

Approved: March 10, 1998
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 23, 1998 in Room 519-S of the Capitol.

All members were present except: Representative Phill Kline, Excused

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

Conferees appearing before the committee:

Others attending: See attached list

The Chairman opened the meeting and asked if there were any bill introductions.

Representative Cox moved and Representative Crow seconded to introduce legislation dealing with state health care benefits program. The motion carried.

Representative Swenson moved and Representative Tanner seconded to introduce legislation concerning county roads; relating to the removal of poles, piers, pipelines and fixtures from rights-of-way. The motion carried.

The Chairman announced that Representative Phill Kline replaced Representative Steve Lloyd on the committee.

Representative Bill Mason, Chairman of the Sub-Committee on HB 2244, reported their recommendation was to move HB 2244 back to the full committee without recommendation.

HB 2887 - Unlawful Sale of Alcoholic Beverages

The Chairman opened the hearing on HB 2887.

Jill Wolters, Revisor of Statutes Office, gave a briefing on HB 2887, stating the bill related to the unlawful sale, purchase and possession of alcoholic beverages; to provide for the crime of unlawful shipments of beverage alcohol to Kansas consumers under certain circumstances; to provide for registration and for payment of fees and taxes on authorized shipments; relating to out-of-state shipper's license.

The bill would allow an out-of-state shipper to ship not more than 24 individual containers of nonregistered alcoholic beverages of not more than one liter each to any household in a 12 month period, ship only to individual who is at least 21 years of age, label container "Contains alcoholic beverages. Adult (over 21) signature required for delivery" and are accompanied by a bill of lading describing the contents of the shipping package.

No out-of-state shipper's license shall be issued to any person unless such person is currently licensed in such person's state of domicile as an alcoholic beverage manufacturer and provides the director with a true and correct copy of such license annually.

R. E. "Tuck" Duncan, Kansas Wine and Spirits Wholesalers Association, testified as a proponent to HB 2887 stating the bill allows an out-of-state shipper to ship not more than 24 individual containers of nonregistered alcoholic beverages to only persons over 21. Cartons must be labeled for delivery to only persons over 21.

HB 2887 is a reasoned approach to address the new age of commerce, prevent sales to minors, preserve state tax revenues, preserve the three-tier system, and safeguard the state's power to regulate alcoholic beverages

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE FEDERAL AND STATE AFFAIRS, Room 519-S
Statehouse, at 1:30 p.m. on FEBRUARY 23, 1998.

within its borders.

Mr. Duncan suggested a balloon that would change all "alcoholic beverages" to "alcoholic liquor", in (2), line 33, change "duly licensed" to "common", delete (3), add to (4), line 41, "and other reports as may be required by the director" and change (5) to read: "pay to the state department of revenue on a quarterly basis all gallonage taxes as required by KSA 1-501 et.seq. relating to and all excise taxes as would be due from retail liquor licenses as required by KSA 79-4101 et.seq. due on sales made to residents of this state during the preceding quarter. On page 2, line 19, change "participates in" to "or" and delete "imports or receives". Section 5 should be changed to, "No license of any kind shall be issued pursuant to the liquor control act to a person, except that only the provisions of subsection (h) shall provide for the qualifications for an out-of-state shipper's license." (Attachment 1)

Marge Roberson, President, Kansas Retail Liquor Dealers Association, testified as a proponent to **HB 2887**, stating this legislation strengthens current law. The Association is only interested in this type of legislation if it gives the ABC and local law enforcement the necessary tools to stop illegal shipment of liquor products and we believe this legislation does that.

A concern expressed by members of the Association was that additional, stronger laws would not be helpful if the ABC and the Department of Revenue would not attempt to actively enforce the law if it were adopted. The Association is asking for an amendment to address this issue.

The KRLDA amendment would earmark funds raised by this law for enforcement of this law and asked that the registration fees collected be used for administration and enforcement of this law. Any penalties and fines would be earmarked for enforcement only, not administration. The law enforcement unit causing the penalty or fine to be imposed would be allowed to keep most of the money from the fine or penalty. This provision would provide an incentive to local law enforcement to be diligent in helping us have this law enforced, as well as providing the funds to facilitate enforcement. The state would benefit by collecting more taxes on the legal sale of products so the state general fund isn't left out entirely. Ms. Roberson stated an amendment is being drafted. (Attachment 2)

Testimony opposing **HB 2887** by Charles E. McGrigg, Central States Counsel, Wine Institute, Ames, Iowa, was distributed. Mr. McGrigg stated this bill does not significantly address the national problem of direct shipping and Internet purchases. It is very narrowly drawn and exposes the wine industry to severe felony penalties for the atrocious act of shipping unauthorized wine to a consumer. This issue is of national scope and cannot be solved by regional action alone. This is not the source of choice for minors and the volume is so insignificant that it would probably not be cost effective to design a taxing scheme to collect the revenue. (Attachment 3)

The Chairman closed the hearing on **HB 2887**.

HB 2972 - Concerning adult care homes; relating to background check of employees

The Chairman opened the hearings on **HB 2972**.

Jill Wolters, Revisors of Statutes Office, gave a briefing on **HB 2972**, stating last year a bill was passed concerning adult care homes and home health agencies and employee background checks. The bill that was passed last year would not go into effect until July 1, 1998 and these are amendments that were requested after further review. This bill only deals with adult care homes. Possibly, the home health agencies should be looked at also as these two bills mirror each other. If this would go into effect without any amendments, it would state that no person can work in a home if they have had a felony conviction for a crime in Article 34, in the crime against persons, 35 in the sex offenses and 36 as crimes effecting family, family and children functions. If convicted of attempt of any of these a person would not be able to work in an adult care home. Also promoting obscenity to minors and also if a juvenile offender. This bill, instead of making an outright blanket, that if any of these acts were committed, a person could not work in a home. What this bill does is it still prohibits certain people from working in a home and those convictions are listed in 34 thru 38, capital murder, first degree murder, second degree murder, pursuant to subsection (a) which is intentional. The other is disregard for human life and assisting suicide. The other ones would still apply if sexual, physical or emotional abuse pursuant to an SRS statute. There are certain crimes that would never allow a person to work in homes, and others that if the record were looked at and person now being rehabilitated, then they would be able to work in a home.

Representative Samuelson stated when she asked for this bill introduction she had not given enough information to the Revisor and major changes have been made. The bill in the book is not what is needed.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE FEDERAL AND STATE AFFAIRS, Room 519-S
Statehouse, at 1:30 p.m. on FEBRUARY 23, 1998.

Joyce Bedsworth, Schowalter Villa, Hesston, Kansas, testified in support of **HB 2972**, stating they are concerned about the impact of the criminal background check law passed last year on our services. At this point it is not known how many of the staff would be impacted adversely. It is a struggle for long term care facilities to staff their organizations. Quality workers, at the entry level with salaries of \$11,000 to \$16,000 annually, are extremely difficult to find in a county with an unemployment rate of 2.3. It is suggested that current high performing employees be grandfathered in, or at least continue to work until a determination is made that they are ineligible due "to lack of clear and convincing evidence of rehabilitation" by KDHE. It would be difficult to convince the residents, family members, and employees of the need to discharge hard working, high performing employees due to historic events. (Attachment 4)

Representative Nancy Kirk, a proponent to **HB 2972** stated an extensive amendment was needed to this bill to provide the care to the residents (Attachment 5).

Representative Dixie E. Toelkes, a proponent to **HB 2972**, stated she was in favor of the bill with the recommended amendment by Representative Nancy Kirk. This fine tunes the statute on background checks passed at the end of the 97 session.

The original intent was to prohibit convicted sex-offenders and convicted batterers from having access to those helpless people who can't defend themselves. The statute now is too broad in scope as it included offenses that do not put people in danger (Attachment 6)

Linda J. Fund, Assistant Secretary/General Counsel, Kansas Department of Health & Environment, testified as a proponent to **HB 2972**. The Department has encountered some difficulty in interpreting the language of the statute. In addition, there were discovered a number of situations where the statute appears to have unintentionally harsh consequences. The Department recommends a Substitute Bill (Attachment 7).

The Chairman closed the hearing on **HB 2972**.

Representative Gilbert moved and Representative Ruff seconded to approve the minutes of February 10, 11 and 12. The motion carried.

The meeting adjourned at 3:05 p.m . The next meeting is scheduled for March 4, 1998.

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

To: House Federal
and State Affairs Committee
From: R.E. "Tuck" Duncan *Red*
Kansas Wine and Spirits
Wholesalers Association
RE: HB 2887

Introduction

According to the National Conference of State Legislatures direct to consumer alcoholic beverage shipments have grown substantially over the last 20 years. Rapid growth in recent years has come through Internet and catalog wine clubs, beer-of-the-month clubs, malt-of-the-month clubs and preferred-customer direct marketing. Estimates of the size of this large underground economy range widely from \$350 million to nearly \$1 Billion annually (according to Forbes Magazine).

The more than 3000 small U.S. wineries and microbreweries have expanded direct marketing and shipments to consumers. Small producers contend that they have no access to the distribution system, and thus justify direct shipments as a result. At the same time specialty publications and the Internet have made consumers increasingly knowledgeable about wines and microbrews and increased demand for direct shipment. Promoted as tourism destinations and regional local color, the small producer niche has grown immensely from a few hundred to 3,000 today. The expansion of direct shipping

has generated conflict among states, producers, wholesalers, retailers and consumers.

The passage of the 21st Amendment to the U.S. Constitution gave complete control of alcoholic beverages to the states. Congress and the federal courts generally have not preempted state regulation. In Kansas the state licenses producers, their agents, wholesalers, retailers and on-premise establishments. Substantial taxes are imposed by the state.

The state maintains control over this three-tier system through the approval of licenses as well as the oversight of licensees' business practices.



Direct Shipment of alcoholic beverages across state lines is illegal in most states, as it is in Kansas, punishable as a misdemeanor. (see chart) This prohibition has been widely ignored by direct shippers, however, in part because states have a difficult time reaching offenders in other states.

The growth of direct shipping has caused concern because today in Kansas direct shippers can:

- + avoid state sales and excise taxes;
- + by-pass the state sanctioned three-tier system of production, distribution and retailing;
- + ship beverage illegally to minors;
- + create an unfair business environment in which only in-state businesses must comply with state regulations; and
- + reduce states' powers to regulate

alcoholic beverages within their borders.

Solutions:

Whatever solutions are proposed they must meet certain criteria: (1) they must prevent sales to minors, (2) preserve state tax revenues, (3) preserve the three-tier system, and (4) safeguard the state's power to regulate alcoholic beverages within its borders.

Choices:

1. maintain the current law, which is essentially unenforceable.
2. increase penalties for the current law.
3. establish a procedure that accomplishes the criteria set forth above, and meets consumer needs.

