

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 11:10 a.m. on March 5, 1998, in Room 254-E of the Capitol.

All members were present.

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:

Mr. Gene Johnson, Kansas Community Alcohol Safety Action Project Coordination
Association, Topeka
Mr. Michael Hale, Attorney, Department of Revenue
Mr. Gary Carter, Chief, Driver Control Bureau, Division of Vehicles

Others attending: See attached list

The chair recognized Senator Harrington who introduced Dallas Rakestraw, Ashley Rakestraw, Jacob Reeves, and Rebecca Trego, students from Maize High School who served as pages for the committee this morning.

Senator Oleen recalled that, during the hearing yesterday on **SB 680**, relating to licensure and qualifications for the sale of alcoholic beverages, a question was raised in regard to the effect the bill would have on pending litigation involving the Indian Tribes. She indicated the bill would not affect that litigation because it had already moved forward, and she made available to the committee information provided by the Department of Revenue on the current status of two lawsuits involving Native Americans and the Department (Attachment #1).

The hearing was continued on:

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

The chair reiterated the policy of the committee to divide equal time between opponents and proponents. She noted that approximately nine minutes remained for testimony to be offered by proponents and indicated only one conferee was scheduled to be heard before the hearing was closed.

Mr. Gene Johnson, representing the Kansas Community Alcohol Safety Action Project Coordination Association, appeared in opposition to the bill (Attachment #2), saying the Association opposes it in its present form. He told the committee the organization has been actively involved in highway safety, predominantly in the area of DUI legislation, since 1981. He said the Association does not feel the ignition interlock device would further enhance highway safety or do much to reduce DUI arrests. He indicated he continues to have misgivings with the bill in its present form and stated that, while his Association is not against any proposed legislation that would reduce the number of DUI offenders in Kansas, it believes more input is needed from all agencies involved. Further, he suggested a review of the February 1, 1996, Department of Revenue report to the legislature regarding the use, recommendations, modification or continuation of the ignition interlock program.

Senator Harrington, referencing a statement in Mr. Johnson's written testimony that Kansans were drinking more in moderation since the inception of the present DUI law, inquired if this included all age groups, and Mr. Johnson replied it did not hold true in the underage group.

The chair inquired about the Department of Revenue report of February 1, 1996, and asked that a copy be provided to the committee.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON FEDERAL AND STATE AFFAIRS, Room 254-E, Statehouse, at 11:10 a.m. on March 5, 1998

Responding to a question from a committee member concerning the number of ignition interlock manufacturers in the State of Kansas, the committee was told there four approved distributors and six manufacturers, including Lifesaver Interlock, Inc.

At the request of the chair, Gary Carver, Chief of the Driver Control Bureau, explained diversion, comparing it to a probationary period with specific requirements to be met by the offender. He told the committee that 40% of first-time offenders enter into a diversion agreement and, if an offender meets all the requirements during that period, a diversion is entered in lieu of the DUI conviction.

Senator Harrington asked Mr. Johnson for clarification regarding his testimony today and statistics he provided in earlier testimony before the Senate Transportation on a bill that would require drug and alcohol abuse counseling prior to obtaining a first-time driver's license. Mr. Johnson indicated he would contact her office after reviewing the statistics referred to in his earlier testimony on a different bill in the Senate Transportation Committee.

The hearing was closed on **SB 651**.

Senator Oleen requested representatives of Lifesaver Interlock and the Division of Vehicles to remain and meet with her immediately upon adjournment of the meeting.

The hearing was continued on:

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

Senator Oleen explained that the hearing yesterday on **SB 680** had been interrupted because of time constraints and would continue today to allow Mr. Michael Hale, Attorney for the Department of Revenue, to complete his testimony.

