

Approved: 3-18-96
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 March 14, 1996 in Room 519-S of the Capitol.

All members were present except: Representative Britt Nichols, Absent

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

Conferees appearing before the committee: Hal Hudson, State Director, National Federation of Independent Business
Kevin Robertson, Executive Director, Kansas Lodging Association
Elwaine F. Pomeroy, For Motion Picture Association of America, Inc.
Ed Bailey, Attorney, ASCAP

Others attending: See attached list

The Chairperson announced the minutes for March 5 and 6 were distributed on March 13 and asked if there was a motion to approve.

Representative Cox moved and Representative Adkins seconded to approve the minutes of March 5 and 6. The motion carried.

SB 627 - Relating to Contracts for the Payment of Royalties.

Kevin Robertson, Executive Director, Kansas Lodging Association, a proponent, gave a briefing on **SB 627**. Mr. Robertson briefed the background of the bill and why it was needed. The federal copyright law establishes that restaurants and businesses playing music over the airwaves or piped into lobby areas or general public areas in their facilities have to pay licensing fees to the societies such as ASCAP, NFIB, KCCI, SESAC and BMI. Motels, hotels, restaurants and businesses, even if music playing behind the front desk and people in the lobby area can hear that music, have to pay a licensing fee and that licensing fee is based on the number of people that pass through and hear that music. While there is nothing in the state of Kansas that we can do about that as it is a federal law and have to live with that. **SB 627** would curb some of the activity of agents trying to collect some of those fees from proprietors. Currently, agents will, in a proprietor's opinion, come into a restaurant or hotel and find that this particular business is not licensed with them, hang out in the lobby area until they hear music and approach the general manager and demand they pay an X number of dollars immediately or they will be taken to court and sued. **SB 627** would require that these agents that are trying to collect fees on behalf of BMI, ASCAP, SESAC, the composers rights society require them to identify themselves when on the property of the proprietor and also require them to provide a list of the rate schedule. At the present time, they tell the proprietor they owe a fee and they are at the mercy of that agent rather than seeing a rate schedule. **SB 627** also allows a 72-hour waiting period before a contract needs to be signed allowing the proprietor to contact their attorney or the Association they belong to that may know more about their rights are under the law. The bill also establishes that the composer's rights society would have to provide to the proprietor upon request an 800 number where they could call and get a list of music under their command. There are three different entities, ASCAP, BMI and SESAC that license all music that is played on the radio. Any music is licensed by one of these three agencies and would like to be able to buy music from only one agency. They say the lists are too large to provide and constantly change. (See Attachment #1)

Representative Adkins asked why the Kansas Lodging Association and others didn't educate their members on this rather than having the legislature intervene as it is rather simple on how the payments are made?

Hal Hudson, State Director, National Federation of Independent Business, a proponent to **SB 627** stated that federal copyright laws allow these licensing groups -- ASCAP and BMI -- to collect fees for the use of musical compositions by those they represent. The complaint is the manner in which they go about collecting royalty

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE FEDERAL AND STATE AFFAIRS, Room 519-S
Statehouse, at 1:30 p.m. on March 14, 1996.

fees. The issue of **SB 627** is not whether somebody has the right or not the right to pay because that is governed by federal copyright law and there is nothing we can do to change that, but it is in the manner in which they go about collecting the royalty fees. (See Attachment #2)

Ed Baily, Attorney for ASCAP, stated that copyright holders not getting any royalties formed an organization back in the 1920s to protect the interest collectively of the creative artists that were copyrighting music. The purpose of this was to under one roof create the ability to license all of these copyright music so anyone in the field could buy a license and feel protected that they weren't violating anybody's copyright laws. This has been the law with amendments since the 1920s. If a proprietor does not want to pay for these creative artists then it does not have to be used, if want to use the music they would have to pay. 90-95% of the proprietors are licensed and have been for years. The licenses are filed with the Secretary of State. **SB 627** does not change ASCAP's way of doing business. ASCAP paid close to \$100,000 in taxes last three years to the state of Kansas. The lists are only good on the day it is received as it changes everyday. They cost \$2500 and would be very voluminous. ASCAP agrees to this legislation.

