

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 February 6, 1996 in Room 519-S of the Capitol.

All members were present except:

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

Conferees appearing before the committee: Gary Haulmark, Lukas Liquor Store
Neal Whitaker, Kansas Beer Wholesalers Association
Tuck Duncan, Kansas Wine and Spirits Wholesalers Association
Rebecca Rice, Kansas Retail Liquor Dealers Association
Jim Conant, Chief Administrative Officer, Alcoholic Beverage Control Division

Others attending: See attached list

The Chairman opened the hearing on **HB 2722, an Act concerning alcoholic beverages.**

Mary Torrence, Revisor of Statutes Office, gave a briefing on **HB 2722**, stating most of the provisions of the bill are familiar as a number of them are in **HB 2557** that had a hearing in this committee last year. Three sections of the bill deal with the distributor provisions of the licensing law and authorize a distributor to have on their warehouse premises products of another distributor for a retailer to come and pick up at the warehouse premises.

The bill would also on page 5 allow a retailer's spouse to hold a license for another retail establishment. Currently, a person can only have beneficial interest in one retail establishment. Language is stricken at the bottom of page 7 that allows a beer manufacturer who has a place of business in the state to sell directly to a retailer. This would circumvent the normal three tier system that requires retailers to purchase from distributors and purchase from manufacturers. There are no beer manufacturers currently that have a place of business in this state. The final provision of the bill on page 8 would allow withdrawal from a distributor's warehouse for samples used in the course of the distributor's business or for industry seminars. Currently, the distributor would have to purchase that liquor through a retailer for those purposes rather than being able to purchase it at a warehouse.

Gary Haulmark, representing Lukas Liquor Super Store, in support of **HB 2722**, stated he would like to focus on the change that would allow a husband and wife to each own a retail liquor store. (See Attachment #1)

Neal Whitaker, Executive Director, Kansas Beer Wholesalers Association, a proponent for **HB 2722**, stated in 1988 the Liquor Control Act was completely renovated in anticipation of liquor by the drink. Many outdated provisions were removed from the act. One that was overlooked was a sentence that allowed a licensed retailer to purchase or receive beer from a licensed beer manufacturer having a place of business in this state. Another statute sets out a manufacturer's rights of license that requires them to sell only to distributors, non-beverage users, or persons outside the state. Presently, in order to introduce a new product a retailer must buy it, then it is bought back from the retailer to use as samples to convince other retailers to purchase the product. (See Attachment #2)

R. E. "Tuck" Duncan, Kansas Wine & Spirits Wholesalers Association, a proponent for **HB 2722**, stated they supported sections 1, 2, 3, and 6 and are not opposed to section 4 and 5, but they do not affect their industry. (See Attachment #3)

Rebecca Rice, Legislative counsel for Kansas Retail Liquor Dealers Association, a proponent for **HB 2722**,

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE FEDERAL AND STATE AFFAIRS, Room 519-S
Statehouse at 1:30 p.m. on February 6, 1996.

stated they support the section of the bill which allows a spouse to also own a liquor license separate from the liquor licensed owned by the other marital partner. (See Attachment #4)

Jim Conant, Chief Administrative Officer, Alcoholic Beverage Control Division, neither a proponent or opponent for **HB 2722**, stated Section 6 would amend K.S.A. 41-709 to allow distributors to withdraw products from their warehouses for use as samples in the course of their business or at industry seminars. Use of the product in this manner would be subject to rules and regulations of the secretary. Sampling at industry seminars is currently allowed by ABC regulations, but all product used must be purchased through a retail liquor store and is subject to the 8% enforcement tax. Clarification is needed regarding the taxable status of product withdrawn for business or sampling purposes. Since this product is now subject to the 8% enforcement tax as it passes through the retail liquor level, is it the intent of the bill to specifically exempt it from that tax? Mr. Conant stated his testimony requested additional amendments to coordinate the provision of **HB 2675** and that should be ignored at this time. (See Attachment #5)

The Chairman closed the hearing on **HB 2722**.

Representative Cox moved and Representative Standifer seconded to conceptionally accept the language of the Revisor's amendment for the addition of the 8% enforcement tax and insert in the proper place in the bill. The motion carried.

Representative Standifer moved and Representative Swenson seconded three technical amendments to change "which" to "with" one page 1, line 42; page 2, line 39 and page 3, line 34. The motion carried.

Representative Cox moved and Representative Ballou seconded to pass **HB 2722** out favorably as amended. The motion carried.