Mr. Hale referenced his supplemental testimony (Attachment #3), calling attention to and explaining the balloon amendment prepared in response to discussion yesterday. Addressing a specific question raised yesterday about whether the Department of Revenue could effectively administer tax information reported from the various counties, Mr. Hale referred to the memorandum attached to the supplemental testimony which indicates there would not be any additional operational costs associated with requesting tax compliance information from cities and counties. In regard to the concern expressed about disclosure of tax information by the Department, Mr. Hale discussed the proposed amendment which would allow the Department to exchange tax information with the local bodies of government.

The chair called attention to an attachment to the written testimony of Mr. Hale which sets out the qualifications for an individual to receive a license to sell liquor in the State of Kansas and asked staff if the same standard concerning the payment of taxes applies to other businesses. Staff advised that the same stipulation applies to lottery retailers who must be current in the payment of all state and local taxes. Mr. Hale added there is a similar provision in the Motor Vehicle Dealers' Act that relates to the sale of motor vehicles.

Senator Schraad, recalling criticism the State of Kansas and the Department of Revenue have received nationally from the perspective of the business community as not being "business friendly", commented that an effort was made to change that perception with the passage of the Taxpayers Fairness Act last year, and he inquired of Mr. Hale if the overall tone of **SB 680** was consistent with that effort. Mr. Hale stated he believed the tone of the bill was consistent with that effort and he did not see a conflict in that regard; that businesses are wanted in the state for economic development but that citizens expect taxes that are due to be paid. He stated he believes it is a good pro-business bill.

In response to an inquiry from a committee member, the chair advised there were no opponents listed for either day set for the hearing of **SB 680** and, noting that time had expired, indicated the bill would be revisited at a later date.

Senator Oleen announced there had been an agenda change and the committee would have an abbreviated meeting tomorrow, from 11:00 to 11:30, to hear **SB 682**, concerning juveniles. She advised that the subcommittee appointed to study **SB 322**, relating to licensure and regulation of private detectives and detective agencies, would meet tomorrow also.

The meeting adjourned at 12:10 p.m. The next meeting is scheduled for March 6, 1998.

SENATE FEDERAL & STATE AFFAIRS COMMITTEE
GUEST LIST

DATE: 3-5-98

NAME	REPRESENTING
Steve Johnson	Ks. Remunty A SAP. Coord. aish
David Whelan	Attorney General
Michael Hare	K D & R
Ann Dukes	Div of Bud.
Stacy Sololan	Pete M. Sullivan & Assoc
Lang Sisson	Kearney law office
John Rendall	Lifesaver Interlou
STEVE KEARNEY	LIFESAVER INTERLOCK

STATE OF KANSAS
Bill Graves, Governor

FEB 20 1998
DEPARTMENT OF REVENUE
John D. LaFaver, Secretary

Office of the Secretary
Kansas Department of Revenue
915 SW Harrison St.
Topeka, KS 66612-1588



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Office of the Secretary

February 19, 1998

The Honorable Lana Oleen,
State Senator
Statehouse, 136N
Topeka, KS. 66612

Re: Litigation involving Native Americans and Kansas Department of Revenue

Dear Senator Oleen:

As requested, here is the current status of the two lawsuits involving Native Americans and the Kansas Department of Revenue:

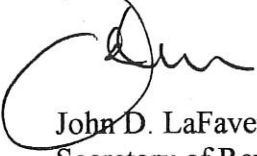
The first suit, *Sac & Fox Tribe, et al. v. LaFaver*, is pending in federal district court. Judge Saffles has just issued an order denying the department's motion to reconsider his decision denying the department's motion to dismiss based on Eleventh Amendment immunity. Motions for summary judgment on dispositive issues are due from both parties on or before March 11, 1998. Discovery and further pretrial proceedings would follow after the court has issued its decision on the motions for summary judgment.

The second lawsuit, *In re Kathy Kaul, et al v. LaFaver*, is currently before the Kansas Supreme Court. In this case, the department filed a motion for summary judgment with the Jackson County district court, and plaintiffs filed partial motions for summary judgment. The district court ruled, as a matter of law, that the legal incidence of the Kansas motor fuel tax is on distributors, not retailers. The court further found as a matter of fact that the plaintiffs are retailers, not distributors. He therefore ruled that plaintiffs lacked the requisite standing to bring suit against the department, granted the department's motion for summary judgment and denied plaintiff's motion for partial summary judgment. From this order the plaintiffs appealed. This case has been fully briefed before the Supreme Court, and is awaiting oral arguments.