HB2887:

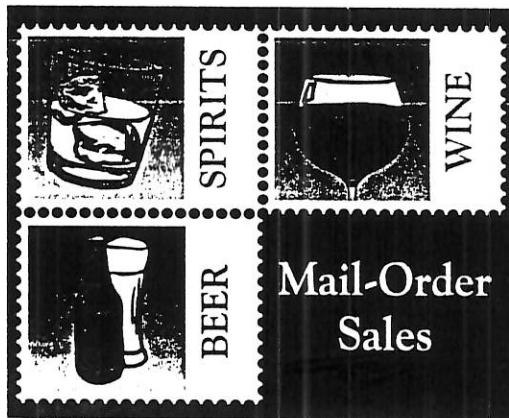
This bill provides the following:

New Section 1 allows an out-of-state shipper (OSS) to ship not more than 24 individual containers of nonregistered alcoholic beverages to only persons over 21. Cartons must be labeled for delivery to only persons over 21. These shippers

must file quarterly reports, pay all excise and gallonage taxes, maintain records and consent to the state's jurisdiction.

New Section 2 makes it unlawful for any person, other than a licensed OSS to ship direct to consumer, and makes it illegal for anyone to ship to a person less than 21 years of age. This section sets the penalties for such illegal conduct.

Sections 3, 4 and 5 amend current law to establish the new license category, set a \$25.00 annual fee, and require that an out-of-state shipper be licensed in their state of domicile.

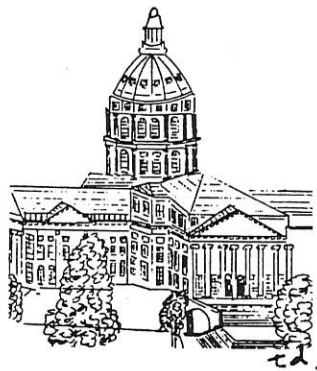


Section 6 makes it a crime for a person under 21 years of age to attempt to purchase or obtain alcoholic liquor from out-of-state via mail, telephone or electronic means.

Conclusion

HB 2887 is a reasoned approach to address the new age of commerce,

prevent sales to minors, preserve state tax revenues, preserve the three-tier system, and safeguard the state's power to regulate alcoholic beverages within its borders. Please support HB 2887, with the amendments a suggested by the Department of Revenue.



WHAT IS THE CURRENT KANSAS LAW ?

41-724. Transportation of liquor into state forbidden; exceptions. No person or common carrier shall haul or transport alcoholic liquor in or into this state, for sale, or for storage and sale in this state, upon which the required labeling or gauging fee, tax, duty or license has not been paid, except for delivery to distributors, distillers, manufacturers, importers, blenders, rectifiers, wholesalers or jobbers maintaining a bonded warehouse within this state.

History: L. 1949, ch. 242, § 87; March 9.

HOUSE BILL No. 2887

By Committee on Federal and State Affairs

2-11

1-3

9 AN ACT concerning alcoholic beverages; relating to the unlawful sale,
 10 purchase and possession of alcoholic beverages; to provide for the
 11 crime of unlawful shipments of beverage alcohol to Kansas consumers
 12 under certain circumstances; to provide for registration and for pay-
 13 ment of fees and taxes on authorized shipments; relating to out-of-
 14 state shipper's licenses; amending K.S.A. 41-304 and 41-310 and
 15 K.S.A. 1997 Supp. 41-311 and 41-727 and repealing the existing
 16 sections.

17
18 *Be it enacted by the Legislature of the State of Kansas:*

19 New Section 1. (a) An out-of-state shipper's license shall allow the
20 licensee to:

21 (1) Ship not more than 24 individual containers of nonregistered al-
22 coholic beverages of not more than one liter each to any household in
23 this state during any twelve-month period;

24 (2) ship only to an individual who is at least 21 years of age for such
25 individual's personal use and not for resale.

26 (b) Such licensee shall:

27 (1) Ensure than all shipping containers of alcoholic beverages
28 shipped pursuant to this section are conspicuously labeled with the words:
29 "CONTAINS ALCOHOLIC BEVERAGES. ADULT (OVER 21) SIG-
30 NATURE REQUIRED FOR DELIVERY"; and are accompanied by a
31 bill of lading describing the contents of the shipping package;

32 (2) ensure that all shipments into this state are made by a duly li-
33 censed carrier and further ensure that such carriers comply with the re-
34 quirement to obtain an adult signature;

35 ~~(3) file such reports as may be required by the alcoholic beverage~~
36 ~~control on a quarterly basis concerning the amount, type and brand of~~
37 ~~alcoholic beverages shipped pursuant to the license;~~

38 (4) file a quarterly report with the director of alcoholic beverage control
39 showing the total number of bottles or cases shipped into the state,
40 the type of alcoholic beverage or cereal malt beverage shipped and the
41 name brands of such shipments;

42 (5) pay to the alcoholic beverage control on a quarterly basis all sales
43 and excise taxes due on sales to residents of this state during the preceding

All references to
"alcoholic beverages" should be
to "alcoholic liquor"

◆ ◆ ◆

(2) ensure that all shipments into
this state are made by a common carrier
and further ensure that such carriers
comply with the requirement to obtain
an adult signature.

(3) delete

(4) (add) ...and other reports as may
be required by the director.

(5) pay to the state department of revenue
on a quarterly basis all gallonage taxes
as required by KSA 41-501 et.seq. relating
to and all excise taxes as would be due
from retail liquor licenses as required
by KSA 79-4101 et.seq. due on sales made
to residents of this state during
the preceding quarter.

1-3

1 quarter, the amount of such taxes to be calculated as if the sale took place
2 at the location where the delivery is made;

3 (6) maintain such records for at least three years as will permit the
4 alcoholic beverage control to ascertain the truthfulness of the information
5 filed and permit the alcoholic beverage control to perform an audit of
6 the licensee's records upon reasonable request; and

7 (7) be deemed to have consented to the personal jurisdiction of the
8 alcoholic beverage control or any other state agency and the courts of this
9 state concerning enforcement of this section and any related laws or rules
10 and regulations.

11 (c) This section shall be part of and supplemental to the Kansas liquor
12 control act.

13 New Sec. 2. (a) It is unlawful for any person domiciled outside the
14 state of Kansas to ship alcoholic beverages or cereal malt beverages to
15 Kansas consumers, except as otherwise provided by this act.

16 (b) It is unlawful for any manufacturer of alcoholic beverages domi-
17 ciled outside the state of Kansas to ship directly to any consumer less
18 than 21 years of age.

✓ 19 (c) Any person who makes, ^{OR} ~~participates in,~~ transports, imports or re-
20 ceives a shipment in violation of this act shall be guilty of a severity level
21 10, nonperson felony and further may be subject to a civil penalty of not
22 more than \$500 for the first offense and \$1,000 for each subsequent
23 offense.

24 (d) Where the person holds an out-of-state shipper's license, license
25 suspension or revocation may be in addition to or in lieu of the foregoing
26 penalties.

27 (e) Upon determination by the director that a manufacturer holding
28 a basic permit from the federal bureau of alcohol, tobacco and firearms
29 has made an illegal shipment to consumers in Kansas, the director shall
30 notify the bureau of alcohol, tobacco and firearms in writing and by cer-
31 tified mail of the director's official determination that state law has been
32 violated and request the bureau to take appropriate action.

33 (f) This section shall be part of and supplemental to the Kansas liquor
34 control act.

35 Sec. 3. K.S.A. 41-304 is hereby amended to read as follows: 41-304.
36 Licenses issued by the director shall be of the following classes: (a) Man-
37 ufacturer's license; (b) spirits distributor's license; (c) wine distributor's
38 license; (d) beer distributor's license; (e) retailer's license; (f) microbrew-
39 ery license; (g) farm winery license; and (h) nonbeverage user's license;
40 and (i) out-of-state shipper's license.

41 Sec. 4. K.S.A. 41-310 is hereby amended to read as follows: 41-310.

42 (a) At the time application is made to the director for a license of any
43 class, the applicant shall pay the fee provided by this section.

27 Sec. 5. K.S.A. 1997 Supp. 41-311 is hereby amended to read as fol-
28 lows: 41-311. (a) *The provisions of subsection (h) shall provide for the*
29 *qualifications for an out-of-state shipper's license.* No license of any kind
30 shall be issued pursuant to the liquor control act to a person:

31 (1) Who has not been a citizen of the United States for at least 10
32 years, except that the spouse of a deceased retail licensee may receive

Sec. 5:

No license of any kind shall be issued pursuant to the liquor control act to a person, except that only the provisions of subsection (h) shall provide for the qualifications for an out-of-state shipper's license.

Twenty One States Prohibit Direct Shipping



Arizona, Arkansas, Delaware, Florida, Georgia, Indiana, Kansas, Kentucky, Maine, Maryland, Mississippi, Montana, New Hampshire, New York, North Carolina, North Dakota, South Dakota, Tennessee, Texas, Utah and Virginia.

Nineteen States and Territories Allow Direct Shipment Under a Host of Tight Regulatory Conditions

Alabama, Alaska, Connecticut, District of Columbia, Hawaii, Louisiana, Massachusetts*, Michigan, Nebraska, Nevada, New Jersey, Ohio, Oklahoma, Pennsylvania, Puerto Rico, Rhode Island, South Carolina, Vermont, Wyoming

* The Massachusetts Alcoholic Beverage Control Commission reported in 12/97 that it is currently illegal to direct ship into their state.

Twelve States Have Reciprocal Arrangements Allowing Direct Shipment of Wine Only, and Only to States with Reciprocal Agreements

California, Colorado, Idaho, Illinois, Iowa, Minnesota, Missouri, New Mexico, Oregon, Washington, West Virginia, Wisconsin

Source: National Conference of State Legislators, October/November 1997

<http://www.araa.org/state.htm>

2/23/98

Americans for Responsible Alcohol Access

818 Connecticut Ave., NW / 2nd Floor / Washington, DC 20006 / Toll Free (888) 660-ARAA / (202) 216-9300

1-5



STEVE L. BARSBY & ASSOCIATES, INC.
 12685 Wilderness Way Suite 200
 Molalla, Oregon 97038