Elwaine F. Pomeroy, For Motion Picture Association of America, Inc., stated they were in support of **SB 627** as long as the floor amendments added by the Senate Committee of the Whole were kept in place. There has been no problem concerning the motion picture industry. The other groups involved with this legislation agree that the motion picture industry should be excluded from this bill. (See Attachment #3)

The Chairperson closed the hearing on **SB 627** and asked what the pleasure was of the committee.

Representative Graeber moved and Representative Ruff seconded to move **SB 627** out of committee favorably. The motion carried.

The Chairperson stated when the meeting adjourned March 13, **SB 708** was Tabled then there was a motion and second to amend and make **SB 708** as amended a part of **SB 663**.

Representative Ballou stated his reason for doing this was that **SB 708** was Tabled.

Representative Standifer stated she was opposed to the motion, prefer if we work **SB 708** as amended yesterday and bring it up off the Table.

The Chairperson asked the committee to vote on merging **SB 708** as amended and **SB 663**. The motion failed.

A Division was called. 9 yeas and 10 nays. The motion failed.

The Chairperson stated we were back on **SB 663**.

Representative Samuelson moved and Representative Graeber seconded to move **SB 663** out favorably. The motion carried.

Representative Cox moved and Representative Graeber seconded to bring **SB 708** off the Table. The motion carried.

Representative Ballou moved and Representative Cox seconded to move **SB 708** out favorably as amended.

Representative Lloyd moved and Representative Franklin seconded to change "may" to "shall" on page 16, line 15. The motion failed.

The Chairperson stated we were back on Representative's motion to move **SB 708** out favorably as amended.

The motion carried.

The Chairperson asked what the pleasure was of the committee on **HB 2796**.

Representative Jones moved and Representative Samuelson seconded to amend **HB 2796** (See Attachment #4)

Representative Standifer made a Substitute Motion and Representative Smith seconded to Table **HB 2796**.

A Division was called for - 9 yeas and 7 nays, the motion carried and **HB 2796** was Tabled. Representative Adkins requested to be recorded as voting "NO".

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE FEDERAL AND STATE AFFAIRS, Room 519-S
Statehouse, at 1:30 p.m. on March 14, 1996.

The meeting adjourned at 2:35 p.m. The next meeting is scheduled for March 18, 1996.

FEDERAL & STATE AFFAIRS COMMITTEE GUEST LIST

DATE: March 14, 1996

NAME	REPRESENTING
Hal Hudson	NEAB
KEVIN ROBERTSON	to Judge
Eloane Kennedy	National Spectacle association of America
Whitney Danna	Broadcast Music, Inc.
SL Bailey	ASCAP



Date: March 14, 1996

To: House Committee on Federal & State Affairs

From: Kevin Robertson
Executive Director

RE: Testimony in **Support** of SB 627

Chairman Boston and members of the Committee, thank you for the opportunity to appear before you today. I am Kevin Robertson, executive director of the Kansas Lodging Association comprised of approximately 140 hotels and motels statewide.

Today I am here to ask for your assistance curbing what KLA members believe are abuses by performing rights societies regarding licensure of music in Kansas businesses. As we have already heard in testimony today, performing rights societies like BMI, ASCAP, and SESAC often harass and threaten businesses in Kansas that play music. Kansas hotels and motels are not immune from this harassment. Agents of performing rights societies periodically audit hotels and motels across our state. They simply determine the businesses that are not licensed and lurk in the lobby, restaurant, meeting room, or other general public area of a hotel until they uncover an infraction.

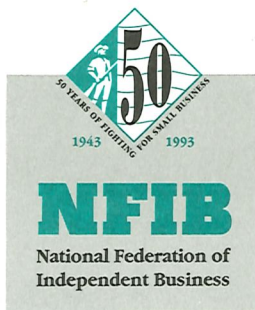
These unidentified agents are often hostile, and threaten the unsuspecting hotel/motel operator, general manager, or front-desk clerk. They demand royalty fees payable on demand or threaten legal action. Often, if not always, the rationale behind the licensing fees demanded cannot or are not explained leaving the hotelier at the mercy of the agent. Agents do not provide lists of those artists they license claiming it is too lengthy, ever changing, or too cumbersome to name them all.

This abuse of Kansas business has got to stop! Let's follow the lead already taken by Missouri and many other states that calls for placing restraints on activities of these performing rights societies and their agents. The members of KLA do not believe it is too much to ask an agent representing a performing rights society such as BMI, ASCAP, or SESAC to identify themselves, provide a list of artists they represent, and a logical explanation for the fee being requested of a hotelier. .