I trust that this answers your questions as to the status of these two matters. If you need any additional information, please call me or my staff.

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Attachment: #1

Sincerely,

A handwritten signature in black ink, appearing to read "John D. LaFaver". The signature is written in a cursive style with a large, looping initial "J".

John D. LaFaver
Secretary of Revenue

Testimony
Senate Bill 651
Senate Federal and State Affairs Committee
February 25, 1998

Senator Lana Oleen
Chairperson, Federal and State Affairs Committee
State House, Topeka, KS

Good Morning Madam Chairperson and Members of the Committee.

The Kansas Community Alcohol Safety Action opposes S.B.651 in its present form. Our organization has been actively involved in highway safety, predominantly in the D.U.I. legislation since 1981. In the 1982 Legislative Session, the Legislature passed and the governor signed law, legislation that completely changed the attitude of how the courts and the public in general viewed the D.U.I. problem.

For starters, the law eliminated the practice of "plea bargaining" in order to "hide" a D.U.I. arrest into something less threatening. However, the legislation realized that for the first time offender, a diversion from the charge of D.U.I. could be of positive value for the offender. Other major changes in this legislation was mandatory jail sentences of a progressive nature, hefty fines that could not be paroled under a certain amount and restriction and suspension of the offender's driving privileges.

In almost every year since 1982, the legislature has continued to "fine tune" our D.U.I. laws and other alcohol and drug violations. When our Kansas D.U.I. laws are measured against the remaining fifty states, I personally feel that we rank near the top.

This was accomplished by an open minded legislature and total cooperation from the Kansas Department of Revenue, the office of Highway Safety, Department of Transportation, the Kansas Attorney General's Office and the Governor's Office. In addition, the grass roots organization of MADD and SADD played important roles in the enactment of our present D.U.I. and other alcohol and drug legislation.

Since the inception of the present D.U.I. law in 1982, we have witnessed a drop of alcohol related crash fatalities of over 50%. We also note that alcohol consumption per capita has not lowered in accordance to the fatality figure which would indicate that alcohol awareness, education and treatment are accomplishing their purpose. The citizens of Kansas are drinking more in moderation and not subjecting themselves to death or injuries on the highways of Kansas.

Our organization does not feel that the ignition interlock device as proposed in S.B.651 would further enhance highway safety or do much to reduce D.U.I. arrests in it's present form.

First, the device is placed on the vehicle and only that vehicle is affected. The person who makes it a habit of drinking and driving will most likely find a vehicle that isn't equipped with an interlock device. This gives the appearance that the vehicle is on probation rather than the offender.

In examining this proposed legislation on page 2, line 9, the phrase of "suspension or revocation indefinitely" is used. Only after the offender has placed an interlock devise on his vehicle for a year is he or she eligible for re-instatement of his driving privileges. Should he or she choose not to participate in the interlock program, when if ever would he or she be eligible for re-instatement of driving privileges.

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Attachment: #2

We are really concerned about the language on page 3, line 5 thru 11, which would give the courts the opportunity of by-passing alcohol and drug education or a treatment program to just ordering an interlock device for the period of probation. In other words, no education or treatment for the offender, just an interlock device on his vehicle. This same language is found in line 17 thru 23 which relates to diversions granted by the prosecution.

In referring to page 5, lines 34 thru 37 would indicate the court could order an ignition interlock device on a diversion agreement. We do not believe the court should be involved in diversion agreements as that is the function of the prosecuting attorney.