FEB 13 1999

Consulting Economists

503-829-6244

FAX: 503-829-6248

Lost State Excise & Sales Tax Revenues from Direct Shipping

	Beer (\$000)			Wine (\$000)			Spirits (\$000)			Total (\$000)		
	Excise	Sales	Total	Excise	Sales	Total	Excise	Sales	Total	Excise	Sales	Total
AL	1,639	1,177	2,816	1,206	2,375	3,582	109	29	137	2,954	3,581	6,535
AK	27	0	27	44	0	44	9	0	9	81	0	81
AZ	50	237	287	312	1,304	1,615	20	32	52	382	1,572	1,954
AR	48	140	189	108	460	568	3	5	9	160	806	766
CA	416	1,951	2,367	58	1,151	1,209	227	423	650	702	3,525	4,226
CO	0	50	59	32	197	229	11	13	24	51	261	312
CT	32	152	184	88	549	637	50	68	118	150	770	920
DE	7	0	7	80	0	80	15	0	15	81	0	81
DC	2	28	30	5	122	127	1	8	9	9	158	167
FL	1,543	2,500	4,043	3,724	9,018	12,740	488	473	961	5,755	11,989	17,744
GA	350	541	891	657	1,041	1,698	74	77	151	1,081	1,659	2,740
HI	372	325	697	228	543	769	22	17	39	620	886	1,505
ID	7	36	43	15	108	123	41	18	57	62	161	223
IL	20	272	292	49	1,044	1,093	27	80	107	96	1,396	1,492
IN	24	157	181	90	688	786	15	28	41	129	879	1,008
IA	31	125	156	602	1,385	1,987	30	16	47	884	1,536	2,200
KS	20	0	20	12	0	12	4	0	4	36	0	36
KY	8	96	103	74	709	784	3	8	11	85	813	898
LA	218	428	642	6	164	170	10	15	25	282	606	888
ME	54	152	206	39	312	351	47	21	68	140	485	625
MD	12	102	114	54	519	574	5	16	22	72	638	709
MA	7	48	55	55	402	457	53	68	121	115	518	633
MI	139	688	827	213	1,928	2,141	238	108	345	589	2,704	3,293
MN	34	212	247	32	476	508	52	68	120	119	756	874
MS	189	451	620	0	0	0	26	19	44	195	469	664
MO	7	76	83	58	530	588	16	20	36	81	627	708
MT	6	0	6	85	0	85	21	0	21	112	0	112
NE	28	96	123	69	350	420	4	7	11	101	462	554
NV	5	50	54	20	213	234	5	16	21	30	279	309
NH	45	198	244	0	0	0	49	46	95	94	244	338
NJ	33	256	289	261	1,793	2,053	111	159	270	404	2,208	2,613
NM	130	252	382	243	513	756	24	20	45	397	786	1,183
NY	413	1,887	2,100	543	9,300	9,843	430	303	733	1,366	11,290	12,676
NC	515	768	1,383	335	1,291	1,627	251	66	318	1,202	2,126	3,327
ND	5	24	29	11	85	96	1	2	3	17	111	128
OH	119	53	171	89	113	202	186	7	195	396	173	568
OK	159	284	443	121	593	715	22	19	41	302	897	1,199
OR	7	0	7	99	0	99	218	0	218	323	0	323
PA	40	365	405	0	8,293	8,293	288	119	407	328	8,777	9,105
RI	3	31	34	25	215	240	9	16	25	36	262	298
SC	657	752	1,409	341	1,208	1,549	10	19	29	1,009	1,979	2,988
SD	19	45	64	53	179	232	2	2	4	74	226	299
TN	26	188	214	450	1,822	2,272	21	31	53	498	2,041	2,538
TX	285	1,381	1,666	67	1,422	1,489	31	78	110	383	2,881	3,264
UT	40	90	130	0	487	487	32	0	41	72	586	656
VT	15	46	61	16	121	137	28	10	38	58	178	236
VA	182	357	539	1,228	2,312	3,539	270	63	333	1,680	2,731	4,411
WA	80	368	448	283	1,456	1,739	324	128	453	686	1,952	2,640
WV	20	105	125	148	730	878	10	10	20	177	846	1,023
WI	8	90	98	26	383	409	18	29	47	52	502	554
WY	0	2	2	3	23	26	4	2	6	6	27	34
Total	8,181	17,411	25,592	12,316	57,947	70,263	3,868	2,790	6,758	24,466	78,148	102,614

Source: Steve L. Barsby & Associates, Inc.

1-6

Kansas Wine & Spirits Wholesalers Association **DISTRIBUTOR'S DISPATCH**

NEWSLETTER FOR THE KANSAS BEVERAGE ALCOHOL INDUSTRY
Vol. 6 January, 1998

Americans for Responsible Alcohol Access Formed in Reponse to Growing Public Concerns

A new effort to combat underage access to alcohol via the Internet was announced recently. Americans for Responsible Alcohol Access (ARAA), a coalition established to prevent the illegal direct shipment of alcoholic beverages, and to discourage underage access to these products, was formed in response to growing government and public concern about how Internet technology and toll-free telephone numbers are being used increasingly to circumvent state alcohol distribution and control systems.

At a recent press conference in Washington, D.C. coalition leaders said that in the name of "consumer freedom," direct shippers of alcoholic beverages seek to increase profits by avoiding taxes and state-monitored and regulated systems for alcohol by marketing and shipping their products directly to consumers. They said that what began as a cottage industry catering to collectors who wanted to acquire hard-to-find wine and micro-brewed beer has become a coast-to-coast, \$1 billion a year illegal enterprise. ARAA says that this trade violates state laws and prerogatives, presents a significant public safety risk, and makes a mockery of state and community efforts to strictly enforce laws against underage purchase and use of alcoholic beverages.

ARAA believes that alcoholic beverages must be tracked and controlled by state governments, and that direct-to-consumer shipping of alcohol runs counter to this national priority. The organization supports legitimate efforts by state governments to allow connoisseurs and other adult purchasers to acquire unusual or rare beer, wine and spirits, and to place orders through the Internet or toll-free numbers.

Americans for Responsible Alcohol Access



ARAA Objectives

- + Raise public awareness about consumer-direct shipping of alcoholic beverages as illegal activity that has dangerous social consequences, especially the ease with which children can have access to alcohol via the Internet and toll-free phone numbers.
- + Advocate strict enforcement of existing alcoholic beverage control laws, and support efforts to upgrade state laws to make consumer-direct shipment of alcoholic beverages a felony.
- + Work with coalition members and state and community partners to promote responsible alcoholic beverage distribution, sales and consumption.
- + Conduct public awareness activities about the tragic consequences of underage access to alcoholic beverages.

Americans for Responsible Alcohol Access Members include (as of December 1997)

- SADD (Students Against Destructive Decisions/ formerly Students Against Drunk Driving)
- American Trauma Society
- Emergency Nurses Association
- National Assn. of Governor's Highway Safety Representatives
- American Coalition for Traffic Safety
- National Licensed Beverage Association
- Emergency Nurses CARE (ENCARE)
- National Beer Wholesalers Association
- National Association of Beverage Retailers
- National Assn of Alcoholism & Drug Abuse Counselors
- Virginia Alcoholic Beverage Control Board
- Wine & Spirit Wholesalers of America
- American Assn of Motor Vehicle Administrators
- Campaign for Alcohol Free Kids, Inc.

Supporters:

- National Highway Traffic Safety Administration
- Mothers Against Drunk Driving (MADD)

Distributor's Dispatch
R.E. "Tuck" Duncan, Editor
214 SW 7th Street, Topeka KS 66603

Underage Access A Major Concern

At the press conference the SADD Student of the Year commented that through Internet and toll-free phone ordering, anyone with a credit card, debit card or money order can now have beer, wine or spirits delivered to their doorstep. College students for example - most of whom go off to school with a credit card but typically don't turn 21 until their junior year - don't need to scam a local convenience store to acquire alcohol... it can be delivered right to their dormitory, she said. Similarly, enterprising high school students can use money orders or debit cards to order alcohol delivered to the door - during the day when parents are at work.

Choice vs. Public Safety

Those advocating consumer-direct shipping find it more profitable to operate outside the system and cleverly play to the American love of convenience. In the name of "consumer freedom," they argue for unfettered access to alcoholic beverages, and consider any regulation whatsoever to be akin to "prohibition." But what's at stake is not simply consumer convenience and choice. It's a much broader issue - our willingness to permit technology and expediency to bypass time-honored safeguards, effectively dismantling the system of state and community controls on access to alcoholic beverages.

The alcoholic beverage distribution system in the United States has been in place for more than six decades. It resulted from a societal decision that alcohol, albeit legal, should be treated differently from other consumer products - including actions to prevent sales to those under age 21. The alternative is to allow the direct-shippers to fulfill their stated goal - the free trade in alcoholic beverages. The existing "three tier" system - licensed producers, wholesalers and retailers - is that control system.

States have an interest in preserving this system, it's how alcohol is controlled in this country, and is the gatekeeper to restrict underage access.

ARAA supports the use of the Internet and other consumer-friendly efficiencies in ordering merchandise of all kinds. However, it also is committed to protecting the public's health and quality of life by making sure that alcoholic beverages are tracked, regulated and sold by licensed entities, and that there is a verifiable means of denying sales to minors.



Direct Shipping Loots State

Coffers Consumer-direct shipment of alcohol directly threatens state treasuries because, in most cases, it evades state excise and sales taxes. At risk is more than \$8.7 billion in state revenues generated by alcohol excise taxes. What's more, states are increasingly dependent on revenues generated by alcohol, with revenues having jumped nearly 40 percent in the last decade in nearly 20 percent since 1990. In addition, federal receipts from alcohol excise taxes totaled \$7.8 billion while state and local governments took on \$9.8 billion. Revenues lost to illegal direct shipping will need to be made up elsewhere.

Q&A

Question: Aren't concerns about direct shipping and underage drinking overblown? Aren't teenagers more likely to illegally buy alcoholic beverages at local outlets than go through the hassle and delay of ordering via direct shipment?

Answer: Quite the contrary, as shown by numerous "stings" in several states in which shipments of alcohol to minors have been intercepted. We should not permit modern technology to make it easier for teens to get access to alcohol. Teens are very resourceful, especially when it comes to acquiring alcohol. Direct shipment allows them to avoid the risk of purchasing from a local outlet. No longer do they have to forge fake ID's and chance getting caught and arrested for buying alcohol at a store monitored by the police. All they have to do is call a toll-free number or get on the Internet and mouse-click "yes" to the question of whether they are of age. In many cases, direct shippers don't label their packages. Most Americans agree that direct shipping is a Pandora's Box to underage access. Direct shipment of alcohol to customers is an open invitation for youngsters to log on to the Internet, download "cyberliquor" or order via toll-free calls that don't show up on their parents' phone bill. A recent poll confirmed that most American believe this is a bad idea - 85 percent believe "the sale of alcohol over the Internet or through the mail should not be allowed because it would give minors easier access to alcohol and could result in more abuse." -Source: *Wirthlin Worldwide/November 1997*

Poll shows most Americans oppose direct shipping

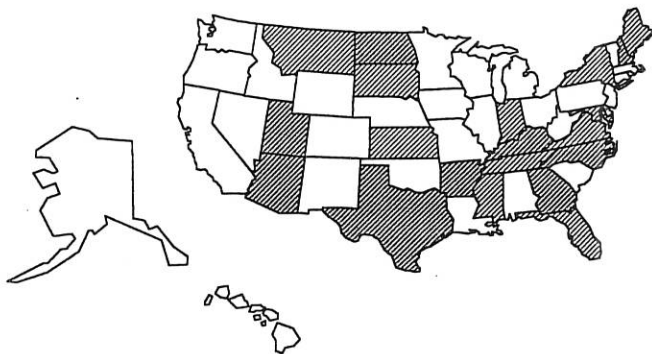
The Americans for Responsible Alcohol Access hired Wirthlin International to conduct a poll in November which found that Americans in general give direct shipping a solid thumbs down.

Overall, the 1,012 people polled nationwide by Wirthlin, one of the most respected names in opinion research, said they are willing to pay a little more for special orders and give up the convenience of doorstep delivery because they want to keep the safeguards currently enforced on wine, liquor and beer.

