

Approved: 3-17-98
Date

MINUTES OF THE SENATE COMMITTEE ON FEDERAL AND STATE AFFAIRS.

The meeting was called to order by Senator Lana Oleen at 11:15 a.m. on March 4, 1998, in Room 254-E of the Capitol.

All members were present except:

Senator Keith Schraad - excused
Senator Laurie Bleeker - excused

Committee staff present: Mary Galligan, Legislative Research Department
Robin Kempf, Legislative Research Department
Theresa Kiernan, Revisor of Statutes
Midge Donohue, Committee Secretary

Conferees appearing before the committee:

Mrs. Betty McBride, Director, Division of Vehicles
Mr. Gary Carter, Driver Control Bureau, Division of Vehicles
Mr. Michael Hale, Attorney, Department of Revenue

Others attending: See attached list

Senator Oleen announced that committee folders had been delivered to the respective offices of committee members and a complete set of minutes was the only material retained in the new folder. She suggested that committee members might wish to pull material relating to bills still in committee and retain in the active folder until action is taken on those bills.

The chair recognized Senator Jones who introduced Melissa Medrano and Anisha Evans, students from his district who served as pages for the committee.

Senator Vidricksen was recognized and introduced Mark Larson and Tyffany Mah, students from Salina who also served as pages for the committee.

Senator Oleen advised that the hearing on **SB 651**, relating to ignition interlock devices, which was begun last Wednesday was scheduled to continue today and tomorrow; that one conferee is on the agenda for tomorrow and, in keeping with past policy of shared equal time between proponents and opponents, ten minutes would be allotted for testimony tomorrow.

The hearing was continued on:

SB 651 An act concerning certain alcohol and drug-related offenses; relating to suspension and restriction of driving privileges; ignition interlock devices.

Mrs. Betty McBride, Director, Division of Vehicles (DOV), appeared before the committee to present information and express concerns the Division has with provisions of **SB 651 (Attachment #1)**. Her testimony centered on administrative problems the bill would create for the DOV, some of which she said could impair its ability to administer the drunk driving laws in Kansas. In discussing the concerns set out in her written testimony, Mrs. McBride pointed out that, if passed, **SB 651** would require four additional full-time employees to administer provisions of the bill. Further, she said the Division believes the bill is unenforceable in its present form and urged the committee, in its deliberations, to consider the effect its passage would have on the DOV.

Mrs. McBride advised the chair that Mr. Jim Keller, the DOV attorney who was scheduled as a conferee today to discuss the legal ramifications of the bill, had a court appearance and was unable to be present. She requested that Mr. Gary Carver, Chief of the Driver Control Bureau, be allowed to present testimony in his absence.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON FEDERAL AND STATE AFFAIRS, Room 254-E, Statehouse, at 11:15 a.m. on March 4, 1998

Mr. Carver referenced Mr. Keller's written testimony (Attachment #2) and explained the difficulties the Division would face in enforcing provisions of the bill. He provided a comparison of present law with **SB 651** and said the bill fails to take into consideration the requirement that an officer provide written and oral notices to a person requested to submit to a test for alcohol or drugs. He pointed out that it would create a burden upon law enforcement and promote confusion to provide notices of all possible sanctions set out in the bill. Mr. Carver noted that **SB 651** also fails to distinguish between administrative action taken as a result of a test failure or test refusal and criminal DUI action. Additionally, he stated that the bill threatens to eliminate the distinction between administrative suspensions for the purpose of protecting the public and criminal actions to punish the offender. He spoke of problems associated with the provision which would require the DOV to suspend driving privileges when notified that a person has failed to comply with an ignition interlock program, noting that the provision does not appreciate the difficulty such a requirement would pose for the Division.

A committee member, questioning the need to rewrite DUI laws if the intent of **SB 651** was to make ignition interlock devices available, inquired if the bill would increase the amount of use of the devices. Mr. Carver responded that it would increase the use of the interlock system because of orders of the court, but the provisions of the bill would be unenforceable.

The chair called attention to testimony in written form only from:

- Rosalie Thornburgh, Bureau Chief of Traffic Safety, Kansas Department of Transportation, (Attachment #3), submitted for informational purposes
- Diane Poot, Chairperson, Kansas Mothers Against Drunk Driving, (Attachment #4), submitted in opposition
- Ronald Eisenbarth, Kansas Alcoholism and Drug Addiction Counselors Association, (Attachment #5), submitted in opposition

Senator Oleen advised that the hearing would conclude tomorrow with ten minutes allowed for opposition testimony from Mr. Gene Johnson of the Kansas Community Alcohol Safety Action Project Coordination Association, who had been scheduled previously to testify.

Attention was then directed to **SB 680**, concerning alcoholic beverages, the provisions of which were reviewed by staff.

The chair noted there was only one conferee listed, a proponent, and opened the hearing on:

SB 680 **An act concerning alcoholic beverages; relating to licensure and qualifications therefor**

Mr. Michael Hale, Attorney for the Department of Revenue (DOR), appeared in support of **SB 680**, (Attachment #6). Mr. Hale recalled that the subject of the bill was initially submitted as an amendment to **SB 610**, relating to definition of terms of alcoholic liquors and beverages; however, it was decided to handle the issue in a separate bill. Referring to his written testimony, he reviewed amendments proposed by the Department and explained that an additional amendment may be required to the disclosure statutes to allow the Department to disclose tax information to local units of government whose officials would have authority to deny a license to someone who is delinquent in the payment of their taxes.

Mr. Hale reiterated his testimony of last week, saying that the intent of the Department is to insure administratively that all taxes owed by a liquor licensee are timely and fully remitted to the state and to provide the taxpayers of Kansas the assurance that taxes destined to their local regions get to the local communities.

Responding to a request for clarification from a committee member concerning disputed taxes or instances in which an agreement for payment had been worked out, Mr. Hale stated this was not referenced in **SB 680** but addressed in department rules and regulations. He said the final determination of tax liability is made by the secretary or his designee, and he explained the procedure in place when there is a dispute about the amount of taxes owed or the validity of a tax assessment. When it is established that taxes are owed and the taxpayer has worked out an agreement with the department indicating liability, Mr. Hale said the effect of the order issued by the department is stayed pending payment of the amount due in accordance with the agreement reached. He acknowledged that this was not specifically set out in statute, and the chair pointed out it might be well to clarify it in that manner.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON FEDERAL AND STATE AFFAIRS, Room 254-E, Statehouse, at 11:15 a.m. on March 4, 1998

Senator Gooch asked for clarification of an earlier reference to enforcement of tax statutes on Indian reservations, and Mr. Hale replied that the proposed amendments would apply to all licensees, state-wide. He explained that the liquor tax in Kansas is due at the time an individual purchases a drink, and the drinking establishment is merely collecting the tax for the State or Kansas.

The chair explained that the relationship with the Indian Tribes and their ability to have casinos is not covered in statute but in the compacts which were approved a number of years ago. She said that, basically, all of the compacts are the same in regard to having liquor on the reservations and that the compacts clearly state the Tribes will follow applicable state laws. If they do not, she said they are not issued a license to sell alcohol. Further, she said, this particular bill, while it may impact the Tribes, would impact anyone who sells alcohol; that no individual or group is singled out. She pointed that, since the Tribes cannot be sued in court, this bill would provide a vehicle for enforcement of the liquor laws if taxes are not paid by withholding the license to sell liquor.

Senator Oleen advised the committee she would make available to them information concerning the current status of two lawsuits involving Native Americans and the Kansas Department of Revenue.