This proposed legislation gives the courts and prosecuting attorneys the right to impose a \$5.00 monthly fee to the probation department or the community based alcohol and drug safety action program to monitor the person's compliance with the interlock program. This proposal is found on page 7, lines 3 thru 18. We believe that a \$5.00 fee to be collected monthly from the person on the interlock program would create a fiscal hardship on those programs. In other words, the cost to collect would be greater than the money received. If that person fails to pay, it would be necessary to request a revocation of their diversion agreement or probation order requiring a court appearance in order to collect \$5.00. Granted a fee should be paid to the probation department or the community based alcohol and drug safety action program, but it should come from the vendor of the ignition interlock system who most likely will obtain their fee in advance of installing the device.

To go a little bit further, on page 11, lines 22 thru 32, would suggest that violations discovered by the manufacture would be reported to the court, not the probation department, or the community alcohol and drug safety action program, nor the Division of Motor Vehicles, Kansas Department of Revenue. In addition, a violation or non compliance could be as late as 60 days in being reported to the court.

In addition, we question the language found again on page 11, lines 19 thru 20, as to what a "reasonable statewide service network" would actually consist of.

In conclusion, we have not found any evidence of the cost of the interlock device to the offender thru out this proposed legislation nor do we find any cost limits incurred in the ensuing years. We feel that any cost over and above the already existing costs, fees and fines would place a financial hardship on a large percentage of our offenders. We also did not find any solution for those offenders who have been found indigent by the court.

Our organization definitely is not against any proposed legislation that would help reduce the number of D.U.I. offenders in our state. We believe that more input is needed from all agencies involved and also a review of the Department of Revenue's February 1, 1996 report to the legislature regarding the use, recommendations, modification or continuation of the ignition interlock program.

Thank you, I will attempt to answer any questions.

Respectfully,


Gene Johnson

Kansas Community Alcohol Safety Action Project Coordination Association

Richard Oxandale, General Counsel
Kansas Department of Revenue
915 SW Harrison St.
Topeka, KS 66612-1588



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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: 3/5/98

Re: Senate Bill 680, Supplemental Testimony

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.

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.

The current SB 680 would apply to any person holding a Drinking Establishment, 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.

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 suppliers, micro-breweries, farm wineries, retail liquor stores and other license holders under Chapter 41 by amending K.S.A. 41-311 and KSA 330. This proposed language is found as Attachment 1 to the department's supplemental 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

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revocation of a license held by 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 held by 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 fiscal note presents to the committee certain administrative difficulties SB 680 presents in authorizing the denial of a license 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.

Moreover, 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 would need to be handled in one of two ways: 1) eliminate this section because current disclosure laws do not authorize the disclosure of state tax information to local licensing subdivisions; or, 2) amend KSA 74-2424 to authorize disclosure by the department to local licensing subdivisions.

Finally, the department's proposed the amendments 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 subdivisions thereof. The major taxes at issue are: state and local sales tax, employee withholding tax, income tax and transient guest taxes, property 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) *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;

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

censed. The agent must be satisfactory to and approved by the director, except that the director shall not approve as an agent any person who:

- (1) 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 41-330. 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~~ *secretary or secretary's designee* 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 41-2610: It shall be unlawful for any licensee or holder of a temporary permit under this act to:

(a) Employ any person under the age of 18 years in connection with the serving of alcoholic liquor.

(b) Employ knowingly or continue in employment any person in connection with the dispensing or serving of alcoholic liquor or the mixing of drinks containing alcoholic liquor who has been adjudged guilty of a felony or of any crime involving a morals charge in this or any other state, or of the United States.

(c) Employ knowingly or to continue in employment any person in connection with the dispensing or serving of alcoholic liquor or mixing of drinks containing alcoholic liquor who has been adjudged guilty of a violation of any intoxicating liquor law of this or any other state, or of the United States, during the two-year period immediately following such adjudging.

(d) In the case of a club, fail to maintain at the licensed premises a current list of all members and their residence addresses or refuse to allow the director, any of the director's authorized agents or any law enforcement officer to inspect such list.

(e) Purchase alcoholic liquor from any person except from a person authorized by law to sell such alcoholic liquor to such licensee or permit holder.