KLA has worked with NFIB, KCCI, ASCAP, and BMI to make sweeping compromises to SB 627 as it was originally drafted. On behalf of the Kansas Lodging Association I urge your support of SB 627. I will be happy to answer any questions you may have at this time.

*Fede State
3.14.96
Atch #1*





LEGISLATIVE

TESTIMONY

**Testimony of
Hal Hudson, State Director
National Federation of Independent Business**

**Before the
Kansas House Federal and State Affairs Committee
on Senate Bill 627**

Thursday, March 14, 1996

Mister Chairman and members of the Committee: Thank you for this opportunity to appear here today in support of enactment of S.B. 627. My name is Hal Hudson, and I am the State Director for the Kansas Chapter of National Federation of Independent Business (NFIB), the State's largest small-business advocacy group, with about 8,000 members who employ nearly 100,000 Kansans.

You may know that we do not have a board of directors who set NFIB legislative policy. NFIB's position on legislative issues is determined by ballots, surveys and questionnaires, through which we ask our members directly for their opinion.

The issue of the behavior of representatives of music licensing organizations has been brought to my attention, over the past two years, by a number of NFIB members. They have used terms like "extortion and coercion," and the threat of lawsuits -- which would be tried in a New York state court -- to describe the manner in which these individuals go about collection of royalty fees.

In the fall of 1995, we asked NFIB/Kansas members the question: "Should legislation be enacted to require ASCAP and BMI representatives to identify themselves, who they represent and how their licensing fee for use of music played in places of businesses is determined?" Of those responding, **81.3% said YES!** Even respondents who said they never had been contacted by either of these groups apparently had heard of them from others.

S.B. 627 was introduced in the Senate at the specific request of NFIB. Proponents allied with NFIB in support of the bill in the Senate included: Kansas Chamber of Commerce and Industry (KCCI), Kansas Restaurant and Hospitality Association (KRHA), and Kansas Lodging Association (KLA).

After the bill was drafted, we learned that ASCAP had gone to court in New York challenging a similar bill enacted in Missouri in 1995. The New York court, by its order on February 2, 1996, set aside some of the provisions we had sought in our original draft, saying they were in conflict with federal copyright law.

We do not argue with, or challenge, the fact that federal copyright laws allow these licensing groups -- ASCAP and BMI -- to collect fees for the use of musical compositions by those they represent. Our complaint is the manner in which they go about it.

However, to avoid the possibility of having the Kansas law subjected to federal court review, we agreed to a number of amendments, to which both ASCAP and BMI have agreed. Therefore, we believe that all parties - NFIB, KCCI, KRHA, KLA, ASCAP and BMI now are in support of S.B. 627. We are not aware of any opponents of the bill as it passed in the Senate on a vote of 39-0.

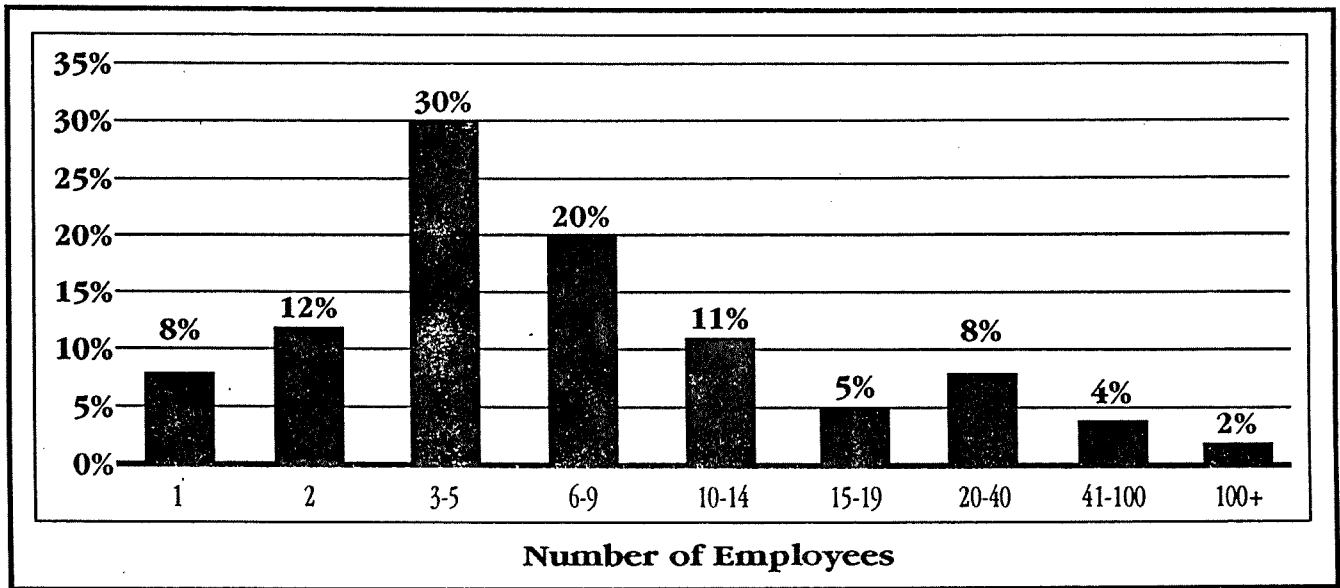
I urge you to report S.B. 627 favorably and to support its enactment by the full House.

