spirits sales.

"Retail chains are going to take a larger and larger share of total alcoholic beverage sales off-premise," predicts a leading drinks industry executive who wished to remain anonymous. "In the future," the source warns, "independent



Sam's Club

retailers are going to have to work a lot harder in order to survive."

O'Connor adds, "The independent retailer really has to pick on the vulnerabilities of the larger retailer." O'Connor notes that independent retailers can challenge their larger competitors in one or more of the following areas: store format, merchandising, service, product selection and price.

Grocers like Safeway, top, dominated the top 10 list with seven entries, but club retailers like Wal-Mart's Sam's, above, also made the ranks.

TOP 10 ALCOHOLIC BEVERAGE RETAILERS — GROCERY, CLUB, DRUG, CONVENIENCE AND SUPERSTORES (millions of dollars)

RANK	NAME ¹	TYPE	ESTIMATED 1994 REVENUES ²
1	American Stores	Grocery, Club	\$ 990
2	Wal-Mart/ Sam's Club	Grocery ³ , Club	900
3	Walgreens	Drug	780
4	PriceCostco	Club	750
5	Albertson's	Grocery	480
6	Safeway	Grocery	475
7	Southland Corp.	Convenience	395
8	Kroger	Grocery	365
9	Winn-Dixie	Grocery	350
10	Vons	Grocery	280

¹Depending on state and local laws and/or company policy, not all stores in a given retail chain sell alcoholic beverages.

²Data for latest year available. Revenue figures include estimated sales of beer, wine, spirits and low-alcohol refreshers.

³Wal-Mart estimate includes alcoholic beverage revenues from Wal-Mart SuperCenter stores as well as from Sam's Club stores.

SOURCE: MARKET WATCH MAGAZINE © 1995

7-45

APPREHENSION VS. OPPORTUNITY

The rapid growth of these mammoth chains has posed new risks for leading brewers, distillers and vintners. That's because a growing number of chain retailers—grocery and drug chains, in particular—have successfully launched their own private label brands of spirits, wine, and, to a lesser extent, beer. The motive is simple, say retail category managers: There are bigger profits to be reaped on private label business than from selling nationally advertised, premium-priced brands. Needless to say, drinks industry executives are extremely apprehensive about this private label trend.

According to a recent article in *Impact* newsletter, private label sales of spirits now account for as much as 20 percent of total spirits sales in markets like southern California and Florida. (Not

surprisingly, both states are chain-driven markets.) As one top distilled spirits executive says, "Supermarkets are our biggest customers, but they could be our biggest competitors."

Nevertheless, chains do mean big business to the nation's leading brewers, vintners and distillers. Indeed, it's not unusual for a single chain to account for tens to hundreds of millions of dollars in annual sales with just one supplier. Often, where legal, a top supplier will develop custom-made, in-store merchandising or promotional programs in order to work as closely as possible with a given chain.

The trading relationship between suppliers and chains is growing even closer nowadays. In a recent development, an increasing number of beer, wine and spirits suppliers actually post a top sales or marketing executive at the headquarters office of an important chain customer. (This phe-

nomenon is also taking place at the regional level, in important chain-dominated markets like Florida and California.) Working in tandem with the chain's category management team, supplier representatives develop merchandising and advertising programs designed to maximize the sales and profit potential of alcoholic beverages.

According to drinks industry executives, the arrival of what can be termed national account category coordinators has already occurred at such progressive chain retailers as American Stores, Walgreens and Wal-Mart, among others.

O'Connor says, "Retailers are asking brewers, like other suppliers, to give them a coordinator to communicate across the system." It's part of a general effort on the part of retailers, O'Connor adds, to reduce the number of supplier contacts at headquarters.

SEEKING MORE PROFIT

During the past year, MARKET WATCH has examined five of the most important off-premise retail sales channels: grocery chains and independent retailers (November/December 1994); warehouse clubs (March/April 1995); drug stores (September 1995); and convenience stores (October 1995). One of the strongest themes to emerge in each of these exclusive reports is the extent to which less innovative players in each retail channel may be underestimating the profit potential of alcoholic beverages.

Although saddled with federal restrictions that prohibit alcoholic beverage suppliers from paying so-called slotting fees, suppliers and chain retailers are getting better and better at selling beer, wine and spirits. (Under this practice, packaged goods marketers make payments to supermarket or

PRICE COSTCO

drug store chains to win coveted shelf and end aisle display space.) Despite this important impediment, a growing number of progressive category managers argue that alcoholic beverages can be as profitable as certain fresh produce, food, and health and beauty aid product categories.