Noting the time and other commitments of committee members, the chair advised that the hearing on **SB 680** would continue at a later date.

Senator Becker moved for approval of the minutes of the meetings on February 24 and 25 and meetings at the Rail on February 25 and 27. Senator Vidricksen seconded the motion. The motion carried.

The meeting adjourned at 12:05 p.m. The next meeting is scheduled for March 5, 1998.

SENATE FEDERAL & STATE AFFAIRS COMMITTEE
GUEST LIST

DATE: 3-4-98

NAME	REPRESENTING
MICHAEL HALE	Ks. DEPT. of Revenue
Alan Steppat	Pete McGill & Assoc.
Ramona Drilling	Social Work Undergraduate
Tally Trapp	social work student undergrad @ Will
Lester Lawson	Kansas clubs ad ass.
Pat Lawson	(spouse)
Mark Larson	Christ Victory Assembly of God
Juffany Moss	Christ Victory Assembly of God
Anisha Evans	Page for Senator Jones
Melissa Medians	Page for senator Jones
Alan Anderson	KDOR
Gary Carter	KDOR
Bob Phillips	KDOR.
Ann Durkes	DN. of Budget.
Tom Cochran	McGill & Assoc.
Pete McGill	McGill & Assoc.

Betty McBride, Director of Vehicles
Kansas Department of Revenue
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Topeka, KS 66626-0001



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Division of Vehicles

MEMORANDUM

TO: Senator Lana Oleen, Chairperson
Federal and State Affairs Committee

FROM: Betty McBride, Director
Division of Vehicles

DATE: February 24, 1998

SUBJECT: Senate Bill 651

Madam Chair, members of the Committee, I am Betty McBride, Director of the Kansas Division of Vehicles. I appreciate the opportunity to appear today to express the Division's concerns with passage of Senate Bill 651.

Provisions of Senate Bill 651 create numerous administrative problems for the Division, some of which could impair the Division's ability to administer the drunk driving laws in Kansas. I have briefly outlined for the Committee, some of the Division's concerns with Senate Bill 651.

* The Division shall be required to issue a driver's license which shall indicate on the face of the license that restrictions have been imposed on the person's driving privileges. A copy of the order imposing the restrictions is required to be carried by the person for whom the license is issued. If a new photo license is required by this provision, it would require a complete reprogramming of the current driver license system to comply. Based on the Division's records, it is estimated that an additional 25,500 driver's licenses would be issued annually to comply with this requirement.

* This bill provides that the court or the prosecutor in the criminal DUI action can order that an administrative driver's license suspension be modified to allow a person to drive with an ignition interlock restriction. This will create a potential conflict in those situations where the court orders restricted driving privileges for a person whose driving privileges are suspended for additional reasons not considered by the court.

* This bill would allow a driver restricted to driving a vehicle equipped with an interlock device to drive his employer's vehicle without an ignition interlock device. The Division does not have the capability to report such an exception to the restriction requirement in the records it is required to maintain. The Division can only indicate that driving privileges are restricted to the use of an ignition interlock or indicate that driving privileges are not restricted. It cannot indicate that driving privileges are sometimes restricted to the use of the ignition interlock.

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* This bill requires that the Division suspend driving privileges and then reinstate with restricted driving privileges upon the order of the convicting court or the prosecutor and upon proof provided by the licensee that the ignition interlock device has been installed. This bill does not establish a clear format for notification to the Division that the interlock device has been installed, and no follow up procedure to verify installations.

* Under this bill, the Division is mandated to enter a suspension which can later be shortened by action taken by the criminal court or prosecutor. The bill does not provide any procedure to notify the driver that he/she may qualify for a shorter suspension period.

* Currently, a Diversion agreement, except for CDL employers, courts, and law enforcement, is considered a closed record. Restricting drivers to an interlock in connection with a diversion agreement would make this an open record, since the Division would be required to indicate the restriction on the person's driving record.

* The Division will be required to notify the driver when the interlock device may be removed. If the driver has moved and does not receive notice to remove the device, he/she may claim that the Division should be liable if the driver continues to pay for the interlock device because notification was not received.

In addition to the above concerns, the Division estimates that if Senate Bill 651 is passed, four (4) additional full time employees will be needed to administer the provisions of the bill.

Madam Chair, members of the Committee, the issues I have presented are just a brief overview of the concerns the Division has with Senate Bill 651. I would defer to our legal counsel, Jim Keller, to explain more fully to the Committee, the legal ramifications regarding the bill. Gary Carter, Bureau Chief of the Driver Control Bureau, is also available to respond to any questions the Committee might have.

Thank you again for allowing me time to appear.

**NUMBERS OF ADMINISTRATIVE SUSPENSIONS FOR TEST REFUSALS
AND TEST FAILURES, DUI CONVICTIONS AND DUI DIVERSIONS FOR
CALENDAR YEARS 1996-97**

1996:

Admin. Susp. For CTR and CTF:	27,553
DUI Convictions:	10,767
DUI Diversions:	7,498
Combined DUI Convictions/Diversions:	18,265
Difference Between Admin. Susp. And DUI Conv/Diversion:	9,288

1997:

Admin. Susp. For CTR and CTF:	26,108
DUI Convictions:	9,742
DUI Diversions:	6,833
Combined DUI Convictions/Diversions:	16,575
Difference Between Admin. Susp. And DUI Conv/Diversion:	9,533

1996-97:

Admin. Susp. For CTR and CTF:	53,661
DUI Convictions:	20,509
DUI Diversions:	14,331
Combined DUI Convictions/Diversions:	34,840
Difference Between Admin. Susp. And DUI Conv/Diversion:	18,821

COMPARISON OF PRESENT LAW WITH SB 651

	<u>PRESENT LAW</u>	<u>SB 651</u>
Test Refusal	one year	18 months or 90 days and restricted for remaining 15 months to use of interlock
Test Failure (1 st Occurrence) (Test result less than twice the legal limit)	30/330	30/330
Test Failure (1 st Occurrence) (Test result of twice the legal limit or higher)	30/330	one year or 30 days and restricted for the remainder of the year to use of interlock
Test Failure (2 nd Occurrence)	one year	three years or one year and restricted for two years to use of interlock
Test Failure (3 rd Occurrence)	one year	five years or one year and restricted for four years to use of interlock

NOTE: If the first conviction under K.S.A. 8-1567 is a “second occurrence” test failure under K.S.A. 8-1013 which is less than twice the “legal limit”, then the convicting court would have no authority to modify the three year suspension period. The driver would be suspended for three years. The driver would be in a better position if he either refused the test or had a higher alcohol content.

If the first conviction is a “third occurrence” test failure of less than twice the limit, the suspension period would be five years and could not be modified by the court.

In addition, since the bill provides the authority to the “convicting court” in the criminal DUI case or the county or district attorney or city attorney in a diversion agreement to modify the suspension order, the person who either refuses or fails a test but is not convicted of DUI or diverted is at a disadvantage. As set out above, approximately 1/3 of those persons suspended for a test refusal or test failure are neither convicted nor diverted in the criminal action.

NOTICES REQUIRED UNDER K.S.A. 8-1001

Senate Bill 651 fails to take into consideration the requirement that an officer provide written and oral notices to a person requested to submit to a test for alcohol or drugs. Although the bill changes the sanctions required for a test refusal or test failure, there is no change made in the notices regarding those sanctions in K.S.A. 8-1001(f)(1).