Thank you. I will respond to questions at the pleasure of the chair.

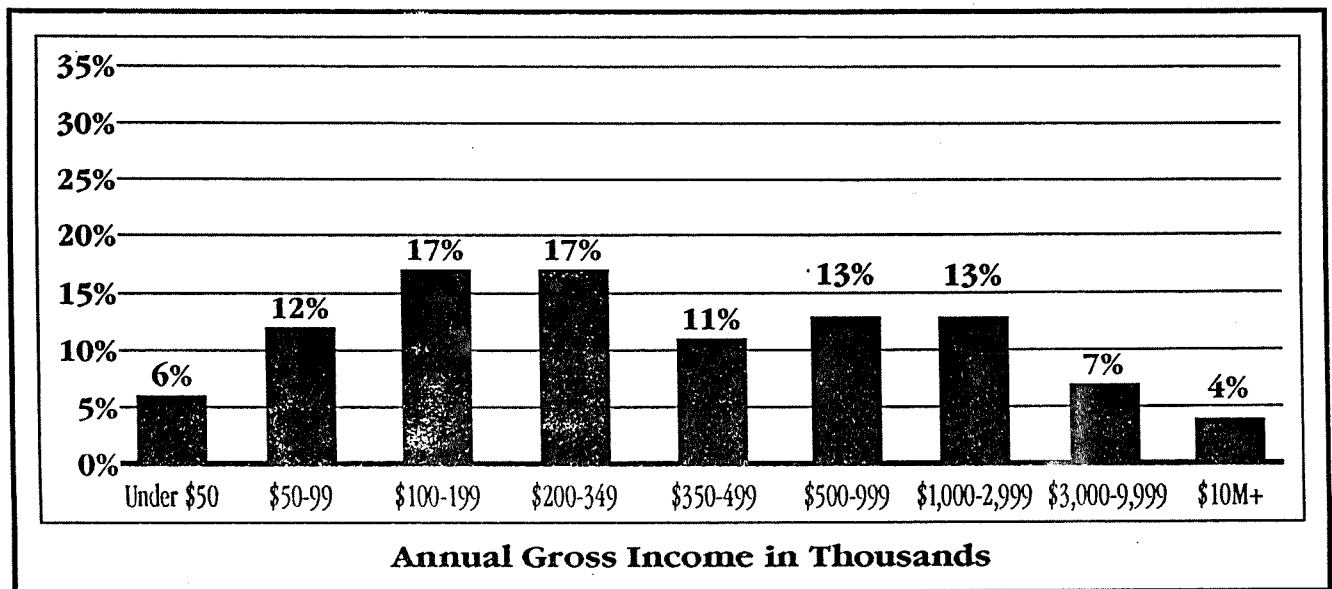
NFIB / Kansas Membership Profile

NFIB/Kansas represents the entire spectrum of independent business, from one-person home-based operations to enterprises employing more than 100 people. The typical NFIB/Kansas member is quite small, employing five workers and ringing up gross sales of about \$330,000 per year. Yet, in aggregate, the membership is a potent economic force, employing nearly 95,000 and earning more than \$8.5 billion (gross) annually.