The Chairman asked Jim Conant, Chief Administrative Officer, Alcoholic Beverage Control Division to give some commentary on **HB 2675**.

Mr. Conant stated that passage of **HB 2675** would not change the status quo. There was some confusion after the hearing. The City of Wichita has, as a result of a court case challenging one of their ordinances, changed their ordinances to match the state law in terms of license fees imposed. They have been since that court case and since the change of ordinance refunding overcharges so our position there would be that passage of **HB 2675**, even if in fact they are correct and a new level of uniformity may be achieved there is a need for debating how and how much a local unit of government can impose on a liquor licensee. Passage will not cause any change to the City of Wichita. They have already reduced their fees and are in compliance with what is currently K.S.A. 41-2622. There are two more appropriate vehicles in place to address this issue; **SB 565** was introduced in Local Government Committee at the request of the City of Wichita and that would amend K.S.A. 41-2622 in its current form to increase the maximum license tax the city could impose to \$3,500. It is felt that is an appropriate vehicle to debate whether there should be or not be different limits. There is also another bill **HB 2798** through the House Committee on Local Government which simply proposes to repeal K.S.A. 12-142. That statute currently prohibits a city from imposing their own sales or excise tax on cereal malt beverage and cigarettes. Passage of **HB 2798** would repeal that statute and allow local fees to be imposed on the local excise tax.

Representative Standifer moved and Representative Lloyd seconded to amend **HB 2675** by changing "\$10" to "\$30 for three years" on page 39, line 1. The motion carried.

Representative Standifer moved and Representative Samuelson seconded to strike "New Section 40." on page 40, lines 2 through 9. The motion carried.

Representative Standifer moved and Representative Cox seconded to strike on page 71 lines 20 through 32. The motion carried.

Representative Lloyd moved and Representative Standifer seconded to remove the typographical errors from **HB 2675**. The motion carried.

Representative Standifer moved and Representative Gilbert seconded to move **HB 2675** out favorably as amended.

The Chairman asked for a show of hands - Yeas - 12 and Nays - 7.

The motion to move **HB 2675** out favorably as amended carried.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE FEDERAL AND STATE AFFAIRS, Room 519-S
Statehouse at 1:30 p.m. on February 6, 1996.

Representative Gilbert moved and Representative Standifer seconded to approve the minutes of January 22, 30 and 31. The motion carried.

The Chairman announced there would be a tour of the Kansas Bureau of Investigation facility on February 8 and expect everyone to be on time and provide their own transportation.

The meeting adjourned at 2:30 p.m.

The next meeting is scheduled for February 7, 1996.

FEDERAL & STATE AFFAIRS COMMITTEE GUEST LIST

DATE: February 6, 1996

NAME	REPRESENTING
Kurt J. Bossert	Bossert Liquor Store
Pat Appitz	KRDA
John D. Ward	KWSWA
Neal Whitcomb	KBWA
Bernie Nowwood	ABC
Tom Conant	ABC

Testimony in favor of HB 2722
by Gary Haulmark
representing Lukas Liquor Super Store

Mr Chairman and members of the committee, thank you for the opportunity to testify today in favor of HB 2722. We wholeheartly support this legislation.

As you know this bill has four components. I would like to focus on one in particular. This bill would allow a husband and wife to each own a retail liquor store. The current prohibition seems silly and out of date. Nothing else would be changed such as, background checks, etc.

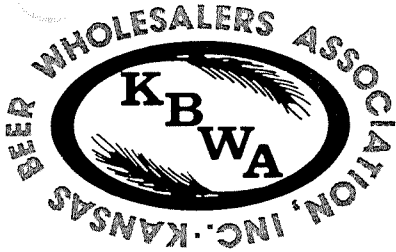
Thank you for your consideration of this bill.

Sincerely,



Gary Haulmark

FISA
2-6-96
Atch #1



TESTIMONY
before
THE HOUSE FEDERAL AND STATE AFFAIRS COMMITTEE
February 6, 1996
Kansas Beer Wholesalers Association
Neal Whitaker, Executive Director

Kansas Beer Wholesalers Association appears in support of the amendments to K.S.A. 41-708, Section 5 and K.S.A. 41-709, Section 6 of House Bill 2722.