To provide notices of all of the possible sanctions set out in this bill will create a burden upon law enforcement and will promote confusion. The failure to give notices of the possible action or the attempt to do so will both result in an increase in litigation and will create legal difficulties for prosecutors and attorneys for the Department of Revenue.

DISTINCTION BETWEEN ADMINISTRATIVE LICENSE SUSPENSIONS AND CRIMINAL DUI PROSECUTIONS

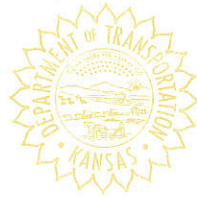
Senate Bill 651 fails to distinguish between the administrative action taken as the result of a test failure or test refusal and the criminal DUI action. By providing that the convicting court in the DUI action or the prosecuting attorney in a diversion agreement have the authority to order the Division of Vehicles to alter its administrative suspension, this bill threatens to eliminate the distinction between administrative suspensions for purpose of protecting the public and criminal actions to punish the offender.

In prior years many people have appeared before the Kansas Legislature to urge administrative action on driving privileges for persons who refuse or fail a test for alcohol content. Statistics were provided to show that simply removing driving privileges from persons who fail a breath or blood alcohol test or refuse to submit to a test acts as a powerful deterrent against drunk driving. Statistics indicate that people believe that an administrative sanction is more likely to occur than is a criminal action. The statistics provided above bear this out. The number of DUI convictions and diversions in Kansas in 1996 and 1997 were only 2/3 of the number of administrative suspensions in those years for test failures and refusals. Procedural and legal differences between administrative actions and criminal prosecutions are a large part of the reason for this difference. Kansas appellate courts have recognized and upheld the legislative intention to separate the administrative license suspension action from the criminal prosecution. This bill, by allowing the criminal court and prosecutor to modify an administrative license suspension, could be regarded by the courts as indicating a change in that legislative intention.

**SUSPENSION FOR FAILURE TO COMPLY
WITH IGNITION INTERLOCK RESTRICTION**

This bill includes a provision which would require the Division to suspend driving privileges when notified that a person has failed to comply with an ignition interlock program. The Division would be required to keep the person's driving privileges suspended until notice is received that the person has complied with the program. This language would appear to place the Division in a position where it could be required to suspend and reinstate a person's driving privileges monthly. This provision does not appreciate the difficulty such a requirement would pose for the Division.

In addition, although this bill would allow prosecutors to order that the Division restrict a person's driving privileges to use of an ignition interlock, the amendment to K.S.A. 8-1014(c) does not include a reference to a prosecutor-ordered interlock in the suspension for noncompliance.



KANSAS DEPARTMENT OF TRANSPORTATION

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E. Dean Carlson
Secretary of Transportation

Bill Graves
Governor of Kansas

**TESTIMONY BEFORE THE SENATE COMMITTEE ON
FEDERAL AND STATE AFFAIRS**

**REGARDING SENATE BILL 651
USE OF IGNITION INTERLOCK DEVICES IN DUI OFFENSES
February 25, 1998**

Madam Chairwoman and Committee Members:

Madam Chairwoman and members of the committee, I am Rosalie Thornburgh, Bureau Chief of Traffic Safety. On behalf of the Department of Transportation, I am submitting testimony on Senate Bill 651 regarding the enhanced use of ignition interlock devices for DUI offenders.

The agency is not opposed to the use of ignition interlock devices. However, the proposed use of such devices as a replacement for current license suspensions does cause the Department some concern. The specific proposal causing this concern involves the reduction of the license suspension for test refusal from one year to 90 days. Years of study have shown that full license suspension is the most effective countermeasure for reducing crash involvement of DUI offenses.

Although ignition interlock devices have been in use for some time, the development of reliable interlocks is relatively new. Hence, research to determine their effectiveness is sparse. The studies, to date, have focused on the use of ignition interlocks by multiple DUI offenders after license suspensions are completed. Currently, thirty-four (34) states have laws providing for either the discretionary or mandatory use of ignition interlock devices for repeat offenders. In most cases, these laws have been an addition to, not a substitute for, the current penalties of a DUI offense. In conversations with the Washington D. C. staff of the National Highway Traffic Safety Administration, findings to date suggest that while the interlock is on the vehicle it serves to reduce recidivism. In a study recently completed in the State of Maryland, the findings were similar when the program was administered by a central agency with quality oversight. Findings further suggest that the interlock does not serve to change the long-term behavior patterns of drinking drivers. Once the interlock is removed, the offender reverts to a high-crash-involvement rate.

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In a "Report to Congress," Compton (1988) concluded that because "there was not enough evidence that the devices are effective, it is not appropriate for the devices to be used in lieu of other sanctions that have evidence of beneficial effects (e.g., suspension); however, use of this technology as an additional condition of probation or for reinstatement of a restricted driving privilege does appear appropriate."

In summary, based on the studies to date, the interlock device appears to be a potentially useful countermeasure to address the problem of drinking and driving and clearly supports the growing interest in continued experimental programs to determine the effectiveness. However, until such time that sound evaluation discounts the effectiveness of license suspension as compared to this technology, it would appear that maintaining current law on license suspensions is the better countermeasure.

FEB 27 1998



Mothers Against Drunk Driving

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KANSAS STATE OFFICE

Senator Lana Oleen, Chairperson
Federal and State Affairs
State Capitol, Rm. 136-N
Topeka, KS 66612

2/26/98

Dear Senator Oleen and Committee Members:

It was brought to my attention that comments were made during testimony on Senate Bill 651 by John Freund, President of Life Safer Interlock, Inc. that MADD supports the use of ignition interlock devices. Again MADD wishes to clarify Mr. Freund's generalization.

" MADD supports the use of ignition interlock devices as an additional penalty and sanction for drunk driving offenders. The use of such devices should be in addition to normal sanctions such as fines, license sanctions and jail sentences."

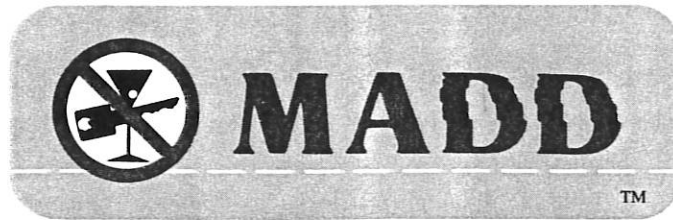
At no time has MADD supported the use of ignition interlock in lieu of the present "hard suspension" . At no time had MADD lobbied in Washington D.C. or in Kansas in favor of ignition interlock in lieu of the "hard suspension"

MADD does acknowledge that a number of measures may have some effect in dealing with repeat offenders. These measures include vehicle impoundment, vehicle confiscation, vehicle forfeiture, and ignition interlock. However, MADD's position does not support any of these measures in lieu of the "hard suspension". MADD supports these measures as additional sanctions.

Sincerely,

Diane Poot,
Kansas MADD Chairperson

Sen. Federal & State Affairs Comm.
Date: 3-4-98
Attachment: #4



Mothers Against Drunk Driving

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KANSAS STATE OFFICE

Senator Lana Oleen, Chairperson
Federal and State Affairs
State Capital, Rm. 136-N
Topeka, KS 66612

2/23/98

Dear Senator Lana Oleen and Committee Members,

Kansas MADD regrets that we will be unable to have a representative present to testify before the Senate Federal and State Committee on Wednesday regarding Senate Bill 651. Kansas MADD would like the opportunity to submit written testimony in opposition to Senate Bill 651.