NFIB / Kansas Membership by Number of Employees



NFIB / Kansas Membership by Annual Gross Receipts



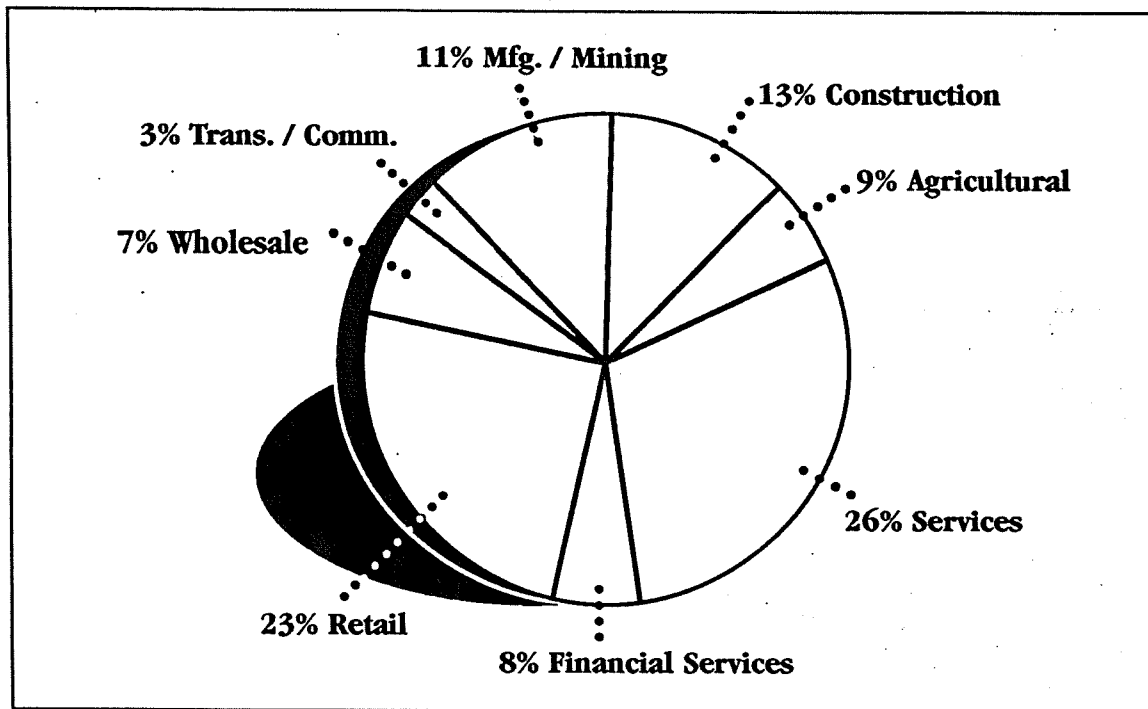
About NFIB / Kansas

Since 1943, business owners from all walks of commercial life have joined the National Federation of Independent Business to have a powerful, united voice in government decision making. Today, NFIB's Kansas chapter has more than 7,800 members, making it the largest small-business advocacy group in the state.

Each year NFIB/Kansas polls its entire membership on a variety of state legislative and regulatory issues. The federation uses the poll results to set its legislative agenda and aggressively promotes those positions approved by majority vote.

This democratic method of setting policy assures that the positions advanced by NFIB reflect the consensus views of the entire small-business community rather than the narrow interests of any particular trade group. Lawmakers wanting to know how proposed legislation and regulation will affect Main Street businesses can get the authoritative answer from NFIB's legislative office in Topeka.

NFIB / Kansas Membership by Industry Classification



NFIB Federal Legislative Office
600 Maryland Ave. SW, Suite 700
Washington, DC 20024
(202) 554-9000

NFIB/Kansas
3601 S. W. 29th St., Suite 116B
Topeka, KS 66614-2015
(913) 271-9449

NFIB Membership Development
53 Century Blvd., Suite 205
Nashville, TN 37214
(615) 872-5300



REMARKS CONCERNING SENATE BILL 627
AS AMENDED BY SENATE COMMITTEE OF THE WHOLE
HOUSE FEDERAL AND STATE AFFAIRS COMMITTEE
MARCH 14, 1996

Thank you for giving me the opportunity to appear before your committee on behalf of the Motion Picture Association Of America, Inc. (MPAA). MPAA members include: Buena Vista Pictures Distribution, Inc. (Disney); Metro-Goldwyn-Mayer Inc.; Paramount Pictures Corporation; Twentieth Century Fox Film Corporation; Sony Pictures Entertainment, Inc.; University City Studios, Inc.; Warner Bros.; and Turner Pictures.