In 1988, the Liquor Control Act was completely renovated in anticipation of liquor by the drink. Many outdated provisions were removed from the act. One that was overlooked was a sentence that allowed a licensed retailer to purchase or receive beer from a licensed beer manufacturer having a place of business in this state. We have another statute, K.S.A. 41-305, which sets out a manufacturer's rights of license that requires them to sell only to distributors, non-beverage users, or persons outside the state. This section is basically cleanup and was passed by the House last year, but fell through the cracks during the conference committee at the end of the session. Since it is cleanup it could have been included in House Bill 2675 presented by the ABC last week. However, it was agreed by the task force assembled by ABC that since it had actually been part of legislation and not agreed to by the Senate that it should be in a separate bill.

The provisions of Section 6 were also included in legislation passed by the House last year which allow a distributor when introducing a new product to withdraw that product from inventory to use as samples. Presently in order to introduce a new product we must first convince a retailer to buy it, then buy it back from the retailer to use as samples to convince other retailers to purchase the product. This provision will simplify that process. The other provisions of House Bill 2722 affect other parts of the industry and we certainly support their efforts to modernize the law.



located shall be used to determine if such city is located in a township in a majority of the qualified electors voted the amendment.

History: L. 1949, ch. 242, § 18; L. 1985, ch. 161, § 4; July 1.

Research and Practice Aids:

Intoxicating Liquors §§ 32(1), 34(1), 41(1).

Intoxicating Liquors §§ 66, 70, 75 et seq., 86,

on requesting vote on city option, Vernon's Kansas Statutes Annotated § 3124.

Attorney General's Opinions:

Authority to permit or prohibit sale of liquor by the city's authority to prevent licensure thereof. 91-91.

303. Licenses issued to persons outside cities in townships over 11,000; effect of increase in population. The director may license the sale of alcoholic liquor at retail in original package on premises not located in an incorporated city for use or consumption on the premises, if such premises are located in a township having a population of more than eleven thousand (11,000). No such license shall be granted to any applicant unless he shall possess all the qualifications required of other applicants for retailers' licenses except the location of residence within a city. In the event that any license has been issued under the provisions of this section in a township having a population of more than eleven thousand (11,000), and thereafter such township population decreases or has decreased to eleven thousand (11,000) or less, such licenses shall continue to be valid and the licensees shall be eligible for renewal of such licenses at an appropriate time if they are otherwise qualified.

In the event that any license has been issued under the provisions of this section in a township having a population of more than eleven

Intoxicating Liquors § 59(1).

C.J.S. Intoxicating Liquors § 136.

CASE ANNOTATIONS

1. Discussed, construed; director properly refused reissuance of township retailer's license. *Murphy v. Curtis*, 184 K. 291, 293, 336 P.2d 411.

2. Mentioned; application for cereal malt beverage license denied. *Horyna v. Board of County Commissioners*, 194 K. 445, 448, 399 P.2d 844.

41-304. Classes of licenses. Licenses issued by the director shall be of the following classes: (a) Manufacturer's license; (b) spirits distributor's license; (c) wine distributor's license; (d) beer distributor's license; (e) retailer's license; (f) microbrewery license; (g) farm winery license; and (h) nonbeverage user's license.

History: L. 1949, ch. 242, § 20; L. 1983, ch. 161, § 2; L. 1987, ch. 182, § 11; Jan. 1, 1988.

Attorney General's Opinions:

Licensing and related provisions; classes of persons to whom licenses not issued; conviction of violation of intoxicating liquor laws. 85-44.

41-305. Manufacturer's license; rights of licensee. A manufacturer's license shall allow the manufacture and storage of alcoholic liquor and cereal malt beverage and the sale of alcoholic liquor and cereal malt beverage to distributors and nonbeverage users licensed in this state and to such persons outside this state as permitted by law.

History: L. 1949, ch. 242, § 21; L. 1985, ch. 168, § 3; L. 1987, ch. 182, § 12; Jan. 1, 1988.

Research and Practice Aids:

Intoxicating Liquors § 49.

C.J.S. Intoxicating Liquors §§ 122, 124 et seq.

41-306. Spirits distributor's license; rights of licensee. A spirits distributor's license, shall allow:

2-2

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

February 6, 1996

TO: House Committee on Federal and State Affairs

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

RE: HB 2722

The Kansas Wine & Spirits Wholesalers Association supports sections 1, 2, 3, and 6 of HB 2722. We are not opposed to sections 4 and 5, but they do not affect our tier of the industry.