Senate Bill 651 proposes the use of ignition interlock devices as a sanction in a number of instances for DUI offenders at the request of prosecutors and as a court action. MADD's policy regarding ignition interlock is as follows:

" MADD supports the use of ignition interlock devices as an additional penalty and sanction for drunk driving offenders. The use of such devices should be in addition to normal sanctions such as fines, license sanctions and jail sentences."

Kansas MADD does not support SB 651 based on the following objections and concerns:

- 1) MADD does not support the use of ignition interlock in lieu of the "hard suspension" as is proposed in SB 651 for a BAC test refusal. MADD considers this one of the most flagrant of violations. The reason Kansas experiences a growing number of refusals, is the penalty for a second and subsequent offense is the same as for a test refusal. It is this problem that should be considered. Enhancement of the penalties for test refusal should be considered. Reducing the one year hard suspension to 90 days and requiring an interlock device is hardly a penalty enhancement.
- 2) Kansas MADD is concerned about the mechanics and administration of the program. There appears to have been little, if any, groundwork laid regarding input from KDOT - Bureau of Traffic Safety, The Kansas Department of Revenue - Division of Motor Vehicles, community-based ASAP programs, and law enforcement officials. The ignition interlock program remains a vendor-driven program.

Kenneth H. Beck, PhD, University of Maryland and co-author of the most recent study, The Effects of Alcohol Ignition Interlock License Restriction on Multiple Alcohol Offenders: A Randomized Trial in Maryland, concludes that Ignition Interlock Programs may work best when:

- Cases are carefully screened
- They are combined with treatment
- Subsequent monitoring of restrictions
- Administered through the licensing agency (DMV)

Kansas MADD does not believe these factors have been properly addressed or may even be possible.

- 3) Kansas MADD expresses its concern on the vagueness of terms used in the bill such as "suspended indefinitely", "restricted license", and "ignition interlock restricted license". It is somewhat confusing as to how these terms apply to the offender and his/her participation or lack of participation in the ignition interlock program. Kansas ASAP data indicates that approximately 15% of DUI offenders are unemployed, 11% are students and 3% are indigent. Considering the cost of the ignition interlock device and definition of these terms, Senate Bill 651 may very well have the effect of increasing the pool of offenders who choose to opt out of the system and continue to drive on a suspended or revoked license.
- 4) First time offenders with BAC's "twice the legal limit or higher" are subject to enhance sanctions and may be required to use an ignition interlock device. Since the average BAC in Kansas is .16 BAC, there potentially exists a sizable number of first time offenders at "twice the legal limit". Should the prosecutors, in instances of diversion or the courts upon conviction, choose no to require first time offenders to use an ignition interlock, the suspension is for one year. In situations where the prosecutors or court does not exercise its option of recommending a restricted license requiring the use of an ignition interlock device, the suspension period is increased from 30 days to one year. This will undoubtedly increase the number of unlicensed drivers.

Kansas MADD believes further study regarding the use of ignition interlock devices is warranted. Kansas MADD does not support Senate Bill 651.

Sincerely,



Diane Poot, Chairperson
Kansas State MADD

- SINCE 1990, KANSAS HAS AVERAGED APPROXIMATELY 20,000 DUI ARRESTS PER YEAR. KBI, DCCCA
- APPROXIMATELY 75% OF DUI ARRESTS IN KANSAS ARE CONSIDERED AS FIRST-TIME ARRESTS OR HAVING NO PREVIOUS DUI ARREST WITHIN THE PRECEDING 5 YEARS. DCCCA
- APPROXIMATELY 18% OF ALL INDIVIDUALS ARRESTED FOR DUI ARE CLASSIFIED AS SECOND-TIME OFFENDERS. DCCCA
- APPROXIMATELY 7% OF ALL INDIVIDUALS ARRESTED FOR DUI ARE CONSIDERED THIRD AND SUBSEQUENT OFFENDERS. DCCCA
- APPROXIMATELY 10% OF ALL INDIVIDUALS ARRESTED FOR DUI ARE UNDER THE AGE OF 21. KBI, DCCCA
- APPROXIMATELY 12% OF ALL REPEAT OFFENDERS ARRESTED FOR DUI, ARE DRIVING WHILE THEIR LICENSE WAS SUSPENDED OR REVOKED. DCCCA
- DURING 1996, APPROXIMATELY 49% OF THE 16,254 INDIVIDUALS ADMINISTERED A BREATH ALCOHOL TEST, EXCEEDED .15 BAC. KDHE
- THE AVERAGE BAC FOR INDIVIDUALS ARRESTED FOR DUI IN 1996 WAS .16 BAC. KHP
- IT IS ESTIMATED THAT FIRST TIME OFFENDERS ARE RESPONSIBLE FOR 75% OF ALL ALCOHOL-RELATED CRASHES. KANSAS MADD VICTIM SERVICES PROGRAM, DCCCA

TESTIMONY BEFORE THE SENATE FEDERAL AND STATE AFFAIRS COMMITTEE
ON SENATE BILL 651
FEBRUARY, 25, 1998 BY RONALD EISENBARTH
KANSAS ASSOCIATION OF ALCOHOLISM AND DRUG ADDICTION COUNSELORS

Senator Lana Oleen
Chair, Federal and State Affairs Committee
Statehouse, Topeka, Kansas

Good morning. I thank Senator Oleen and members of this committee for the opportunity to provide testimony on Senate Bill 651.

I am Ron Eisenbarth and I represent members of the Kansas Alcoholism and Drug Addiction Counselors Association and, perhaps, by extension all counselors in Kansas who daily work with alcoholics and drug addicts.

As Senate Bill 651 is now presented, it is not a law we feel we can support and thus must testify in opposition to it.

Our understanding of this proposal is that its purpose is to provide for the use of an interlock mechanism in certain DUI cases. However, in reading S.B. 651, it appears that it goes much further in actually changing and/or modifying some of the existing sanctions for DUI offenders. We also oppose this legislation because it appears there has been little or no opportunity for input from agencies such as the Kansas Department of Revenue, the Kansas Department of Transportation, law enforcement agencies, courts, community Alcohol Safety Action Programs, Alcohol and Drug Abuse Services of the Kansas Department of SRS, and the Kansas Insurance Commissioner's office. All of these organizations are in some way involved or affected by the existing DUI statutes.

As we understand, this interlock mechanism is placed on the offender's vehicle. The person who regularly drinks and drives will desperately try to find a vehicle to drive that isn't equipped with an interlock device. In other words, it appears the vehicle is on probation, not the offender. We stand in opposition to this legislation due to the above reasons cited. We also support the testimony also opposing S.B. 651 presented to you by Gene Johnson, representing the Kansas Association of Alcohol Safety Action Project Coordinators.

Again, thank you for the opportunity to be heard on this matter. I will endeavor to answer any questions you may have regarding my testimony.

Sincerely,



Ronald Eisenbarth
Kansas Alcoholism and
Drug Addiction Counselors Association
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Topeka, KS 66612
785-235-2400

Sen. Federal & State Affairs Comm.
Date: 3-4-98
Attachment: # 5

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Legal Services

MEMORANDUM

To: Senator Lana Oleen, Chair
and Committee on Federal State Affairs

From: Michael Hale, Department of Revenue

Date: 3/4/98

Re: Senate Bill 680

Madam Chair, members of the committee, my name is Michael Hale, and I represent the department of revenue. I would like to thank you for again allowing me to testify on this bill.

To refresh your memories, the fundamental philosophy of SB 680 was brought to this committee as a proposed amendment to SB 610. This committee decided to pass SB 610 out of committee without the proposed amendment, and agreed to receive the proposal as a separate bill.