(f) Permit any employee of the licensee or permit holder who is under the age of 21 years to work on premises where alcoholic liquor is sold by such licensee or permit holder at any time when not under the on-premises supervision of either the licensee or permit holder, or an employee who is 21 years of age or over.

(g) Employ any person under 21 years of age in connection with the mixing or dispensing of drinks containing alcoholic liquor.

(h) Fail to file any tax return or not be 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. 41-2611 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 or temporary permit holder to file any tax return or not be 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 or items under a formal repayment schedule entered into with the secretary or secretary's designee.*

(11) *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 any taxing subdivision, 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 or items under a formal repayment schedule entered into with the secretary or secretary's designee.*

(4) *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 any taxing subdivision, excluding items under formal appeal pursuant to applicable statutes*

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.~~

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 any taxing subdivision, excluding items under formal appeal pursuant to applicable statutes

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 or items under a formal repayment schedule entered into with the secretary or secretary's designee.

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 any taxing subdivision, excluding items under formal appeal pursuant to applicable.

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

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 any taxing subdivision, excluding items under formal appeal
 pursuant to applicable statutes or items under a formal repayment schedule
 entered into with the secretary or secretary's designee.

3-11

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 any taxing subdivision, excluding items under formal appeal pursuant to applicable statutes or items under a formal repayment schedule entered into with the secretary or secretary's designee.

5-12

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

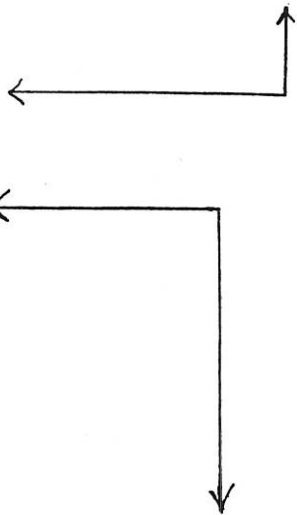
3 ~~(11) A person who has failed to file any tax return or is not current
4 in payment of all taxes, interest and penalties owed to any taxing subdivi-
5 sion.~~

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.



DELETE or add New Section 74-2424:

74-2424 Tax information; limits on dissemination and use.

(a) The secretary of revenue may make available or furnish to the taxing officials of any other state or the commissioner of internal revenue of the United States or other taxing officials of the federal government, or their authorized representatives, or the director of property valuation, or the governing body of any city or board of county commissioners for the purpose of issuing licenses under the provisions of KSA 41-2701 et seq. information contained in tax reports, renditions or returns or any audit thereof or the report of any investigation made with respect thereto, filed pursuant to the tax laws. Such information shall not be used for any other purpose than that of the administration of the tax laws of this or another state or of the United States, except that the post auditor shall have access to all such information in accordance with and subject to the provisions of subsection (g) of K.S.A. 46-1106 and amendments thereto.

(b) Notwithstanding the provisions of this section, the secretary of revenue may:

(1) Communicate to the executive director of the Kansas lottery information as to whether a person, partnership or corporation is current in the filing of all applicable tax returns and in the payment of all taxes, interest and penalties to the state of Kansas, excluding items under formal appeal, for the purpose of determining whether such person, partnership or corporation is eligible to be selected as a lottery retailer; and

(2) communicate to the executive director of the Kansas racing commission information as to whether a person, partnership or corporation has failed to meet any tax obligation to the state of Kansas for the purpose of determining whether such person, partnership or corporation is eligible for a facility owner license or facility manager license pursuant to the Kansas parimutuel racing act.

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.

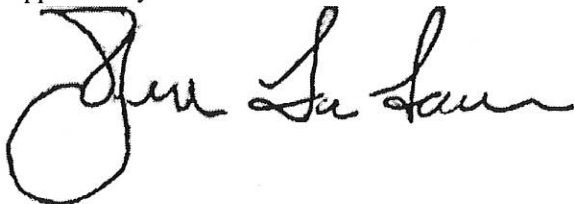
Taxpayer/Customer Impact

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