Sections 1, 2 and 3 will allow wholesalers (beer, wine and spirits) to use each others docks for will-call. The Alcoholic Beverage Control (A.B.C.) has informed us that without a statutory change one wholesalers cannot utilize the dock of another wholesaler so that a retailer can pick-up "will call" orders. This bill allows wholesalers to enter into agreements subject to the approval of the A.B.C. Inasmuch as different distributors' warehouses are located in different cities across the state, this modification will provide for a more cost efficient and service oriented "will-call" system. We understand that the A.B.C. has no objection to this provision.

Section 6 will allow distributors (beer, wine and spirits) to withdraw from their warehouses in limited circumstances inventories for internal and/or approved seminar use. Currently when a distributor desires to offer samples of its products at seminars it sponsors for industry members, they must purchase those goods at retail. The Director of the A.B.C. would issue regulations to govern this activity. We support an amendment that will be offered by the A.B.C. to this section to clarify that distributors would pay the enforcement tax, based on the current case price, for any goods withdrawn.

Both of these matters received favorable action by this committee and the House last year, but were removed in conference at the end of the session. We again ask for your favorable action on this bill. Thank you for your attention to and consideration of these matters.

**TESTIMONY PRESENTED TO THE
HOUSE FEDERAL AND STATE AFFAIRS COMMITTEE
re: HB 2722**

February 6, 1996

**by: Rebecca Rice
Legislative Counsel for Kansas Retail Liquor Dealers Association**

Mr. Chairman and members of the committee. My name is Rebecca Rice and I appear before you today as an proponent to HB 2722 on behalf of the Kansas Retail Liquor Dealers Association. We are supporting that section of the bill which allows a spouse to also own a liquor license separate from the liquor license owned by the other marital partner. Although this will probably affect very few retail liquor dealers, we understand implicitly the right of the spouse to own their own business in their own right. We are certain the ABC can institute sufficient safeguards to insure inventories are kept separate, insuring that each spouse owning a business which has a liquor license would not in some way give a business price advantage which is specifically prohibited by statute.

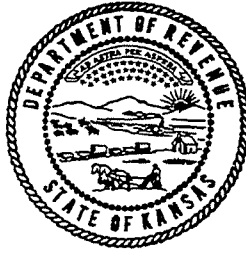
We do not want the committee to confuse our support of spouses owning a liquor license in their own right with the larger issue of an individual owning multiple licenses. Our association remains opposed to the multiple license concept. The Legislature, when initially enacting the present form of distribution, understood implicitly the danger in allowing a few individuals to control the liquor industry. We would ask that you assist us in defeating any amendments which might be proposed that would allow an individual to own multiple liquor licenses.

Mr. Chairman, we have no opinion on the balance of the bill. I would note errors on pages 1, 2, and 3 in the last line of the new language, "which" should read "with".

Thank you, Mr. Chairman and members of the committee. I would be happy to answer any questions.

F&SA
2-6-96
Atch #4

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



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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: February 6, 1996

SUBJECT: House Bill 2722

Thank you for the opportunity to appear before the committee today regarding House Bill 2722. Although the division has not adopted a specific position on the major aspects of the bill, we would request that the committee consider amending the bill to clarify a tax issue raised in Section 6 and to avoid conflict with another bill under consideration by the committee.

Section 6 would amend K.S.A. 41-709 to allow distributors to withdraw products from their warehouses for use as samples in the course of their business or at industry seminars. Use of the product in this manner would be subject to rules and regulations of the secretary. Sampling at industry seminars is currently allowed by ABC regulations, but all product used must be purchased through a retail liquor store and is subject to the 8% enforcement tax. Clarification is needed regarding the taxable status of product withdrawn for business or sampling purposes. Since this product is now subject to the 8% enforcement tax as it passes through the retail liquor level, is it the intent of the bill to specifically exempt it from that tax? We would respectfully request that product used in this manner should either be specified as taxable under K.S.A. 79-4104, et. seq., or specifically exempted via additional language in section 6 of the bill.

Additional amendments are also needed in each section to coordinate the provisions of this bill with House Bill 2675. Each section of House Bill 2722 should be worded to amend the matching section in House Bill 2675, rather than the existing statutes, in order to avoid two amendments to the same statute.

<u>HB2722</u>		<u>HB2675</u>
Section 1	should amend	Section 21
Section 2	"	Section 22
Section 3	"	Section 23
Section 4	"	Section 29
Section 5	"	Section 78
Section 6	"	New Section 79

FISA
2-6-96
Atch#5