Due to concerns about the remittance of Kansas state and local taxes by cereal malt beverage and liquor licensees, the department would propose that Senate Bill 680, with certain amendments, be passed to allow the secretary or secretary's designee to either deny a person, as defined under the act, a liquor license or revoke or suspend the liquor license of any person that owes undisputed tax liabilities.

In some respects the language of SB 680 is more broad than the language proposed last week as an amendment to SB 610, and in other respects, it is more narrow. To assist the committee in following the department's testimony, I have attached the current SB 680 along with the department's proposed amendments.

The current SB 680 would apply to any person holding a class A, class B, or caterer license or temporary permit holders. Additionally, SB 680 would apply to cereal malt beverage retailers. SB 680, as written, would authorize the denial of a license to any person who has failed to file any tax return or is not current in filing all applicable tax returns and in payment of all taxes, interest and penalties to the state of Kansas, except for those liabilities under appeal.

Sen. Federal & State Affairs Comm.
Date: 3-4-98
Attachment: #6

Moreover, SB 680 would authorize the denial of a liquor drink or cereal malt beverage license to any person who has failed to file any tax return or is not current in filing all applicable tax returns and in payment of all taxes, interest and penalties to any taxing subdivision.

The department's proposed amendments would extend SB 680's coverage to retail liquor stores by amending K.S.A. 41-311, KSA 41-327 and KSA 330. This proposed language is found as Attachment 1 to the department's testimony. This language would allow the denial of the initial issuance of a license and the renewal of a license to any person who has failed to file any tax return or is not current in filing all applicable tax returns and in payment of all taxes, interest and penalties to the state of Kansas, except for those liabilities under appeal. This language would also provide for the revocation of a license to any person who has failed to file any tax return or is not current in filing all applicable tax returns and in payment of all taxes, interest and penalties to the state of Kansas, except for those liabilities under appeal. The department believes that it is crucial to provide for all three occurrences: initial issuance, renewal and revocation.

The department's proposed amendments would also extend SB 680's coverage to allow for the denial of renewing a liquor drink license and provides for the suspension or revocation of a liquor drink license to any person who has failed to file any tax return or is not current in filing all applicable tax returns and in payment of all taxes, interest and penalties to the state of Kansas, except for those liabilities under appeal. See Attachment 2.

Additionally, the department's proposed amendments would eliminate the sections allowing for the denial of a license issuance for liquor drink and cereal malt beverage license to any person who has failed to file any tax return or is not current in filing all applicable tax returns and in payment of all taxes, interest and penalties to any taxing subdivision. The department would have no effective way of administering this section. This is more fully discussed in the department's attached fiscal note.

Moreover, the proposed amendments by the department would eliminate the denial of issuance of a cereal malt beverage license who has failed to file any tax return or is not current in filing all applicable tax returns and in payment of all taxes, interest and penalties to the state of Kansas. Under current disclosure law, local subdivisions would not be able to obtain tax information from the department.

The department would propose the following amendments. The legislation would make it a violation of the liquor act to fail to pay or collect and remit lawful taxes due the state of Kansas and applicable local taxes. The major taxes at issue are: state and local sales tax, employee withholding tax, income tax and transient guest taxes as well as liquor drink taxes.

The intent behind this proposal is to assure administratively that all taxes owed by a liquor licensee are timely and fully remitted to the state, and to provide to the taxpayers of Kansas the assurance that taxes ultimately destined to their local regions, in particular local sales, transient guest and liquor taxes, get to the local communities for their use. Moreover, enforcement of tax statutes on Indian reservations is problematic. This proposal would give the department the most effective vehicle to enforce the tax laws. Liquor and related business transactions are being sold in their locale, and the local communities need to know that taxes earmarked for use in their region will get to them, or the offenders' liquor licenses will be denied or revoked. The proposed amendment will afford the department the tool it needs to insure that licensees, as part of the local community in which they conduct business, will fulfill their obligation to pay, collect and remit taxes lawfully due for the benefit of the community.

ATTACHMENT 1

New Section KSA 41-311: (a) No license of any kind shall be issued pursuant to the liquor control act to a person:

- (1) Who has not been a citizen of the United States for at least 10 years, except that the spouse of a deceased retail licensee may receive and renew a retail license notwithstanding the provisions of this subsection (a)(1) if such spouse is otherwise qualified to hold a retail license and is a United States citizen or becomes a United States citizen within one year after the deceased licensee's death;
- (2) who has been convicted of a felony under the laws of this state, any other state or the United States;
- (3) who has had a license revoked for cause under the provisions of this act or who has had any license issued under the cereal malt beverage laws of any state revoked for cause except that a license may be issued to a person whose license was revoked for the conviction of a misdemeanor at any time after the lapse of 10 years following the date of the revocation;
- (4) who has been convicted of being the keeper or is keeping a house of prostitution or has forfeited bond to appear in court to answer charges of being a keeper of a house of prostitution;
- (5) who has been convicted of being a proprietor of a gambling house, pandering or any other crime opposed to decency and morality or has forfeited bond to appear in court to answer charges for any of those crimes;
- (6) who is not at least 21 years of age;
- (7) who, other than as a member of the governing body of a city or county, appoints or supervises any law enforcement officer, who is a law enforcement official or who is an employee of the director;
- (8) who intends to carry on the business authorized by the license as agent of another;
- (9) who at the time of application for renewal of any license issued under this act would not be eligible for the license upon a first application, except as provided by subsection (a)(12);
- (10) who is the holder of a valid and existing license issued under article 27 of chapter 41 of the Kansas Statutes Annotated unless the person agrees to and does surrender the license to the officer issuing the same upon the issuance to the person of a license under this act, except that a retailer licensed pursuant to K.S.A. 41-2702 and amendments thereto shall be eligible to receive a retailer's license under the Kansas liquor control act;
- (11) who does not own the premises for which a license is sought, or does not have a written lease thereon for at least 3/4 of the period for which the license is to be issued; or
- (12) whose spouse would be ineligible to receive a license under this act for any reason other than citizenship, residence requirements or age, except that this subsection (a)(12) shall not apply in determining eligibility for a renewal license.

* (13) *A person who has failed to file any tax return or is not current in filing all applicable tax returns and in payment of all taxes, interest and penalties owed to the state of Kansas, excluding items under formal appeal pursuant to applicable statutes*

(b) No retailer's license shall be issued to:

- (1) A person who is not a resident of this state;
- (2) a person who has not been a resident of this state for at least four years immediately preceding the date of application;
- (3) a person who has beneficial interest in the manufacture, preparation or wholesaling of alcoholic beverages;
- (4) a person who has beneficial interest in any other retail establishment licensed under this act;
- (5) a copartnership, unless all of the copartners are qualified to obtain a license;
- (6) a corporation; or
- (7) a trust, if any grantor, beneficiary or trustee would be ineligible to receive a license under this act for any reason, except that the provisions of subsection (a)(6) shall not apply in determining whether a beneficiary would be eligible for a license.

(c) No manufacturer's license shall be issued to:

- (1) A corporation, if any officer or director thereof, or any stockholder owning in the aggregate more than 25% of the stock of the corporation would be ineligible to receive a manufacturer's license for any reason other than citizenship and residence requirements;
- (2) a copartnership, unless all of the copartners shall have been residents of this state for at least five years immediately preceding the date of application and unless all the members of the copartnership would be eligible to receive a manufacturer's license under this act;
- (3) a trust, if any grantor, beneficiary or trustee would be ineligible to receive a license under this act for any reason, except that the provisions of subsection (a)(6) shall not apply in determining whether a beneficiary would be eligible for a license;
- (4) an individual who is not a resident of this state; or

) an individual who has not been a resident of this state for at least five years immediately preceding the date of application.