Specifically, the survey results showed that:

- 81 percent did not know that alcohol beverages could be purchased through the internet or through the mail.
- Once told that such sales are possible, 69 percent opposed direct wine, liquor and beer deliveries to consumers.
- 85 percent agree that the sale of alcohol beverages over the Internet or through the mail should not be allowed because it would give minors easier access to alcohol and could result in more abuse.
- 77 percent are opposed to direct shipping because it permits alcohol beverages to be sold in a way that cannot be controlled, regulated or tracked by state governments.
- 64 percent agree that direct shipping causes states to lose revenue that will have to be recouped by increases in other taxes for in-state residents and,
- 70 percent agree that delivery drivers cannot be trusted to check identification to be sure the recipient at the home is age 21 or older.

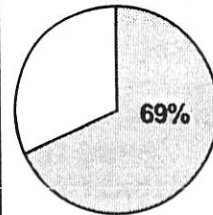
Americans for Responsible Alcohol Access Twenty-One States Prohibit Direct Shipping



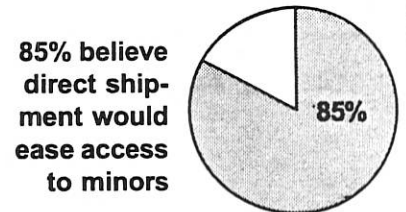
Arizona, Arkansas, Delaware, Florida, Georgia, Indiana, Kansas, Kentucky, Maine, Maryland, Mississippi, Montana, New Hampshire, New York, North Carolina, North Dakota, South Dakota, Tennessee, Texas, Utah and Virginia

Source: National Conference of State Legislators, October/November 1997

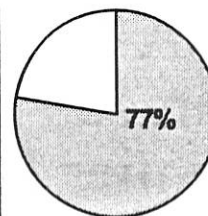
America's opinions on direct shipping



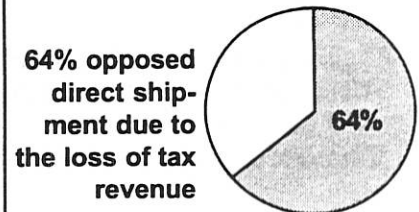
69% oppose direct shipment of alcohol



85% believe direct shipment would ease access to minors



77% support controls on alcohol shipment

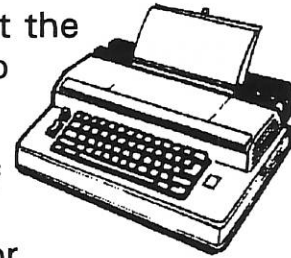


64% opposed direct shipment due to the loss of tax revenue

Results of of the Wirthlin Worldwide poll are based on a random telephone survey made of 1,012 U.S. adults

IN THE NEWS

It was recently reported in the Kansas City Star that the Missouri Attorney General has asked for an injunction to prevent Hog's Head Beer Cellars, N.C., from selling beer without a Missouri license, engaging in the sale of alcohol to those under 21 and failing to verify the age of customers. A hearing was held in December, 1997.



Acting under the supervision of state attorneys and liquor control agents, an 18 year old successfully ordered beer from a Hog's Head Internet WebSite. The package with the beer was reportedly left on a doorstep in St. Louis. No one signed for it and there were no instructions that it be delivered to only someone over 21 years old. Missouri's action is one of several in various states. New York has launched several undercover operations. Cease and desist orders were filed in Georgia and North Carolina. According to the Star, Kansas officials believe the illegal sale over the Internet has the potential for several problems, including the loss of state liquor tax revenue.

Happy New Year
from
Kansas' Wine and Spirits
Wholesalers:
A-B Sales
Famous Brands
Premier Beverage
Standard Beverage



**Kansas Wine & Spirits
Wholesalers Association
214 SW 7th Street
Topeka, Kansas 66603**

TESTIMONY PRESENTED TO THE HOUSE FEDERAL AND STATE AFFAIRS
COMMITTEE

February 23, 1998 RE: HB 2887

by

Marge Roberson, President
Kansas Retail Liquor Dealers Association

Thank you Mr. Chairman and members of the committee. I am here today on behalf of the Kansas Retail Liquor Dealers Association to ask for your support of HB 2887.

As Mr. Duncan explained, this legislation strengthens current law. Our Association is only interested in this type of legislation if it gives the ABC and local law enforcement the necessary tools to stop illegal shipment of liquor products. We believe this legislation does that.

Attached to my testimony are copies of just a few examples of products mail-order companies are shipping into this state. The Internet lists over 300,000 sites that have the potential to ship into Kansas. It is not limited to mail-order catalogues, or the Internet, as products are also shipped into this state by liquor outlets from other states, and also by some producers. We believe this law will stop most of those illegal shipments and also allow the Kansas consumer legal access to products not currently offered in this market.

A concern expressed by members of our association was that additional, stronger laws will not be helpful if the ABC and the Department of Revenue do not attempt to actively enforce the law if it is adopted. To address this issue, we are asking for an amendment.

The KRLDA amendment would earmark funds raised by this law for enforcement of this law. We would ask that the registration fees collected be used for administration and enforcement of this law. However any penalties and fines would be earmarked for enforcement only, not administration. The law enforcement unit causing the penalty or fine to be imposed would be allowed to keep most of the money from the fine or penalty. This provision would provide an incentive to local law enforcement to be diligent in helping us have this law enforced, as well as providing the funds to facilitate enforcement. The state would benefit by collecting more taxes on the legal sale of products, so the state general fund isn't left out entirely. A copy of the proposed amendment is attached to my testimony.

We would ask for your favorable consideration of both our amendment and this legislation.

Mr. Chairman, thank you for allowing me to testify.

Fed. State
2-23-98
Atch #2



Kansas Retail Liquor Dealers Association

400 SW Croix
Topeka KS 66611

Phone & Fax 913-266-3963

Marge Roberson, President

Maureen Price, Office Manager

January 7, 1998

Bernie Norwood, Director
Alcohol Beverage Control
4 Townsite Plaza, # 210
129 SE Sixth Street
Topeka, KS 66603

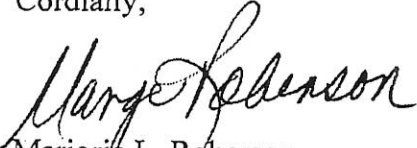
Bernie,

I just wrote a letter to a catalog company that sells wine and spirits through the mail and will ship to their customers. I have included a copy of that letter for your files. I also provided in that letter the ABC address in case they wanted verification of the law.

I know it would be practically impossible for the ABC to contact every catalog and internet address, but I would request that you send a formal letter to the wineries in California explaining it is against the law to ship into Kansas. I think the compliance rate from the wineries would increase considerably if they received a written notice from your office. I am sure the California regulatory board would have a list with addresses of all the wineries in their state. It would also help the liquor retailers in Kansas feel they are receiving some support from you if your office is addressing the problem in some way.

Thank you for your time and consideration.

Cordially,


Marjorie L. Roberson
President

copy: Rebecca Rice



Kansas Retail Liquor Dealers Association

400 SW Croix
Topeka KS 66611

Phone & Fax 913-266-3963

Marge Roberson, President

Maureen Price, Office Manager

January 7, 1998


Celebration Fantastic
104 Challenger Drive
Portland, TN 37148-1723

I received a copy of your catalog from a friend of mine, and in it I noticed you had both wine and spirits for sale and were willing to ship to your customers. There were restricted states listed, such as Florida, Utah and Kentucky, but you did not list Kansas.

As President of the Kansas Retailer Dealers Association, I would like to ask you to also list Kansas as a state that does not allow shipment of wines, beer or spirits. We are currently looking at legislation that would increase the penalty for illegal shipping into Kansas, and I know a magazine of your caliber would prefer to stay within the law.

Thank you for your consideration in this matter. If you have any questions or a response to this letter, you may reach me at the above address. You may also contact the Alcohol Beverage Control, 4 Townsite Plaza, # 210, 129 SE Sixth Street, Topeka, KS 66603, for the exact ruling.

Cordially,


Marge Roberson
President

copy: Rebecca Rice, Attorney at Law

CONTINUED FROM 50

Although the beer distribution endeavors never solidified, the exposure to the beer business inspired Mr. Dion, then in his mid 50s and with retirement lurking ahead, to start his own brewery. He invested his savings and bought the small Massawippi brewery in Quebec that was in danger of closing permanently. Then, in 1993, the brewery operations were moved to Chambly.

When Dion first took over the Massawippi brewery, he continued to produce the pale ale that was brewed there before he took control of the brewery. However, his passion for the beers experienced while in Belgium led to a desire to produce beers that were different and unique. First he needed to find the right brewer. "I wanted a young brewer with no bad habits," says Dion with a smile. "Old Belgian brewers would want it 'this way' and no way else." It wasn't Dion's intention to replicate Belgian beers, but rather to take the Belgian brewing tradition and build on it to create a uniquely Quebecois product.

Enter Gino Vantieghem. A graduate of

Belgium's Leuven University, Mr. Vantieghem was recruited by Dion in Belgium, where he worked as a biochemical engineer specializing in spirits technology. To ensure quality, Unibroue's first original product, a Belgian white-style beer called Blanche de Chambly, was produced by Vantieghem

with the assistance of the Belgian brewing group Riva, producers of Dentergems Wit, among others. All nine products currently produced at Unibroue have evolved from to the creative efforts of Gino Vantieghem, who continues to cross brewing boundaries as Unibroue's Master Brewer. ■

Single Malt / Spirits Specialists
WINE AND LIQUOR DEPOT
500 Single Malts • Largest Selection in the U.S.

MACALLAN 12yr..... \$ 28.99	THE EDRAOOUR 10yr... \$ 37.50	TALISKER 10yr..... \$ 37.50
LAGAVULIN 16yr..... 38.95	GLENMORANGIE '71..... 149.95	BOWMORE Legend..... 19.99
BALVENIE Dblwood..... 28.50	BALLANTINE'S 30yr..... 310.00	GLENMORANGIE 10yr..... 25.99
SPEYBURN 10yr..... 15.49	INCHMURRIN 10yr..... 27.95	ARBEG 20yr..... 77.95
SPRINGBANK 21yr..... 64.99	MACALLAN 18yr..... 47.99	MURRAY MCDAVID
DALMORE 12yr..... 20.49	SPRINGBANK 30yr..... 225.00	LAPHROAIG 9yr..... 49.95

CADENHEAD'S • SIGNATORY • GLENHAVEN
WHYTE & WHYTE • GORDON & MACPHAIL

Finest Selection of Cognacs • Armanacs
 Single Barrel Bourbons • Calif. Wines

J. WALKER Blue..... \$ 147.95	COURVOISIER XO..... \$ 99.95	CHIVAS Royal Salute..... \$ 119.95
BOOKERS..... 43.50	LOUIS XIII..... CALL	A.H. HIRSCH 16yr..... 37.95
CHIVAS CENTURY..... 53.95	ERTE COLLECTION..... CALL	J. WALKER Gold..... 45.95

16938 Saticoy St.
 Van Nuys, CA 91406
 (Los Angeles Area)
 (818)996-1414

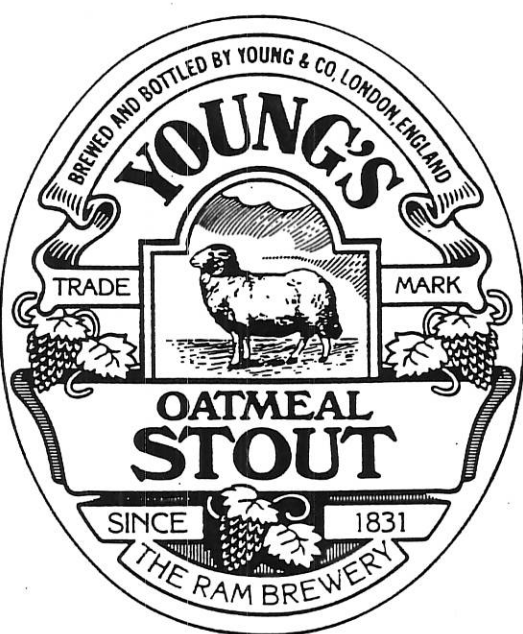
Call Toll Free We Ship!!
1-888- 622-1414
Fax:1-818- 996-3161
<http://www.wine-and-liquor-depot.com>

eXplore Style.



eXtra Strong.
eXtra Special.
eXtra Sensory.