From retail channels like convenience stores—where beer is the second most

7-46

A Note On The Numbers

Until now, there has been little if any published information about the scope of beer, wine and spirits sales rung up by the country's largest convenience, discount, drug, grocery and superstore chains.

National market research firms such as Information Resources Inc. and Nielsen North America don't necessarily track or compile sales data about alcoholic beverage sales taking place at some of these different retail channels as part of their overall market-by-market research reports. In cases where they do, access to certain proprietary Infoscan and Nielsen data is restricted to a select number of paying clients.

For obvious reasons, national chains are reluctant to divulge many details about the performance and profitability of individual merchandise categories, including alcoholic beverages.

In an effort to illuminate these key off-premise sales channels, MARKET WATCH conducted its own intensive research for more than a year to determine the nation's leading chains in terms of their estimated 1994 beer, wine and spirit sales.

These revenue projections combine all available published market research, company reports and articles. In addition, dozens of interviews were conducted with current and former food, beverage and retail industry executives in an effort to provide the most accurate information possible.

All stores listed in the accompanying tables declined to comment regarding the size and scope of their alcoholic beverage sales. Company-related information and the accompanying revenue estimates presented in this article are based solely on MARKET WATCH research. —D.L.R.

important merchandise category—to grocery or drug chains—where alcoholic beverages generally account for three to five percent of total revenues—beer, wine and spirits are capable of delivering margins every bit as plump as other packaged goods categories.

In contrast, warehouse clubs prefer working on razor thin margins, often four to six percent, according to a club buyer who wished to remain anonymous. With the possible exception of club stores, progressive companies in the convenience, drug and grocery sales channels can reap big profits through aggressive cross-merchandising programs, strong advertising—where legal—and a host of other innovative in-store promotional activities.

Overall, most chain retailers together with suppliers are working as never before to create business-generating cross-merchandising programs, in-store redeemable coupon promotions, product tastings and a host of other activities to build traffic and sales.

THE OUTLOOK

Chains are relentlessly encroaching on the retail turf long dominated by independent retailers. As a result, competitive pressures faced by independent retailers are only going to intensify, predict industry observers.

What's more, the radical transformation of the retail environment for alcoholic beverages is being further accelerated by technological advances—from scanning to EDI (electronic data interchange). Industry observers forecast still more consolidation ahead, with bigger and fewer players battling it out for the consumer dollar well into the next century. As O'Connor says, "The store wars are not over."

In true Darwinian fashion, only the strongest, most progressive independent retailers will survive in this radically altered retail landscape. The independent must successfully cultivate points of difference—better service and bigger selection—from their larger-scale competitors

Meanwhile, the retail Goliaths will continue to set the fast pace, and, if little else is certain, the battle for sales and market share is sure to become ever more fierce. □



Chains are relentlessly encroaching on the retail turf long dominated by independent retailers. As a result, competitive pressures faced by independent retailers are only going to intensify.