(d) No distributor's license shall be issued to:

(1) A corporation, if any officer, director or stockholder of the corporation would be ineligible to receive a distributor's license for any reason. It shall be unlawful for any stockholder of a corporation licensed as a distributor to transfer any stock in the corporation to any person who would be ineligible to receive a distributor's license for any reason, and any such transfer shall be null and void, except that: (A) If any stockholder owning stock in the corporation dies and an heir or devisee to whom stock of the corporation descends by descent and distribution or by will is ineligible to receive a distributor's license, the legal representatives of the deceased stockholder's estate and the ineligible heir or devisee shall have 14 months from the date of the death of the stockholder within which to sell the stock to a person eligible to receive a distributor's license, any such sale by a legal representative to be made in accordance with the provisions of the probate code; or (B) if the stock in any such corporation is the subject of any trust and any trustee or beneficiary of the trust who is 21 years of age or older is ineligible to receive a distributor's license, the trustee, within 14 months after the effective date of the trust, shall sell the stock to a person eligible to receive a distributor's license and hold and disburse the proceeds in accordance with the terms of the trust. If any legal representatives, heirs, devisees or trustees fail, refuse or neglect to sell any stock as required by this subsection, the stock shall revert to and become the property of the corporation, and the corporation shall pay to the legal representatives, heirs, devisees or trustees the book value of the stock. During the period of 14 months prescribed by this subsection, the corporation shall not be denied a distributor's license or have its distributor's license revoked if the corporation meets all of the other requirements necessary to have a distributor's license;

(2) a copartnership, unless all of the copartners are eligible to receive a distributor's license;

(3) a trust, if any grantor, beneficiary or trustee would be ineligible to receive a license under this act for any reason, except that the provisions of subsection (a)(6) shall not apply in determining whether a beneficiary would be eligible for a license;

(4) an individual who is not a resident of this state; or

(5) an individual who has not been a resident of this state for at least 10 years immediately preceding the date of application, except that:

(A) A wholesaler of cereal malt beverages properly licensed on September 1, 1948, shall be eligible for a beer distributor's license; and

(B) a person who has been a resident of the state for at least one year immediately preceding the date of application shall be eligible for a beer distributor's license.

(e) No nonbeverage user's license shall be issued to a corporation, if any officer, manager or director of the corporation or any stockholder owning in the aggregate more than 25% of the stock of the corporation would be ineligible to receive a nonbeverage user's license for any reason other than citizenship and residence requirements.

(f) No microbrewery license or farm winery license shall be issued to a:

(1) Person who is not a resident of this state;

(2) person who has not been a resident of this state for at least four years immediately preceding the date of application;

(3) person who has beneficial interest in the manufacture, preparation or wholesaling of alcoholic beverages other than that produced by such brewery or winery;

(4) person, copartnership or association which has beneficial interest in any retailer licensed under this act or under K.S.A. 41-2702 and amendments thereto;

(5) copartnership, unless all of the copartners are qualified to obtain a license;

(6) corporation, unless stockholders owning in the aggregate 50% or more of the stock of the corporation would be eligible to receive such license and all other stockholders would be eligible to receive such license except for reason of citizenship or residency; or

(7) a trust, if any grantor, beneficiary or trustee would be ineligible to receive a license under this act for any reason, except that the provisions of subsection (a)(6) shall not apply in determining whether a beneficiary would be eligible for a license.

(g) The provisions of subsections (b)(1), (b)(2), (c)(3), (c)(4), (d)(3), (d)(4), (f)(1) and (f)(2) shall not apply in determining eligibility for the 10th, or a subsequent, consecutive renewal of a license if the applicant has appointed a citizen of the United States who is a resident of Kansas as the applicant's agent and filed with the director a duly authenticated copy of a duly executed power of attorney, authorizing the agent to accept service of process from the director and the courts of this state and to exercise full authority, control and responsibility for the conduct of all business and transactions within the state relative to alcoholic liquor and the business licensed. The agent must be satisfactory to and approved by the director, except that the director shall not approve as an agent any person who:

.) Has been convicted of a felony under the laws of this state, any other state or the United States;

(2) has had a license issued under the alcoholic liquor or cereal malt beverage laws of this or any other state revoked for cause, except that a person may be appointed as an agent if the person's license was revoked for the conviction of a misdemeanor and 10 years have lapsed since the date of the revocation;

(3) has been convicted of being the keeper or is keeping a house of prostitution or has forfeited bond to appear in court to answer charges of being a keeper of a house of prostitution;

(4) has been convicted of being a proprietor of a gambling house, pandering or any other crime opposed to decency and morality or has forfeited bond to appear in court to answer charges for any of those crimes; or

(5) is less than 21 years of age.

* New Section KSA 41-327: Any licensee may renew his license at the expiration thereof if he is then qualified to receive a license and the premises for which such renewal license is sought are suitable for such purpose. In no event shall the secretary of secretary's designee renew a license for *A person who has failed to file any tax return or is not current in filing all applicable tax returns and in payment of all taxes, interest and penalties owed to the state of Kansas, excluding items under formal appeal pursuant to applicable statutes.*

New Section KSA 41-330. Denial or revocation of license for alcohol-related convictions; notice and hearing.

After notice and an opportunity for hearing in accordance with the provisions of the Kansas administrative procedure act, the director may refuse to issue or renew or may revoke any license provided for by the Kansas liquor control act if:

(a) The licensee or the licensee's spouse has been convicted of a violation of intoxicating liquor laws of any state or the alcoholic beverage control laws of the United States or has forfeited of bond to appear in court to answer charges for any such violation, within the 10 years immediately preceding the date of application for issuance or renewal of the license or the date of revocation; or

(b) the licensee or the licensee's spouse has been convicted of a violation of any of the laws of any state relating to cereal malt beverages, within 10 years immediately preceding the date of application for issuance or renewal of the license or the date of revocation.

* (c) *The licensee has failed to file any tax return or is not current in filing all applicable tax returns and in payment of all taxes, interest and penalties owed to the state of Kansas, excluding items under formal appeal pursuant to applicable statutes.*

ATTACHMENT 2

* New Section K.S.A. 1997 Supp. 41-2611 is hereby amended to read as follows: 41-2611. The ~~director~~ *secretary or secretary's designee* may revoke or suspend any license issued pursuant to the club and drinking establishment act for any one or more of the following reasons:

(a) The licensee has fraudulently obtained the license by giving false information in the application therefor or any hearing thereon.

(b) The licensee has violated any of the provisions of this act or any rules or regulations adopted hereunder.

(c) The licensee has become ineligible to obtain a license or permit under this act.

(d) The licensee's manager or employee has been intoxicated while on duty.

(e) The licensee, or its manager or employee, has permitted any disorderly person to remain on premises where alcoholic liquor is sold by such licensee.

(f) There has been a violation of a provision of the laws of this state, or of the United States, pertaining to the sale of intoxicating or alcoholic liquors or cereal malt beverages, or any crime involving a morals charge, on premises where alcoholic liquor is sold by such licensee.

(g) The licensee, or its managing officers or any employee, has purchased and displayed, on premises where alcoholic liquor is sold by such licensee, a federal wagering occupational stamp issued by the United States treasury department.

(h) The licensee, or its managing officers or any employee, has purchased and displayed, on premises where alcoholic liquor is sold by such licensee, a federal coin operated gambling device stamp for the premises issued by the United States treasury department.