Rogue Private Locker XS Ales
 Brewed and bottled in Newport, OR
 For more information, call 541.867.3660



Nothing's as Special as Young's.

Imported by Belukus Marketing, Inc. (512) 320-9111

2-4

1994 PORTS

	Bottle	Case
Cockburn (92)	42.50	499.00
<i>"A big and juicy, young vintage Port." WS.</i>		
Croft (96)	59.99	719.00
<i>"... best Croft since 1945." WS.</i>		
Ferreira	34.99	419.00
Graham's (95)	100.00	1199.00
Quinta do Vesuvio (96)	79.99	959.00
<i>"... greatest Vesuvio this century." WS.</i>		
Taylor Fladgate (100)	150.00	1799.00
<i>"Perhaps the greatest Taylor ever..." WS.</i>		
Warre (95)	49.99	599.00
<i>"... the finest Warre's I have ever tasted..." WA.</i>		

Two Great 1995 Ports

Taylor 'Quinta de Vargellas' 38.99	467.00
Taylor 'Quinta de Vargellas' (375ml)	20.99 495.00
<i>Arguably the finest of all Port quintas. The last Quinta de Vargellas (1991) was judged, in blind tastings, to be the best Port that year.</i>	
Fonseca 'Guimaraens'	38.99 467.00
<i>The harvest was excellent, yet Fonseca decided to declare 1995 under its second label. Guimaraens comes from the same three properties as the 'classic' Fonseca Port, & thus is equally powerful, consistent to the house style & packed with big fruit.</i>	

Additional Ports

Dow 1983 (94)	60.00 715.00
Fonseca 1985 (95)	95.00 1125.00
Fonseca 1977 (100)	250.00 2950.00
Fonseca 1970 (96)	175.00 2050.00
Graham's 1977 (90)	110.00 1299.00
Graham's 1970 (94)	165.00 1950.00
Sandeman 1977	70.00 840.00
Taylor Fladgate 1977 (98)	125.00 1450.00
Taylor Fladgate 1970 (98)	175.00 2050.00
Taylor Fladgate 1963 (97)	275.00 3250.00

PAGE 4

DISCOUNTS

Purchase any 2 cases, deduct 5%
Purchase any 3 cases, deduct 10%
Cannot be combined with other discounts

SUPREME EXPRESSIONS OF THE SYRAH GRAPE

Cote Rotie & Hermitage

	Bottle	Case
Cote Rotie 'Jumelles' (Jaboulet) 1995	39.99	479.00
Hermitage 'Pied de la Cote' (Jaboulet) 1995	27.99	335.00
<i>Less powerful than Hermitage 'La Chapelle', but also more approachable young.</i>		
Hermitage 'Emile' (Desmeure) 1995	39.99	479.00
<i>Profound concentration & depth.</i>		
Hermitage 'Miaux' (Ferraton) 1995	39.99	479.00
Hermitage 'Sizeranne' (Chapoutier) 1995	50.00	600.00
<i>Our favorite 1995 Hermitage; layers upon layers of lush, silky fruit. "... excellent richness..." WA.</i>		
Hermitage 'La Chapelle' (Jaboulet) 1995 (93)	65.00	780.00

Crozes Hermitage

Chapoutier 'Meysonnier' '95	17.99	215.50
<i>Very full-bodied, almost the concentration of a Hermitage.</i>		
Jaboulet 'Thalabert' 1995 ..	19.99	239.50

WHITE BORIS AUX

Dry White Bordeaux

	Bottle	Case
Carbonnieux 1995	21.99	263.00
de Fieuzal 1994	52.50	625.00
Dom. de Chevalier '94 (91)	89.95	1069.00
Haut Brion Blanc '94 (96)	239.00	2865.00
Olivier 1995	15.99	185.00
Pavillon Blanc 1995	45.00	525.00
Plantiers du Haut Brion '95	25.99	310.00
Plantiers du Haut Brion '94	28.99	345.00
<i>The second wine of Haut Brion Blanc... fantastic!</i>		
Smith Haut Lafitte '94 (90)	39.95	469.00

Sauternes

Coutet 1988 (91)	45.00	530.00
d'Arche 1990 (93)	37.99	449.00
de Malle 1990 (95)	52.50	625.00
Guiraud 1987 (375ml)	12.99	299.00
Raymond Lafon '85 (375ml)	27.99	669.00
Suduiraut '90 (375ml) (93)	30.99	739.00
Yquem 1990 (97)	210.00	2499.00
Yquem 1990 (375ml) (97)	105.00	2499.00
<i>'90 is the last in a trio of spectacular vintages. Like many other wines in Bordeaux, once we are sold out of our current stocks, the prices will skyrocket.</i>		
Yquem 1989 (97)	215.00	2550.00
Yquem 1988 (96)	210.00	2500.00
Yquem 1983 (97)	349.00	4150.00
<i>"... a staggering display of extract..." WA.</i>		

PERRIER JOUET

Our All-Time Favorite Champagne
 'Fleur de Champagne' '89 . 72.95 875.00
A pure & elegant Champagne like no other.
 'Fleur' 1989 (w/ 4 glasses) 89.95
 'Fleur de Champ.-Rose' '88 83.95 999.00

AUCTION ACTION

- OUR MOST IMPORTANT SALE EVER - OVER \$4,000,000 WORTH OF WINE
Friday, December 5th (2:00 PM) and Saturday, December 6th (10:00 AM)
at Christie's 502 Park Avenue, New York City

HIGHLIGHTS FROM THIS SALE INCLUDE:

The Wine Of The Vintage Superlot - Haut Brion 1989:
30 cases bottles, 3 cases magnums, 1 jeroboam - estimate \$160,000-220,000

The Golden Decade Superlot - 5 cases each
Cheval Blanc 1982, Mouton Rothschild 1982, Margaux 1982, Lafite Rothschild 1982,
Mouton Rothschild 1986, Margaux 1986, Lafite Rothschild 1986 - estimate \$140,000-200,000

10 cases of Petrus 1982 • 10 cases of Petrus 1989 • 10 cases of Petrus 1990
14 cases of Ausone 1982 • 37 cases of Lafite Rothschild 1982 • 18 cases of Cheval Blanc 1982 19 cases
of Mouton Rothschild 1982 • 20 cases of Margaux 1982 • 9 cases of Palmer 1983
40 cases of Margaux 1986 • 20 cases of Latour 1990 • 5 cases of Latour 1982
1 case of double magnums of Mouton Rothschild 1982 • An imperial of Mouton Rothschild 1982
1 case of double magnums of Petrus 1989 • 1 case of magnums of Lafleur 1982

AND MORE

1 case of Petrus 1961 • 11 bottles of Cheval Blanc 1947 • A magnum of Latour a Pomerol 1961
A magnum of Mouton Rothschild 1945 • A Superlot of 7 jeroboams of 1993 DRC wines
A jeroboam of Lafite Rothschild 1961 • 12 bottles of Quinta do Noval Nacional 1963
A 25 case parcel of Dominus 1994 • 1 case of Romanee Conti 1970

To order catalogue #8794Z for this sale please call 800-395-6300
 Monday-Friday 9:00 AM - 5:00 PM EST.
 Mail and fax bids gladly accepted.



For sale and consignment inquiries please contact Kevin Swersey of Zachys at 914-723-6560 or Fritz Hatton of Christie's at 212-546-5830.

Customers are reminded that various states impose limitations on the quantity of alcoholic beverages which may be purchased and brought into their jurisdiction by a purchaser from another state, without requiring the purchaser, a seller or shipper to possess certain licenses or permits. Zachys does not, as a condition to sale, assume any obligation nor bear any responsibility whatsoever for applying for or obtaining any permits or licenses. Therefore, a customer is advised to investigate the possibility of such limitations and to determine the manner in which alcoholic beverages shall be brought into its state from New York so as to comply with all of said state's requirements.

The Zachys Gazette





Be Prepared For Those Martini Emergencies!

You'll never run out of the classic Martini's essential ingredients when you keep this emergency kit on hand. Just break the seal, shake it up, and take a sip. Includes your choice of a full size bottle of Stoli Vodka or Tanqueray Gin (please specify), vermouth, olives, two glasses and a stainless steel cocktail shaker. Bottoms up! Include recipient's date of birth when ordering. No gift box. Allow 3 weeks. No shipments to FL, KY, or UT.

BE7600 \$150 ☆
(Freight surcharge \$10)



Refer To These PJ's When You Can't Decide What To Have As A Nightcap

Covered with clever interpretations of classic cocktails, our cozy pajamas let you enjoy many of your favorite nightcaps all at once! You're sure to sleep soundly after a few nips of a Stinger, Grasshopper, Pink Lady, Manhattan and more. Top features two front pockets; pants adjust with a drawstring waist. 100% domestic cotton flannel. By Nick & Nora. Specify S(26-28), M(30-32), L(34-36) or XL(38-40).

BE6985 \$75

☆ Our Catalog Exclusive!



It's A Cocktail, It's A Table...It's A Cocktail Table!

"Shake-up" any room and try decorating "with a twist." Our exclusive fun and funky cocktail shaker table is pure Martini madness down to the last detail; the lid even comes off! Crafted from a silver-leaved base of hand-turned white pine, with a 30" round glass top. (Sorry, Martinis not included!) 11"DIA base, 32"H. Allow 10 weeks. No gift box.

BE7333 \$1350 ☆
(Freight surcharge of \$30)



WINE INSTITUTE

1601 Amherst Drive

Ames

Iowa 50014

(515) 292-1940

Facsimile (515) 292-5168

Charles E. McGrigg
Central States Counsel

February 23, 1998

TO: HOUSE FEDERAL & STATE AFFAIRS COMMITTEE

RE: HOUSE BILL 2887 - DIRECT SHIPPING

On behalf of the Wine Institute, a national trade association made up of over 500 California wineries, we would urge you not to adopt the provisions as contained in HB 2887.

