

Approved: February 11, 1999 5
Date

MINUTES OF THE COMMITTEE ON FEDERAL AND STATE AFFAIRS.

The meeting was called to order by Chairperson Senator Lana Oleen at 11:00 a.m. on February 1, 1999 in Room 254-E of the Capitol.

All members were present except: Senator Jones, excused

Committee staff present: Mary Galligan, Legislative Research Division
Theresa Kiernan Revisors of Statutes
Judy Glasgow, Committee Secretary

Conferees appearing before the committee: Jim Conant, ABC Director
Rita Madl, Kansas Licensed Beverage Association
Ron Hein, Kansas Restaurant and Hospitality Assoc.
R. E. Tuck Duncan, Comments on Written Testimony

Others attending: See Attached Sheet

Chairman Oleen called for introduction of bills and recognized Senator Vidricksen. Senator Vidricksen requested the introduction of a bill for the Associate General Contractors of Kansas, for a nondamage for delay clause in public work contracts. Senator Vidricksen moved for the introduction of the bill. The motion was seconded by Vratil. Motion carried.

Chairman Oleen asked Theresa Kiernan to give an overview of **SB 6**, relating to alcoholic beverages and certain licensees. This bill was referred from the Interim Federal and State Affairs Committee and was similar to a bill introduced in this committee last year. It would require the licensees under the liquor control act to be current in their state taxes. Senator Becker questioned if there were any who were exempted from the bill and why. Theresa Kiernan stated that cereal malt beverage licenses are exempt because they are issued at the local not state level. This bill would cover all licenses under the Liquor Control Act. Senator Vratil pointed out that the use of the word "willfully" in the bill would make it extremely difficult to enforce. Senator Vratil suggested that at least the second reference "willfully" should be removed when the bill is worked.

Chairman Oleen moved to open hearings on;

SB 6, relating to certain licensees

Jim Conant, Director, Division of Alcoholic Beverage Control, (ABC) a proponent for **SB 6**, stated that it has been the policy of this state to require businesses engaged in the selling of alcoholic liquor to be current in the payment of liquor taxes as a condition of continued licensure. (Attachment 1). However, even those who routinely pay their liquor taxes on time, may often remain delinquent in taxes related to the business such as sales, withholding or income taxes. This bill would provide a tool to ensure that each licensee pays their fair share, rather than placing others in the industry who pay all their taxes at a disadvantage to those who subsidize their operations by paying only liquor taxes in order to retain the license. Mr. Conant pointed that the department also suggests that the term "willfully" be removed from the proposal. Current collections procedures for delinquent liquor taxes provide for written notice and 30-day period to cure the delinquency before citations are issued against the license. This procedure provides those who have inadvertently failed to file a timely return or payment an opportunity to correct the deficiency. Mr. Conant presented figures showing the amount of delinquent taxes this bill would impact. (Attachment 2).

Senator Oleen asked Mr. Conant to explain how bonding works and if there would be a possibility for the bond to be used to pay these taxes. Mr. Conant stated that a statutory bond of at least \$2000.00 is required. The bond can be foreclosed for any number of reasons including the failure to pay taxes. Senator Oleen questioned if when the renewal packet was sent out by ABC if they would have the capability at that time to indicate if taxes were owed. Mr. Conant responded it could be done.

CONTINUATION

MINUTES OF THE SENATE FEDERAL AND STATE AFFAIRS COMMITTEE, Room 254-E,
Statehouse at 11:00 a.m. on February 1, 1999

In response to a question from Senator Bleeker about what kind of taxes would be include, Mr. Conant stated that this would include personal income as well as corporate income taxes. Senator Bleeker ask if this was being done in other areas and Senator Oleen stated that some of the other businesses who meet the test include all lottery retailers, and all licensee in the pari-mutual act. Cigarette and tobacco licenses must meet the sales tax test as well.

Senator Harrington asked if there was any way of knowing if businesses who contract with the state are current with their taxes and if they are not current, does this effect the state doing business with them. Mr. Conant stated that there is a contract provision regarding tax liabilities and the contractor must meet these provision before being awarded the contract. Failure to do so would be a violation of the contract.

Rita Madl, President, Kansas Licensed Beverage Association (KLBA), appeared as an opponent to **SB 6**. (Attachment 3). Members of this organization are independent owners of bars and restaurants throughout the state. We are concerned with the need to guarantee tax payments with license renewals. Penalties and interest fees seem to be deterrents enough. The reason for the security bond to protect the state from non payment of taxes. The KLBA feel that not enough notice of delinquent taxes or penalties is given now and the ability to "pay up" in the short period of time available during the licensing renewal is problematic. If the bill passes, the KLBA would like to see the tax bond lessened or eliminated. Missouri requires tax bonds similar to Kansas but after two years if taxes are current, the bond is refunded.