(i) The licensee holds a license as a class B club, drinking establishment or caterer and has been found guilty of a violation of article 10 of chapter 44 of the Kansas Statutes Annotated under a decision or order of the Kansas human rights commission which has become final or such licensee has been found guilty of a violation of K.S.A. 21-4003 and amendments thereto.

* (j) *Failure of a licensee to file any tax return or is not current in filing all applicable tax returns and in payment of all taxes, interest and penalties owed to the state of Kansas, excluding items under formal appeal pursuant to applicable statutes.*

New Section K.S.A. 1997 Supp. 41-2623 is hereby amended to read as follows: 41-2623. (a) No license shall be issued under the provisions of this act to:

(1) Any person described in subsection (a)(1), (2), (4), (5), (6), (7), (8), (9) or (12) or (13) of K.S.A. 41-311 and amendments thereto, except that the provisions of subsection (a)(7) of such section shall not apply to nor prohibit the issuance of a license for a class A club to an officer of a post home of a congressionally chartered service or fraternal organization, or a benevolent association or society thereof.

(2) A person who has had the person's license revoked for cause under the provisions of this act.

(3) A person who has not been a resident of this state for a period of at least one year immediately preceding the date of application.

(4) A person who has a beneficial interest in the manufacture, preparation or wholesaling or the retail sale of alcoholic liquors or a beneficial interest in any other club, drinking establishment or caterer licensed hereunder, except that:

(A) A license for premises located in a hotel may be granted to a person who has a beneficial interest in one or more other clubs or drinking establishments licensed hereunder if such other clubs or establishments are located in hotels.

(B) A license for a club or drinking establishment which is a restaurant may be issued to a person who has a beneficial interest in other clubs or drinking establishments which are restaurants.

(C) A caterer's license may be issued to a person who has a beneficial interest in a club or drinking establishment and a license for a club or drinking establishment may be issued to a person who has a beneficial interest in a caterer.

(D) A license for a class A club may be granted to an organization of which an officer, director or board member is a distributor or retailer licensed under the liquor control act if such distributor or retailer sells no alcoholic liquor to such club.

(E) On and after January 1, 1988, a license for a class B club or drinking establishment may be granted to a person who has a beneficial interest in a microbrewery or farm winery licensed pursuant to the Kansas liquor control act.

(5) A copartnership, unless all of the copartners are qualified to obtain a license.

(6) A corporation, if any officer, manager or director thereof, or any stockholder owning in the aggregate more than 5% of the common or preferred stock of such corporation would be ineligible to receive a license hereunder for any reason other than citizenship and residence requirements.


(7) A corporation, if any officer, manager or director thereof, or any stockholder owning in the aggregate more than 5% of the common or preferred stock of such corporation, has been an officer, manager or director, or a stockholder owning in the aggregate more than 5% of the common or preferred stock, of a corporation which:

(A) Has had a license revoked under the provisions of the club and drinking establishment act; or

(B) has been convicted of a violation of the club and drinking establishment act or the cereal malt beverage laws of this state.

(8) A corporation organized under the laws of any state other than this state.


(9) A trust, if any grantor, beneficiary or trustee would be ineligible to receive a license under this act for any reason, except that the provisions of subsection (a)(6) of K.S.A. 41-311 and amendments thereto shall not apply in determining whether a beneficiary would be eligible for a license.

 (10) *A person who has failed to file any tax return or is not current in filing all applicable tax returns and in payment of all taxes, interest and penalties owed to the state of Kansas, excluding items under formal appeal pursuant to applicable statutes.*

(b) No club or drinking establishment license shall be issued under the provisions of the club and drinking establishment act to:

(1) A person described in subsection (a)(11) of K.S.A. 41-311 and amendments thereto.

(2) A person who is not a resident of the county in which the premises sought to be licensed are located.

 (3) *A person who has failed to file any tax return or is not current in filing all applicable tax returns and in payment of all taxes, interest and penalties owed to the state of Kansas, excluding items under formal appeal pursuant to applicable statutes.*

MEMORANDUM

To: Ms. Gloria M. Timmer, Director
Division of Budget

From: Kansas Department of Revenue

Date: 03/03/98

Subject: Senate Bill 680
Introduced as a Senate Bill

Brief of Bill

Senate Bill 680 as Introduced proposes additional standards for the issuance or re-newal of a license under the club and drinking establishment act or a license for the sale of cereal malt beverages. Persons must be current in filing any tax return or in payment of all taxes, interest and penalties owed to the state or any taxing subdivision. Items pertaining to the state under formal appeal pursuant to applicable statutes, are excluded. This act will be in effect from and after publication in the statute book.

Fiscal Impact

Adding new licensure standards will have no immediate effect on licenses presently in effect. The Department believes these standards will primarily affect individuals desiring to re-new their license and believes the industry for the most part will comply with the new standards.

Administrative Impact

The Department will be responsible for verifying submission of all state tax returns and payment of taxes, interest and penalties associated with a person requesting or re-newing a license under the club or drinking establishment act and for responding to city and county officials regarding the same for approval or re-newal of a cereal malt beverage license. In addition, the Department would be responsible for requesting verification regarding the submission of tax returns and the payment of taxes, interest and penalties imposed by taxing subdivisions when the person is requesting or re-newing a license for a club or drinking establishment. The time needed to perform these functions resulting in the approval or denial of the license will be increased.

The Department conducts Kansas tax return and payment information checks on businesses/persons requesting a Kansas lottery license. The Department believes many of the liquor and lottery license checks concerning current tax returns and tax payments will involve many of the same individuals and the use of a single check will prove sufficient for approval of both licenses and will not result in a request for additional expenditures at this time. Similarly

the Department will not request any additional operational costs associated with requesting the tax compliance information from cities and counties.

Additional administrative costs will be incurred by city and county governments to verify payment of locally administered taxes. The Department is unable to determine the cost of or the ability of all cities and counties to comply with this act.

Administrative Problems and Comments

Under this act, verifying the status of tax returns and payment of taxes constitutes an additional standard for the approval of a club or drinking establishment or cereal malt beverage license. The language refers to any tax return and all taxes, interest and penalties owed the state or taxing subdivision. A literal interpretation of "all taxes" would include taxes administered by other state agencies (Department of Human Resources-unemployment insurance) and a significant number of taxing subdivisions. The Department will coordinate the administrative process with these agencies but has little influence over the priority these agencies will place on processing the request. Some of these concerns could be resolved by inserting language linking license approval to tax return/payment information checks applicable to only taxes administered by the state agency issuing the license. The amendment mentions no time period regarding the Department's, other state or local agencies concerning the historical time period for verifying whether all tax returns have been filed or the time an agency has to complete the check and report back to the Department or the Department to the cities or counties.

Some cities do not presently authorize cereal malt beverage licenses unless property taxes are paid on the realty and all necessary city inspections have been conducted.

Taxpayer/Customer Impact

This act will increase voluntary compliance in filing tax returns and payment of taxes by persons in the alcohol and cereal malt beverage industry.

Legal Impact

Denial of liquor licenses based on these new standards may result in additional litigation by the Department. It is impossible to determine the number or complexity of the cases and subsequently whether the Department will be able to absorb the costs associated with this litigation.

Approved By:



John LaFaver
Secretary of Revenue

SENATE BILL No. 680

By Committee on Federal and State Affairs

2-25

9 AN ACT concerning alcoholic beverages; relating to licensure and qual-
10 ifications therefor; amending K.S.A. 41-2623 and 41-2703 and repeal-
11 ing the existing sections.