At first blush, you might wonder why wineries would be opposed to legislation that purports to legalize a current illegal activity. The fact of the matter is that HB 2887 does not significantly address the national problem of direct shipping and Internet purchases. It is very narrowly drawn and exposes the wine industry to severe felony penalties for the atrocious act of shipping unauthorized wine to a consumer.

This issue is of national scope and can not be solved by regional action alone. To this end we are working with the National Conference of State Legislators, the National Conference of State Liquor Administrators, and the Council of State Governments to draft a model proposal that will allow for uniform treatment of this issue. It might surprise you to know that under current Kansas law, you the consumer, are in violation of your law if you bring any alcoholic beverage into Kansas. However, we prefer to operate under your current law than to face the potential mine fields contained in HB 2887.

Feds State
2-23-98
Atch #3

House Federal & State Affairs Committee
February 23, 1998
Page 2

The proponents of this measure would have you believe that the sky is falling and minors are rushing to the Internet to purchase product and states are going broke because of loss of revenue. However, these assertions do not stand up to the light of day. The fact of the matter is that this is not the source of choice for minors and the volume is so insignificant that it would probably not be cost effective to design a taxing scheme to collect the revenue.

Both of these issues are being addressed at the national level and the model draft has language that speaks to these matters.

Once again, we thank you for the consideration that you give this matter and would urge you to vote unfavorably on this bill. It is the wrong bill at the wrong time for the state of Kansas.

Sincerely,

Charles E. McGrigg

CEM/jm

3-2



SCHOWALTER VILLA

200 West Cedar • P.O. Box 5000 • Hesston, KS 67062-5000 • (316) 327-4261

TESTIMONY IN SUPPORT OF H.B. 2972

TO: Representative Garry Boston, Chair, and members of Federal & State Affairs Committee

FROM: Joyce Bedsworth, MN, MHS, NHA, RN, CS, CNA; Vice President Health Services Schowalter Villa

DATE: February 23, 1998

RE: House Bill 2972

Thank you Mr. Chairman, and Members of the Committee. On behalf of Schowalter Villa, I appreciate the opportunity to comment on House Bill #2972.

I am Joyce Bedsworth, Vice President Health Services, functioning in the role of Director of Nursing and Health Services for 8 1/2 years. I am a Master prepared Nurse and a Licensed Nursing Home Administrator in Kansas.

Schowalter Villa is a non-profit Mennonite owned and operated Continuing Care Retirement Community offering a broad range of services to older adults. The services offered range from independent living to those qualifying for Medicare Part A Skilled Nursing services including a special program for persons with memory loss. We currently serve 370 persons. Our mission is to offer **COMPETENT AND COMPASSIONATE CHRISTIAN CARE TO OLDER ADULTS**. Since 1991, we have received 3 Exemplary Awards for quality care from Kansas Department of Health & Environment.

We are very concerned about the impact of the Criminal Background Check law passed last year on our services. At this point we do not yet know how many of our staff will be impacted adversely. We along with all other Long Term Care Facilities in our area struggle daily to staff our organization. Quality workers, at the entry level with salaries of \$11,000 to \$16,000 annually, are extremely difficult to find in a county with an unemployment rate of 2.3.

One of our staff members that we are certain is affected by this legislation is a 38 year old male. In 1982, while intoxicated he committed a robbery and was convicted of this crime, serving two years in a Kansas prison and eight years on probation. He was up front in telling me briefly of this problem. In 1984, while on probation, he returned to work at the same Kansas nursing home prior to the robbery event. In 1997 he moved his family to Hesston and has been employed nearly 1 year with us.

The Kansas CNA registry shows him to be in "good standing". His work is exceptional. He has excellent relationships with staff, supervisors, residents & families.

We believe that this employee should be allowed to continue his work with us. We also believe that other employees may have histories equally unrelated to their current functioning especially when juvenile records are

Feds State
2-23-98
Atch #4

reviewed. Yet as an employer, we are required to terminate high performing employees who have not worked with us for 5 years (regardless if they have worked in long term care settings for many years). The cost to replace good workers, when we are already desperately short on quality workers, is great as well.

We ask that members of this committee support House Bill 2972. Additionally, can not currently high performing employees be grandfathered in, or at least continue to work until a determination is made that they are ineligible due "to lack of clear and convincing evidence of rehabilitation" by KDHE. In our facility, we will be hard pressed to convince our residents, family members, and employees of our need to discharge hard working, high performing employees due to historic events.

Thank you for your time. What questions can I answer?

Federal State
2-23-98
Attach # 5

HOUSE BILL No. 2972

By Committee on Federal and State Affairs

2-17

9 AN ACT concerning ~~adult care homes, relating to~~ background check of ^{certain}
10 employees; amending K.S.A. 1997 Supp. 39-970 ^{and 65-5117} and repealing the ex-
11 isting ~~section~~

12
13 *Be it enacted by the Legislature of the State of Kansas:*

14 Section 1. K.S.A. 1997 Supp. 39-970 is hereby amended to read as
15 follows: 39-970. (a) (1) On and after July 1, 1998, no person shall know-
16 ingly operate an adult care home if, in the adult care home, there works
17 any person who ~~is~~

18 (1) ~~(A) Has a felony conviction for~~ a crime which is described in
19 articles 34, 35 or 36 of chapter 21 of the Kansas Statutes Annotated and
20 acts amendatory thereof or supplemental thereto, except K.S.A. 21-3605
21 and amendments thereto; or a conviction of an attempt under K.S.A.
22 21-3301 and amendments thereto to commit any such act; or (B) has
23 been convicted of any act which is described in K.S.A. 21-4301 or 21-
24 4301a and amendments thereto or similar statutes of other states or the
25 federal government;

26 ~~(2) has been adjudicated a juvenile offender because of having com-~~
27 ~~mitted an act which if done by an adult would constitute the commission~~
28 ~~of a felony and which is a crime against persons; is any act described in~~
29 ~~articles 34, 35 or 36 of chapter 21 of the Kansas Statutes Annotated and~~
30 ~~acts amendatory thereof or supplemental thereto except K.S.A. 21-3605~~
31 ~~and amendments thereto; or is any act described in K.S.A. 21-4301 or~~
32 ~~21-4301a and amendments thereto or similar statutes of other states or~~
33 ~~the federal government;~~

34 ~~(3) capital murder, pursuant to K.S.A. 21-3439 and amendments~~
35 ~~thereto, first degree murder, pursuant to K.S.A. 21-3401 and amendments~~
36 ~~thereto, second degree murder, pursuant to subsection (a) of K.S.A. 21-~~
37 ~~3402 and amendments thereto, or assisting suicide pursuant to K.S.A. 21-~~
38 ~~3406 and amendments thereto;~~

39 ~~(B) has committed an act of physical, mental or emotional abuse or~~
40 ~~neglect or sexual abuse as validated by the department of social and re-~~
41 ~~habilitation services pursuant to K.S.A. 38-1523 and amendments thereto~~
42 ~~and (A) the person has failed to successfully complete a corrective action~~
43 ~~plan which had been deemed appropriate and approved by the depart-~~

certain

and 65-5117

sections

has been convicted of or has been adjudicated a juvenile offender because of having committed an act which if done by an adult would constitute the commission of

voluntary manslaughter, pursuant to KSA 21-3403 and amendments thereto,

rape, pursuant to KSA 21-3502 and amendments thereto, indecent liberties with a child, pursuant to KSA 21-3503 and amendments thereto, aggravated indecent liberties with a child, pursuant to KSA 21-3504 and amendments thereto, aggravated criminal sodomy, pursuant to KSA 21-3506 and amendments thereto, indecent solicitation of a child, pursuant to KSA 21-3510 and amendments thereto, aggravated indecent solicitation of a child, pursuant to KSA 21-3511 and amendments thereto, sexual exploitation of a child, pursuant to KSA 21-3516 and amendments thereto, sexual battery, pursuant to KSA 21-3517 and amendments thereto, or aggravated sexual battery, pursuant to KSA 21-3518 and amendments thereto, or similar statutes of other states or the federal government

ment of social and rehabilitation services, or (B) the record has not been expunged pursuant to rules and regulations adopted by the secretary of social and rehabilitation services;

(4) has had a child declared in a court order in this or any other state to be deprived of a child in need of care based on an allegation of physical, mental or emotional abuse or neglect or sexual abuse;

(5) has had parental rights terminated pursuant to the Kansas juvenile code or K.S.A. 38-1581 through 38-1584, and amendments thereto, or a similar statute of other states;

(6) has signed a diversion agreement pursuant to K.S.A. 22-2006 et seq.; and amendments thereto, or pursuant to K.S.A. 38-1635 and amendments thereto involving a charge of child abuse or a sexual offense;

(7)(C) has been found by the department of health and environment or the department of social and rehabilitation services under K.S.A. 39-1401 et seq. and amendments thereto to have committed an act of abuse, neglect or exploitation of a resident; or

(8)(D) has been found by the department of social and rehabilitation services under K.S.A. 39-1430 et seq. and amendments thereto to have committed an act of abuse, neglect or exploitation of an adult.

(2) On and after July 1, 1998, a person operating an adult care home may employ an applicant who has violated any of the following paragraphs (A) through (E) if such applicant demonstrates by clear and convincing evidence, and in accordance with the procedures established by the department of health and environment by rules and regulations, that such applicant has been rehabilitated.

(A) A felony conviction for a crime which is described in article 34 of the Kansas Statutes Annotated and amendments thereto, except K.S.A. 21-3401, subsection (a) of K.S.A. 21-3402, 21-3406 or 21-3439; articles 35 or 36 of chapter 21 of the Kansas Statutes Annotated and amendments thereto, except K.S.A. 21-3605 and amendments thereto; or a conviction of an attempt under K.S.A. 21-3301 and amendments thereto to commit any such act; or has been convicted of any act which is described in K.S.A. 21-4301 or 21-4301a and amendments thereto, or similar statutes of other states or the federal government.

(B) Been adjudicated a juvenile offender because of having committed an act which if done by an adult would constitute the commission of a felony and which is a crime against persons, is any act described in article 34 of the Kansas Statutes Annotated and amendments thereto, except K.S.A. 21-3401, subsection (a) of K.S.A. 21-3402, 21-3406 or 21-3439; articles 35 or 36 of chapter 21 of the Kansas Statutes Annotated and amendments thereto except K.S.A. 21-3605 and amendments thereto; or is any act described in K.S.A. 21-4301 or 21-4301a and amendments thereto, or similar statutes of other states or the federal government.

if five or more years have elapsed since the applicant satisfied the sentence imposed or was discharged from probation, a community correctional services program, parole, postrelease supervision, conditional release or a suspended sentence; or if five or more years have elapsed since the applicant has been finally discharged from the custody of the commissioner of juvenile justice or from probation or has been adjudicated a juvenile offender, whichever time is longer:

those crimes listed in subsection (a)(1)

those crimes listed in subsection (a)(1) and

listed in this subsection or subsection (a)(1)

5-2

~~(C) Had a child declared in a court order in this or any other state to be deprived or a child in need of care based on an allegation of physical, mental or emotional abuse or neglect or sexual abuse.~~

~~(D) Had parental rights terminated pursuant to the Kansas code for care of children, K.S.A. 38-1581 through 38-1584, and amendments thereto, or a similar statute of other states.~~

~~(E) Signed a diversion agreement pursuant to K.S.A. 22-2906 et seq., and amendments thereto, or pursuant to K.S.A. 38-1635, and amendments thereto involving a charge of child abuse or a sexual offense.~~

(b) No person shall operate an adult care home if such person has been found to be a disabled person in need of a guardian or conservator or both.