My purpose in appearing before you today is to strongly urge you to keep the floor amendments added by the Senate Committee of the Whole, which can be found on page 1, lines 19 and 20, and page 4, lines 11 through 15. MPAA would strongly object to this legislation if these amendments were not included. Language similar to what is contained in those floor amendments appear in the statutes of every single state which has passed this type of legislation.

The amendment on page 1 makes it clear that this legislation will not apply to motion pictures or other audiovisual works. There has been no problem concerning the motion picture industry. The other groups involved with this legislation agree that our industry should be excluded from this bill.

The amendment on page 4 makes it clear that the legislation will not apply to investigations concerning violations of the anti-counterfeiting statute, K.S.A. 21-3750. For your convenience, I have attached a copy of that statute to my testimony.

The Motion Picture Association Of America has personnel who go out to video stores and other retail operations that may be involved in counterfeiting and/or selling or renting "bootlegged" video cassettes as defined in K.S.A. 21-3750. MPAA personnel do the initial groundwork in investigations for law enforcement to

*Fed & State
3-14-96
Atch #3*

identify video counterfeiters and video counterfeit retail operations. MPAA personnel work closely with law enforcement to make arrests and effect prosecutions. These investigators usually do not identify themselves as MPAA representatives. There has been no evidence that such investigations have been conducted in an arbitrary or capricious manner. MPAA is not aware of any example where such an investigation has even led to a complaint to law enforcement or to MPAA.

Such investigations are designed to detect the deliberate and systematic misappropriation of creative works. To detect systematic piracy of such programing and distinguish it from incidental or unintentional misappropriation, MPAA investigators must enter retail establishments without identifying themselves. If required to identify themselves and their purpose, they would be denied admission by those engaged in regular and deliberate piracy. The floor amendment on page 4 will ensure that anti-counterfeiting efforts can and will continue.

Elwaine F. Pomeroy
For Motion Picture Association Of America, Inc.

3-2

21-3750. Nondisclosure of source of recordings. (a) Nondisclosure of source of recordings is knowingly selling, renting or offering for sale or rental, or possessing, transporting or manufacturing for such purposes, any phonograph record, audio or video disc, wire, audio or video tape, film or other article now known or later developed on which sounds, images, or both sounds and images are recorded or otherwise stored, unless the outside cover, box or jacket clearly and conspicuously discloses the name and address of the manufacturer of such recorded article.

(b) Nondisclosure of source of recordings is:

(1) A class A nonperson misdemeanor if the offense involves less than seven audio visual recordings, or less than 100 sound recordings during a 180-day period; or

(2) a severity level 9, nonperson felony if the offense involves seven or more audiovisual recordings, or 100 or more sound recordings, during a 180-day period.

(c) It shall be the duty of all law enforcement officers, upon discovery, to confiscate all recorded devices that do not conform to the provisions of this section or of K.S.A. 21-3748 and amendments thereto and that are possessed for the purpose of selling or renting such recorded devices, and all equipment and components used or intended to be used to knowingly manufacture recorded devices that do not conform to the provisions of such sections for the purpose of selling or renting such recorded devices. The nonconforming recorded devices that are possessed for the purpose of selling or renting such recorded devices are contraband and shall be delivered to the district attorney for the county in which the confiscation was made, by court order, and shall be destroyed or otherwise disposed of, if the court finds that the person claiming title to such recorded devices possessed such recorded devices for the purpose of selling or renting such recorded devices. The equipment and components confiscated shall be delivered to the district attorney for the county in which the confiscation was made, by court order upon conviction, and may be given to a charitable or educational organization.

(d) This section shall not apply to any computer program or any audio or visual recording that is part of any computer program or to any article or device on which is exclusively recorded any such computer program.

HOUSE BILL No. 2796

By Representatives Jones and Mays and Freeborn, Gatlin, Gilmore, Horst, Hutchins, Lloyd, Mason, Mollenkamp, Myers, O'Neal, Pottorff, Swenson and Tanner

1-31

11 AN ACT concerning alcoholic beverages; requiring certain licensees to
12 maintain records of purchasers of certain containers of beer or cereal
13 malt beverage.