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

14 Section 1. K.S.A. 41-2623 is hereby amended to read as follows:
15 41-2623. (a) No license shall be issued under the provisions of this act to:

16 (1) Any person described in subsection (a)(1), (2), (4), (5), (6), (7),
17 (8), (9) or (12) of K.S.A. 41-311, and amendments thereto, except that
18 the provisions of subsection (a)(7) of such section shall not apply to nor
19 prohibit the issuance of a license for a class A club to an officer of a post
20 home of a congressionally chartered service or fraternal organization, or
21 a benevolent association or society thereof.

22 (2) A person who has had the person's license revoked for cause un-
23 der the provisions of this act.

24 (3) A person who has not been a resident of this state for a period of
25 at least one year immediately preceding the date of application.

26 (4) A person who has a beneficial interest in the manufacture, prep-
27 aration or wholesaling or the retail sale of alcoholic liquors or a beneficial
28 interest in any other club, drinking establishment or caterer licensed here-
29 under, except that:

30 (A) A license for premises located in a hotel may be granted to a
31 person who has a beneficial interest in one or more other clubs or drinking
32 establishments licensed hereunder if such other clubs or establishments
33 are located in hotels.

34 (B) A license for a club or drinking establishment which is a restau-
35 rant may be issued to a person who has a beneficial interest in other clubs
36 or drinking establishments which are restaurants.

37 (C) A caterer's license may be issued to a person who has a beneficial
38 interest in a club or drinking establishment and a license for a club or
39 drinking establishment may be issued to a person who has a beneficial
40 interest in a caterer.

41 (D) A license for a class A club may be granted to an organization of
42 which an officer, director or board member is a distributor or retailer
43 licensed under the liquor control act if such distributor or retailer sells

1 no alcoholic liquor to such club.

2 (E) On and after January 1, 1988, a license for a class B club or
3 drinking establishment may be granted to a person who has a beneficial
4 interest in a microbrewery or farm winery licensed pursuant to the Kansas
5 liquor control act.

6 (5) A copartnership, unless all of the copartners are qualified to ob-
7 tain a license.

8 (6) A corporation, if any officer, manager or director thereof, or any
9 stockholder owning in the aggregate more than 5% of the common or
10 preferred stock of such corporation would be ineligible to receive a li-
11 cense hereunder for any reason other than citizenship and residence
12 requirements.

13 (7) A corporation, if any officer, manager or director thereof, or any
14 stockholder owning in the aggregate more than 5% of the common or
15 preferred stock of such corporation, has been an officer, manager or di-
16 rector, or a stockholder owning in the aggregate more than 5% of the
17 common or preferred stock, of a corporation which:

18 (A) Has had a license revoked under the provisions of the club and
19 drinking establishment act; or

20 (B) has been convicted of a violation of the club and drinking estab-
21 lishment act or the cereal malt beverage laws of this state.

22 (8) A corporation organized under the laws of any state other than
23 this state.

24 (9) A trust, if any grantor, beneficiary or trustee would be ineligible
25 to receive a license under this act for any reason, except that the provi-
26 sions of subsection (a)(6) of K.S.A. 41-311, and amendments thereto shall
27 not apply in determining whether a beneficiary would be eligible for a
28 license.

29 ~~(10) A person who has failed to file any tax return or is not current~~
30 ~~in payment of all taxes, interest and penalties owed to any taxing subdivi-~~
31 ~~sion.~~

32 (11) *A person who has failed to file any tax return or is not current*
33 *in filing all applicable tax returns and in payment of all taxes, interest and*
34 *penalties owed to the state of Kansas, excluding items under formal appeal*
35 *pursuant to applicable statutes.*

36 (b) No club or drinking establishment license shall be issued under
37 the provisions of the club and drinking establishment act to:

38 (1) A person described in subsection (a)(11) of K.S.A. 41-311, and
39 amendments thereto.

40 (2) A person who is not a resident of the county in which the premises
41 sought to be licensed are located.

42 ~~(3) A person who has failed to file any tax return or is not current in~~
43 ~~payment of all taxes, interest and penalties owed to any taxing subdivision.~~

1 (4) A person who has failed to file any tax return or is not current in
2 filing all applicable tax returns in and payment of all taxes, interest and
3 penalties owed to the state of Kansas, excluding items under formal appeal
4 pursuant to applicable statutes.

5 Sec. 2. K.S.A. 41-2703 is hereby amended to read as follows: 41-
6 2703. (a) After examination of an application for a retailer's license, the
7 board of county commissioners or the director ~~shall~~, if they approve the
8 same, *shall* issue a license to the applicant. The governing body of the
9 city ~~shall~~, if the applicant is qualified as provided by law, *shall* issue a
10 license to such applicant.

11 (b) No retailer's license shall be issued to:

12 (1) A person who is not a resident of the county in which the place
13 of business covered by the license is located, has not been a resident of
14 such county for at least six months or has not been a resident in good
15 faith of the state of Kansas.

16 (2) A person who has not been a resident of this state for at least one
17 year immediately preceding application for a retailer's license.

18 (3) A person who is not of good character and reputation in the com-
19 munity in which the person resides.

20 (4) A person who is not a citizen of the United States.

21 (5) A person who, within two years immediately preceding the date
22 of application, has been convicted of a felony or any crime involving moral
23 turpitude, drunkenness, driving a motor vehicle while under the influence
24 of intoxicating liquor or violation of any other intoxicating liquor law of
25 any state or of the United States.

26 (6) A partnership, unless all the members of the partnership are oth-
27 erwise qualified to obtain a license.

28 (7) A corporation, if any manager, officer or director thereof, or any
29 stockholder owning in the aggregate more than 25% of the stock of such
30 corporation, would be ineligible to receive a license hereunder for any
31 reason other than the citizenship and residency requirements.

32 (8) A corporation, if any manager, officer or director thereof, or any
33 stockholder owning in the aggregate more than 25% of the stock of such
34 corporation, has been an officer, manager or director, or a stockholder
35 owning in the aggregate more than 25% of the stock, of a corporation
36 which: (A) Has had a retailer's license revoked under K.S.A. 41-2708, and
37 amendments thereto; or (B) has been convicted of a violation of the drink-
38 ing establishment act or the cereal malt beverage laws of this state.

39 (9) A person whose place of business is conducted by a manager or
40 agent unless the manager or agent possesses all the qualifications of a
41 licensee.

42 (10) A person whose spouse would be ineligible to receive a retailer's
43 license for any reason other than citizenship, residence requirements or

1 age, except that this subsection (b)(10) shall not apply in determining
2 eligibility for a renewal license.

3 (11) *A person who has failed to file any tax return or is not current*
4 *in payment of all taxes, interest and penalties owed to any taxing subdivi-*
5 *vision.*

6 ~~(12) *A person who has failed to file any tax return or is not current*~~
7 ~~*in filing all applicable tax returns and in payment of all taxes, interest and*~~
8 ~~*penalties owed to the state of Kansas, excluding items under formal appeal*~~
9 ~~*pursuant to applicable statutes.*~~

10 (c) Retailers' licenses shall be issued either on an annual basis or for
11 the calendar year. If such licenses are issued on an annual basis, the board
12 of county commissioners or the governing body of the city shall notify the
13 distributors supplying the county or city on or before April 1 of the year
14 if a retailer's license is not renewed.

15 Sec. 3. K.S.A. 41-2623 and 41-2703 are hereby repealed.

16 Sec. 4. This act shall take effect and be in force from and after its
17 publication in the statute book.