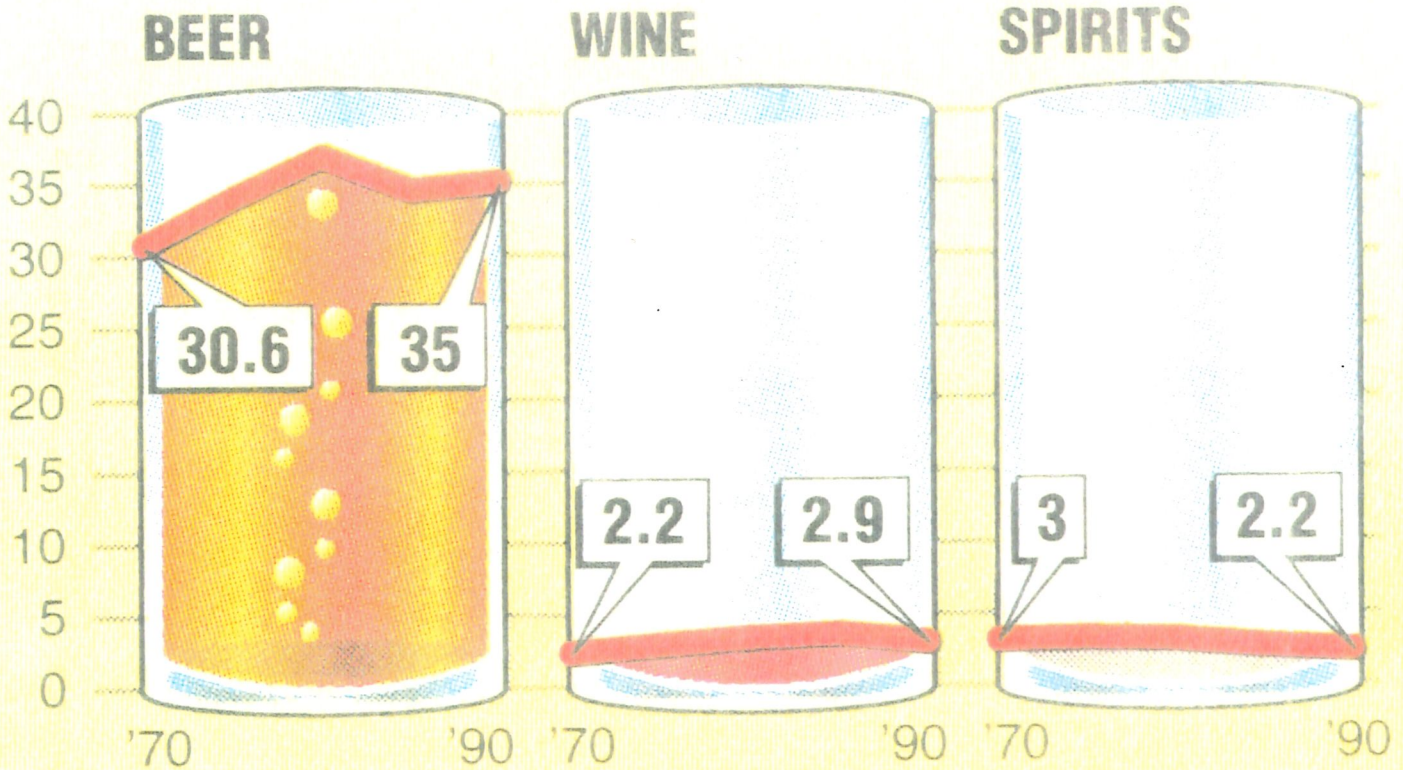
7-47

USA SNAPSHOTS[®]

A look at statistics that shape the nation

How much we drink

Per capita consumption (gallons):



Source: Dept. of Agriculture, Economic Research Service

By Cindy Hall and Stephen Conley. USA TODAY

USA SNAPSHOTS®

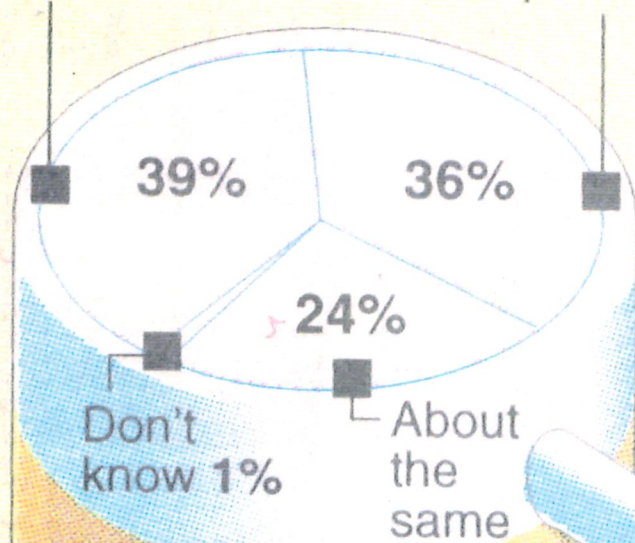
A look at statistics that shape the nation

The problem drugs

Is alcohol abuse or drug abuse the more serious problem among youth today? What parents and teen-agers believe:

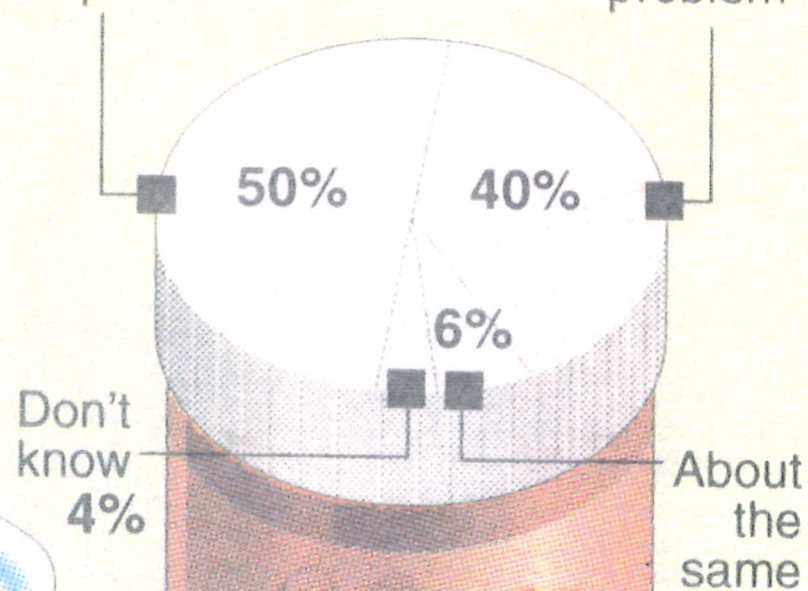
Parents

Drugs bigger problem Alcohol bigger problem



Teen-agers

Drugs bigger problem Alcohol bigger problem



Source: Hazelden Foundation

By Scott Boeck and Kevin Rechin, USA TODAY

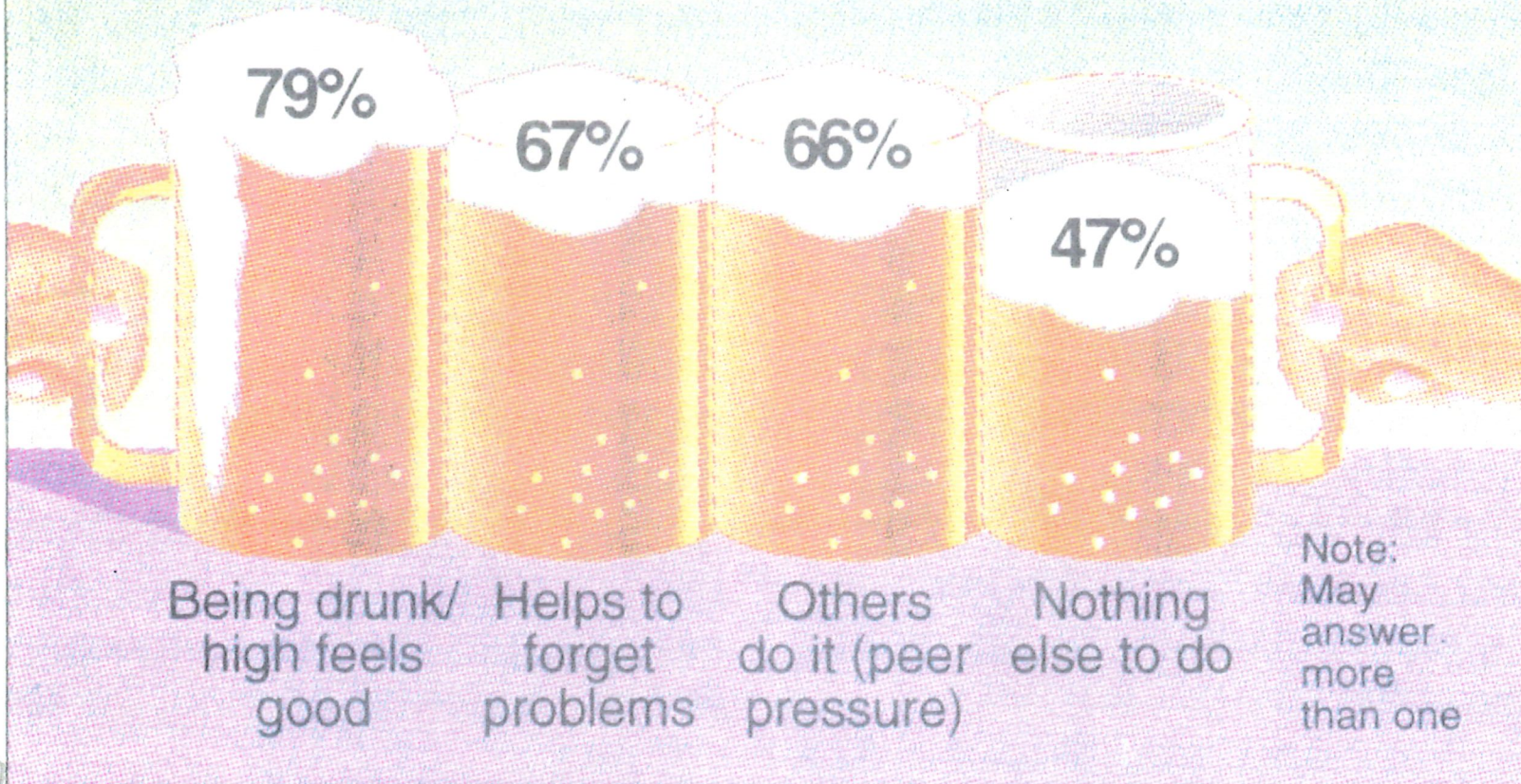
7-49

USA SNAPSHOTS®

A look at statistics that shape the nation

Why teens choose to use

A majority of parents believe peer pressure is the primary reason teen-agers drink or use drugs. Top reasons given by teens:



Source: Hazelden Youth Drug/Alcohol Survey

By Scott Boeck and Genevieve Lynn, USA TODAY