~~(c) [In accordance with the provisions of this subsection (c)] the secretary of health and environment shall have access to any criminal history record information in the possession of the Kansas bureau of investigation and any report of investigations as authorized by subsection (e) of K.S.A. 38-1523 and amendments thereto in the possession of the department of social and rehabilitation services, or any reports of investigations, findings or assessments as provided in K.S.A. 39-1402 and amendments thereto, 39-1404 and amendments thereto, 39-1411 and amendments thereto, 39-1433 and amendments thereto and 39-1434 and amendments thereto, in the possession of the department of health and environment or the department of social and rehabilitation services concerning persons working in an adult care home. The secretary shall have access to these records for the purpose of determining whether or not the adult care home meets the requirements of this section. The Kansas bureau of investigation may charge to the department of health and environment a reasonable fee for providing criminal history record information under this subsection.~~

~~(d) [For the purpose of complying with this section, the operator of an adult care home shall request from the department of health and environment information obtained by the secretary of health and environment under subsection (c) and information available under subsection (c)(4) of K.S.A. 39-936 and amendments thereto, if any, which relates to a person who works in the adult care home, or is being considered for employment by the adult care home, for the purpose of determining whether such person is subject to the provision of this section. For the purpose of complying with this section, the operator of an adult care home shall receive from any employment agency which provides employees to work in the adult care home written certification that such employees are not prohibited from working in the adult care home under this section.]~~

the purpose of complying with this section, information relating to convictions and adjudications by the federal government or to convictions and adjudications in states other than Kansas shall not be required until

5-3

uch time as the secretary of health and environment determines the search for such information could reasonably be performed and the information obtained within a two-week period. For the purpose of complying with this section, a person who operates an adult care home may hire an applicant for employment on a conditional basis pending the results from the department of health and environment of a request for information under this subsection. No adult care home, the operator or employees of an adult care home or an employment agency, or the operator or employees of an employment agency, shall be liable for civil damages resulting from any decision to employ, to refuse to employ or to discharge from employment any person based on such adult care home's compliance with the provisions of this section if such adult care home or employment agency acts in good faith to comply with this section.

(e) ~~For the purpose of subsection (a)(3)(A)(1)(B), an act of abuse or neglect shall not be considered to have been validated by the department of social and rehabilitation services unless the alleged perpetrator has: (1) Had an opportunity to be interviewed and present information during the investigation of the alleged act of abuse or neglect; and (2) been given notice of the agency decision and an opportunity to appeal such decision to the secretary and to the courts pursuant to the act for judicial review and civil enforcement of agency actions.~~

~~(f) The secretary of health and environment shall charge each person requesting information under this section a fee equal to cost, not to exceed \$10, for each name about which an information request has been submitted to the department under this section.~~

(g) No person who works for an adult care home and who is currently licensed or registered by an agency of this state to provide professional services in the state and who provides such services as part of the work which such person performs for the adult care home shall be subject to the provisions of this section.

(h) A person who volunteers in an adult care home shall not be subject to the provisions of this section because of such volunteer activity.

(i) No person who has been employed by the same adult care home for five consecutive years immediately prior to the effective date of this act shall be subject to the provisions of this section while employed by such adult care home.

(j) The operator of an adult care home shall not be required under this section to conduct a background check on an applicant for employment with the adult care home if the applicant has been the subject of a background check under this act within one year prior to the application for employment with the adult care home.

(k) This section shall be part of and supplemental to the adult care

Reletter remaining subsections accordingly.

5-5

home licensure act.

Sec. 2. K.S.A. 1997 Supp. 39-970 ~~(is)~~ hereby repealed.

3 Sec. 3. This act shall take effect and be in force from and after its and 65-5117 are
4 publication in the statute book.

Sec. 2. KSA 1997 Supp. 65-5117 is hereby amended to read as follows:

(a)(1) On and after July 1, 1998, no person shall knowingly operate a home health agency if, for the home health agency, there works any person who:

~~(1) (A) Has a felony conviction for a crime which is described in articles 34, 35 or 36 of chapter 21 of the Kansas Statutes Annotated and acts amendatory thereof or supplemental thereto, except K.S.A. 21-3605 and amendments thereto, or a conviction of an attempt under K.S.A. 21-3301 and amendments thereto to commit any such act, or (B) has been convicted of any act which is described in K.S.A. 21-4301 or 21-4301a and amendments thereto or similar statutes of other states or the federal government;~~

~~(2) has been adjudicated a juvenile offender because of having committed an act which if done by an adult would constitute the commission of a felony and which is a crime against persons, is any act described in articles 34, 35 or 36 of chapter 21 of the Kansas Statutes Annotated and acts amendatory thereof or supplemental thereto except K.S.A. 21-3605 and amendments thereto, or is any act described in K.S.A. 21-4301 or 21-4301a and amendments thereto or similar statutes of other states or the federal government;~~

~~(3) has committed an act of physical, mental or emotional abuse or neglect or sexual abuse as validated by the department of social and rehabilitation services pursuant to K.S.A. 38-1523 and amendments thereto and (A) the person has failed to successfully complete a corrective action plan which had been deemed appropriate and approved by the department of social and rehabilitation services, or (B) the record has not been expunged pursuant to rules and regulations adopted by the secretary of social and rehabilitation services;~~

~~(4) has had a child declared in a court order in this or any other state to be deprived or a child in need of care based on an allegation of physical, mental or emotional abuse or neglect or sexual abuse;~~

~~(5) has had parental rights terminated pursuant to the Kansas juvenile code or K.S.A. 38-1581 through 38-1584, and amendments thereto, or a similar statute of other states;~~

~~(6) has signed a diversion agreement pursuant to K.S.A. 22-2906 et seq., and amendments thereto, or pursuant to K.S.A. 38-1635 and amendments thereto involving a charge of child abuse or a sexual offense;~~

~~(7) has been found by the department of health and environment or the department of social and rehabilitation services under K.S.A. 39-1401 et seq. and amendments thereto to have committed an act of abuse, neglect or exploitation of a resident; or~~

~~(8) has been found by the department of social and rehabilitation services under K.S.A. 39-1430 et seq. and amendments thereto to have committed an act of abuse, neglect or exploitation of an adult. has been convicted of or has been adjudicated a juvenile offender because of having committed an act which if done by an adult would constitute the commission of capital murder, pursuant to K.S.A. 21-3439 and amendments thereto, first degree murder, pursuant to K.S.A. 21-3401 and amendments thereto, second degree murder, pursuant to subsection (a) of K.S.A. 21-3402 and amendments thereto, or assisting suicide pursuant to K.S.A. 21-3406 and amendments thereto; voluntary manslaughter, pursuant to K.S.A. 21-3403 and amendments thereto, rape, pursuant to K.S.A. 21-3502 and amendments thereto, indecent liberties with a child, pursuant to K.S.A. 21-3503 and amendments thereto, aggravated indecent liberties with a child, pursuant to K.S.A. 21-3504 and amendments thereto, aggravated criminal sodomy, pursuant to K.S.A. 21-3506 and amendments thereto, indecent solicitation of a child, pursuant to K.S.A. 21-3510 and amendments thereto, aggravated indecent solicitation of a child, pursuant to K.S.A. 21-3511 and amendments thereto, sexual exploitation of a child, pursuant to K.S.A. 21-3516 and amendments thereto, sexual battery, pursuant to K.S.A. 21-3517 and amendments thereto, or aggravated sexual battery, pursuant to K.S.A. 21-3518 and amendments thereto, or similar statutes of other states or the federal government.~~

(2) On and after July 1, 1998, a person operating an adult care home may employ an applicant who has violated any of the following if five or more years have elapsed since the applicant satisfied the sentence imposed or was discharged from probation, a community correctional services program, parole, postrelease supervision, conditional release or a suspended sentence; or if five or more years have elapsed since the applicant has been finally discharged from the custody of the commissioner of juvenile justice or from probation or has been adjudicated a juvenile offender, whichever time is longer: A felony conviction for a crime which is described in article 34 of the Kansas Statutes Annotated and amendments thereto, except those crimes listed in subsection (a)(1); articles 35 or 36 of chapter 21 of the Kansas Statutes Annotated and amendments thereto, except those crimes listed in subsection (a)(1) and K.S.A. 21-3605 and amendments thereto; or a conviction of an attempt under K.S.A. 21-3301 and amendments thereto to commit any act listed in this subsection or subsection (a)(1); or similar statutes of other states or the federal government.

(b) No person shall operate a home health agency if such person has been found to be a disabled person in need of a guardian or conservator, or both.

~~(c) In accordance with the provisions of this subsection (c), The secretary of health and environment shall have access to any criminal history record information in the possession of the Kansas bureau of investigation and any report of investigations as authorized by subsection (e) of K.S.A. 38-1523 and amendments thereto in the possession of the department of social and rehabilitation services or court of this state, or any reports of investigations, findings or assessments as provided in K.S.A. 39-1402 and amendments thereto, 39-1404 and amendments thereto, 39-1411 and amendments thereto, 39-1433 and amendments thereto and 39-1434 and~~

~~amendments thereto, in the possession of the department of health and environment or the department of social and rehabilitation services concerning persons working for a home health agency. The secretary shall have access to these records for the purpose of determining whether or not the home health agency meets the requirements of this section. The Kansas bureau of investigation may charge to the department of health and environment a reasonable fee for providing criminal history record information under this subsection.~~

~~(d) For the purpose of complying with this section, the operator of a home health agency shall request from the department of health and environment information obtained by the secretary of health and environment under subsection (c), if any, which relates to a person who works for the home health agency or is being considered for employment by the home health agency, for the purpose of determining whether such person is subject to the provisions of this section. For the purpose of complying with this section, information relating to convictions and adjudications by the federal government or to convictions and adjudications in states other than Kansas shall not be required until such time as the secretary of health and environment determines the search for such information could reasonably be performed and the information obtained within a two-week period. For the purpose of complying with this section, a person who operates a home health agency may hire an applicant for employment on a conditional basis pending the results from the department of health and environment of a request for information under this subsection. No home health agency, the operator or employees of a home health agency or an employment agency, or the operator or employees of an employment agency, which provides employees to work for the home health agency shall be liable for civil damages resulting from any decision to employ, to refuse to employ or to discharge from employment any person based on such home health agency's compliance with the provisions of this section if such home health agency or employment agency acts in good faith to comply with this section.~~

~~(e) For the purpose of subsection (a)(3), an act of abuse or neglect shall not be considered to have been validated by the department of social and rehabilitation services unless the alleged perpetrator has: (1) Had an opportunity to be interviewed and present information during the investigation of the alleged act of abuse or neglect; and (2) been given notice of the agency decision and an opportunity to appeal such decision to the secretary and to the courts pursuant to the act for judicial review and civil enforcement of agency actions.~~

~~(f) The secretary of health and environment shall charge each person requesting information under this section a fee equal to cost, not to exceed \$10, for each name about which an information request has been submitted under this section.~~

~~(g) (f) No person who works for a home health agency and who is cur-~~

rently licensed or registered by an agency of this state to provide professional services in this state and who provides such services as part of the work which such person performs for the home health agency shall be subject to the provisions of this section.