14
15 *Be it enacted by the Legislature of the State of Kansas:*

16 Section 1. (a) Prior to the sale by a retailer, or a retailer's employee
17 or agent, of any beer in a container having a liquid capacity of four or
18 more gallons, the retailer, or the retailer's employee or agent, shall affix
19 to the beer container a keg identification number. At the time of sale of
20 any such container of beer, the retailer, or the retailer's employee or
21 agent, shall record the keg number; the date of the sale; the purchaser's
22 name, address and signature; and the number of a piece of identification
23 bearing both the purchaser's picture and the purchaser's signature. Such
24 record shall be kept by the retailer for not less than ~~six months~~ at the
25 premises where the purchase was made.

26 (b) Records required to be kept pursuant to this section shall be avail-
27 able for inspection by any law enforcement officer during normal business
28 hours or at any other reasonable time.

29 ~~(c) Upon a determination, in a proceeding pursuant to K.S.A. 41-320~~
30 ~~and amendments thereto, that a retailer, or a retailer's employee or agent,~~
31 ~~has violated this section or any rules and regulations adopted pursuant to~~
32 ~~this section, the director shall suspend the retailer's retail liquor license~~
33 ~~for five business days.~~

34 (d) It is a class B nonperson misdemeanor to: (1) Remove from a
35 beer container all or part of a keg identification number required pur-
36 suant to this section; (2) make unreadable all or any part of a keg iden-
37 tification number required by this section to be affixed to a beer con-
38 tainer; or (3) possess a beer container that does not have the keg
39 identification number required by this section.

40 (e) The secretary of revenue, pursuant to K.S.A. 41-210, and amend-
41 ments thereto, shall adopt such rules and regulations as necessary to carry
out the intent and purposes of this section. Such rules and regulations
may include, but shall not be limited to, provisions establishing standards

30 days

The provisions of this section shall not apply to sales made by a retailer to licensed clubs, drinking establishments, caterers, or temporary permit holders.

Fed. State
3-14-96
Atcl # 4

1 for marking and handling containers which are required to be registered
2 under this section.

3 ~~(X)~~ This section shall be part of and supplemental to the Kansas liquor
4 control act.

5 Sec. 2. Prior to the sale by a retailer, or a retailer's employee or agent,
6 of any cereal malt beverage in a container having a liquid capacity of four
7 or more gallons, the retailer, or the retailer's employee or agent, shall
8 affix to the cereal malt beverage container a keg identification number.
9 At the time of sale of any such container of cereal malt beverage, the
10 retailer, or the retailer's employee or agent, shall record the keg number;
11 the date of the sale; the purchaser's name, address and signature; and the
12 number of a piece of identification bearing both the purchaser's picture
13 and the purchaser's signature. Such record shall be kept by the retailer
14 for not less than ~~six months~~ at the premises where the purchase was made.

30 days

15 (b) Records required to be kept pursuant to this section shall be avail-
16 able for inspection by any law enforcement officer during normal business
17 hours or at any other reasonable time.

18 ~~(c) Upon a determination, in a proceeding pursuant to K.S.A. 41-2708~~
19 ~~and amendments thereto, that a retailer, or a retailer's employee or agent,~~
20 ~~has violated this section or any rules and regulations adopted pursuant to~~
21 ~~this section, the board of county commissioners or city governing body~~
22 ~~that issued the retailer's retail cereal malt license shall suspend the re-~~
23 ~~tailer's license for five business days.~~

24 (d) It is a class B nonperson misdemeanor to: (1) Remove from a
25 cereal malt beverage container all or part of a keg identification number
26 required pursuant to this section; (2) make unreadable all or any part of
27 a keg identification number required by this section to be affixed to a
28 cereal malt beverage container; or (3) possess a cereal malt beverage
29 container that does not have the keg identification number required by
30 this section.

31 (e) The secretary of revenue, pursuant to K.S.A. 41-210, and amend-
32 ments thereto, shall adopt such rules and regulations as necessary to carry
33 out the intent and purposes of this section. Such rules and regulations
34 may include, but shall not be limited to, provisions establishing standards
35 for marking and handling of containers which are required to be regis-
36 tered under this section.

37 (f) This section shall be part of and supplemental to K.S.A. 41-2701
38 *et seq.*, and amendments thereto.

Sec. 3. This act shall take effect and be in force from and after its
publication in the statute book.