~~(h)~~ (g) A person who volunteers to assist a home health agency shall not be subject to the provisions of this section because of such volunteer activity.

~~(i)~~ (h) No person who has been employed by the same home health agency for five consecutive years immediately prior to the effective date of this act shall be subject to the requirements of this section while employed by such adult care home.

~~(j)~~ (i) The operator of a home health agency shall not be required under this section to conduct a background check on an applicant for employment with the home health agency if the applicant has been the subject of a background check under this act within one year prior to the application for employment with the home health agency.

~~(k)~~ (j) This section shall be part of and supplemental to the provisions of article 51 of chapter 65 of the Kansas Statutes Annotated and acts amendatory thereof or supplemental thereto.

RENUMBER REMAINING SECTIONS ACCORDINGLY.

DIXIE E. TOELKES
REPRESENTATIVE, 53RD DISTRICT
SHAWNEE COUNTY
3336 SE MEADOWVIEW DR.
TOPEKA, KANSAS 66605
(913) 267-7105



COMMITTEE ASSIGNMENT
RANKING MINORITY MEMBER: TOURISM
MEMBER: EDUCATION
UTILITIES
JOINT COMMITTEE ON CHILDREN
AND FAMILIES

STATE CAPITOL BUILDING, ROOM 281-W
TOPEKA, KANSAS 66612-1504
(913) 296-7687

TOPEKA

HOUSE OF
REPRESENTATIVES

FEDERAL AND STATE COMMITTEE

TESTIMONY IN FAVOR OF SUBSTITUTE BILL # 2972

Thank you, Chairman Boston, and Members of the Committee for allowing me to speak to you today.

I am here to speak in favor of Substitute Bill # 2972. As you may be aware this bill is fine-tuning the statute on background checks we passed at the end of the '97 session. I was the initial sponsor of that bill as a result of an attack on my daughter and because of my increased awareness of the need for screening of new employees.

My original intent was to prohibit convicted sex-offenders and convicted batterers from having access to those helpless people who can't defend themselves. The statute now is too broad in scope as it included offenses that do not put people in danger. The changes we all have worked on have eliminated those offenses but list specifically those other crimes that are not acceptable in adult care facilities.

Representative Nancy Kirk has the balloons we support and I ask that you consider the changes and pass them out of committee favorably.

I would be happy to answer any questions.

Thank you.

Feds State
2-23-98
Atch # 6



KANSAS

DEPARTMENT OF HEALTH & ENVIRONMENT

BILL GRAVES, GOVERNOR

Gary R. Mitchell, Secretary

MEMORANDUM

DATE: February 23, 1998

TO: House Federal and State Affairs Committee

FROM: Linda Fund, Assistant Secretary and General Counsel

RE: Proposed amendments to KSA 1997 Supp. 39-970; substitute for 1998 House Bill 2972

Following is the text of a proposed substitute for 1998 HB 2972, which would correct a number of the problems identified with KSA 1997 Supp. 39-970. Text to be deleted is in ~~strikeout~~ and text to be added is underlined. An explanation of each proposed change follows the text of the statute.

Section 1. K.S.A. 1997 Supp. 39-970 is hereby amended to read as follows: 39-970. (a) On and after July 1, 1998, no person shall knowingly operate an adult care home if, in the adult care home, there works any person who within ten years prior to the person's first day of employment:

(1) Has been convicted of (A) Has of a felony conviction for a crime which is a felony and which is described in articles 34, 35 or 36 of chapter 21 of the Kansas Statutes Annotated and acts amendatory thereof or supplemental thereto, except K.S.A. 21-3605 and amendments thereto, or a conviction of (B) an attempt under K.S.A. 21-3301 and amendments thereto to commit any such act, or (B) has been convicted of (C) any act which is described in K.S.A. 21-3437, 21-4301 or 21-4301a and amendments thereto or similar statutes of other states or the federal government;

(2) has been adjudicated a juvenile offender because of having committed an act which if done by an adult would constitute the commission of any act described in subsections (a)(1)(A) through (a)(1)(C) a felony and which is a crime against persons, is any act described in articles 34, 35 or 36 of chapter 21 of the Kansas Statutes Annotated and acts amendatory thereof or supplemental thereto except K.S.A. 21-3605 and amendments thereto, or is any act described in K.S.A. 21-4301 or 21-4301a and amendments thereto or similar statutes of other states of the federal government;

(3) has committed an act of physical, mental or emotional abuse or neglect or sexual

abuse as validated by the department of social and rehabilitation services pursuant to K.S.A. 38-1523 and amendments thereto and (A) the person has failed to successfully complete a corrective action plan which had been deemed appropriate and approved by the department of social and rehabilitation services, or (B) the record has not been expunged pursuant to rules and regulations adopted by the secretary of social and rehabilitation services;

(4) has had a child declared in a court order in this or any other state to be deprived or a child in need of care based on an allegation of physical, mental or emotional abuse or neglect or sexual abuse;

(5) has had parental rights terminated pursuant to the Kansas juvenile code or K.S.A. 38-1581 through 38-1584, and amendments thereto, or a similar statute of other states;

(6) has signed a diversion agreement pursuant to K.S.A. 22-2906 et seq., and amendments thereto, or pursuant to K.S.A. 38-1635 and amendments thereto involving a charge of any act described in subsections (a)(1)(A) through (a)(1)(C) which involves child abuse or is a sexual offense;

(7) has been found by the department of health and environment or the department of social and rehabilitation services under K.S.A. 39-1401 et seq. and amendments thereto to have committed an act of abuse, neglect or exploitation of a resident; or

(8) has been found by the department of social and rehabilitation services under K.S.A. 39-1430 et seq. and amendments thereto to have committed an act of abuse, neglect or exploitation of an adult.

(b) No person shall operate an adult care home if such person has been found to be a disabled person in need of a guardian or conservator, or both.

(c) In accordance with the provisions of this subsection (c), the secretary of health and environment shall have access to any criminal history record information in the possession of the Kansas bureau of investigation and any report of investigations as authorized by subsection (e) of K.S.A. 38-1523 and amendments thereto in the possession of the department of social and rehabilitation services, or any reports of investigations, findings or assessments as provided in K.S.A. 39-1402 and amendments thereto, 39-1404 and amendments thereto, 39-1411 and amendments thereto, 39-1433 and amendments thereto and 39-1434 and amendments thereto, in the possession of the department of health and environment or the department of social and rehabilitation services concerning persons working in an adult care home. The secretary shall have access to these records for the purpose of determining whether or not the adult care home meets the requirements of this section. The Kansas bureau of investigation may charge to the department of health and environment a reasonable fee for providing criminal history record information under this subsection.

(d) For the purpose of complying with this section, the operator of an adult care home shall request from the department of health and environment information obtained by the secretary of health and environment under subsection (c) and information available under subsection (c)(4) of K.S.A. 39-936 and amendments thereto, if any, which relates to a person who works in the adult care home, or is being considered for employment by the adult care home, for the purpose of determining whether such person is subject to the provision of this section. For the purpose of complying with this section, the operator of an adult care home shall receive from any employment agency which provides employees to work in the adult care home written certification that such employees are not prohibited from working in the adult care home under this section. For the purpose of complying with this section, information relating to

convictions and adjudications by the federal government or to convictions and adjudications in states other than Kansas shall not be required until such time as the secretary of health and environment determines the search for such information could reasonably be performed and the information obtained within a two-week period. For the purpose of complying with this section, a person who operates an adult care home may hire an applicant for employment on a conditional basis pending the results from the department of health and environment of a request for information under this subsection. No adult care home, the operator or employees of an adult care home or an employment agency, or the operator or employees of an employment agency, shall be liable for civil damages resulting from any decision to employ, to refuse to employ or to discharge from employment any person based on such adult care home's compliance with the provisions of this section if such adult care home or employment agency acts in good faith to comply with this section.

(e) For the purpose of subsection (a)(3), an act of abuse or neglect shall not be considered to have been validated by the department of social and rehabilitation services unless the alleged perpetrator has: (1) Had an opportunity to be interviewed and present information during the investigation of the alleged act of abuse or neglect; and (2) been given notice of the agency decision and an opportunity to appeal such decision to the secretary and to the courts pursuant to the act for judicial review and civil enforcement of agency actions.

(f) The secretary of health and environment shall charge each person requesting information under this section a fee equal to cost, not to exceed \$10, for each name about which an information request has been submitted to the department under this section.

(g) No person who works for an adult care home and who is currently licensed or registered by an agency of this state to provide professional services in the state and who provides such services as part of the work which such person performs for the adult care home shall be subject to the provisions of this section.

(h) A person who volunteers in an adult care home shall not be subject to the provisions of this section because of such volunteer activity.

(i) No person who has been employed by the same adult care home for five consecutive years immediately prior to the effective date of this act shall be subject to the provisions of this section while employed by such adult care home.

(j) The operator of an adult care home shall not be required under this section to conduct a background check on an applicant for employment with the adult care home if the applicant has been the subject of a background check under this act within one year prior to the application for employment with the adult care home.

(k) This section shall be part of and supplemental to the adult care home licensure act.

Subsection (a). Instead of the expungement proceeding which would be created by HB 2972, this section excludes convictions and adjudications and other findings over 10 years old from those which result in prohibition. Under HB 2972, person subject to findings of murder and assisted suicide could not be rehabilitated. This section does not preserve that distinction. If a decision is made to keep a permanent ban on the most serious crimes, I would recommend addressing this in a separate subsection.

Subsection (a)(1). This section extends the prohibition to misdemeanor convictions for

KSA 21-3437, mistreatment of a dependent adult. All other changes are all technical.

Subsection (a)(2). Changes the section on juvenile adjudications so that it mirrors the section on adult convictions. Person felonies and misdemeanors in articles 34, 35, and 36 of chapter 1 would be excluded; attempts and misdemeanor mistreatment of a dependent adult would be added. This amendment eliminates the ambiguity in the current statute and ensures that juvenile convictions are not treated more harshly than adult convictions.

Subsection (a)(6). The amendment limits the diversions which result in prohibition to those involving felony charges, to ensure that diversions do not have a harsher result than convictions in the case of misdemeanor sexual offenses.

A question has been raised regarding whether a birth parent who has placed a child for adoption would be barred from adult care home employment by subsection (a)(5). This section applies only to termination of parental custody, generally involuntary, pursuant to the Kansas Code for the Care of children. A voluntary consent or relinquishment under KSA 59-2114 or KSA 59-2124 would not trigger the prohibition.