Rita Madl stood for questions from the committee.

Chairman Oleen recognized Ron Hein, counsel for Kansas Restaurant and Hospitality Association, (KRHA) who addressed the committee as neither a proponent or a opponent for **SB 6**. (Attachment 4). One of the concerns of KRHA is why licensees under the Liquor Control Act are, with a handful of others the only ones to be separated out for this type of legislation. The KRHA would prefer that this type of legislation if it be applied uniformly to all licensees.

Senator Becker requested information listing all kinds of businesses in the state that are allowed to retain their licenses when they are behind in their taxes. Senator Oleen suggested that the Department of Revenue might be able to answer this request and ask Mr. Conant to obtain this information.

Chairman Oleen noted written testimony had been provided to the committee by Marge Roberson, President of Kansas Retail Liquor Dealers Association, in opposition of the bill. (Attachment 5)

Written testimony was also provided by R. E. " Tuck" Duncan , on behalf of Kansas Wine and Spirits Wholesalers Association. (Attachment 6). Tuck Duncan did address the committee regarding the use of the language of the lottery act. This language is less onerous and will accomplish the same purpose to ensure compliance. He raised the issue if in checking personal income tax returns included shareholders of various corporations and officers in regard to large corporations

Chairman Oleen announced that the committee will continue to hold this bill in committee, there have been some requests of information as well as any submissions of written testimony. The hearing on **SB 6** was closed.

Hearing were opened on:

SB 15, concerning the powers and duties of the director :

CONTINUATION

MINUTES OF THE SENATE FEDERAL AND STATE AFFAIRS COMMITTEE, Room 254-E, Statehouse, at 11:00 a.m. February 1, 1999.

Chairman Oleen recognized Jim Conant, Director of ABC, as a proponent of the bill. ABC agents are enforcement agents who work in the undercover mode. While they are fully empowered law enforcement officers, but they are not fully equipped to do street enforcement. This bill clarifies that it is not the legislature's intend that agents of ABC specifically become responsible for enforcement of the open container violations in vehicles, but does not prohibit them from taking action. The issue was brought to our attention by the Legislative Post Audit and that there was the unintended effect of appearing to mandate it.

Senator Harrington moved to amend the bill, making it effective upon publication in the Kansas Register, and recommend it favorably to the full Senate. Senator Bleeker seconded the motion, The motion passed.

The meeting adjourned at 12:10 p.m.. The next meeting of the committee is scheduled for February 2, 1999.

SENATE FEDERAL & STATE AFFAIRS COMMITTEE
GUEST LIST

DATE: Feb 1, 1999

NAME	REPRESENTING
Ted + Rita Madl	Kansas Licensed Beverage Ass.
JAMES A. CARSON	KRLDA
Art Bossert	Bossert Liquor
James Bossert	Bossert Liquor
Deborah A. Davis	Ks. STARBASE
Lester L. Lawson	Ks. Clubs Assoc.
Amy A. Campbell	KRLDA
John Conal	ABC
Ron Hein	KS Restaurant & Hospitality Assoc.
Kathy Decker	Beverage News
Kelly Kuitola	City of Overland Park
Tom DeLes	McGill Baker's Assn.
Kath Damon	Philip Morris
Neal Whitaker	Ks Beer Wholesalers Assn
R. Fin	Ks Clubs Assoc & KRLDA
Peter Bodyk	KDOR
Shanna W. Mynra	KDOR
Dean Reynolds	KDOR
Tom SALAME	BMCA of KS.

Don Moler
Alan Steppat

League of KS Municipalities
A.E. Steppat & Co.

Jim Conant, Director
Division of Alcoholic Beverage Control
4 Townsite Plaza, Suite 210
200 S.E. 6th Street
Topeka, KS 66603-3512



(785) 296-7015
FAX (785) 296-0922

Division of Alcoholic Beverage Control

Memorandum

TO: Senator Lana Oleen, Chairperson
Senate Committee on Federal & State Affairs

FROM: Jim Conant, Director

RE: Senate Bill 6

DATE: February 1, 1999

Thank you for the opportunity to appear before the committee in support of Senate Bill 6. Senate Bill 6, as introduced, would require applicants for state liquor licenses to be current in payment of all taxes owed to the state. It has long been the policy of this state to require businesses engaged in the selling of alcoholic liquor to be current in the payment of liquor taxes as a condition of continued licensure. Licensees generally adhere to this requirement, with citations issued by the ABC Division against those who become delinquent and do not submit required returns or payments upon request from the Division of Taxation. Unfortunately, even those who routinely pay their liquor taxes on time often remain delinquent in taxes related to the business such as sales, withholding or income taxes. Senate Bill 6 will provide a tool to ensure that each licensee is paying their fair share, rather than placing those who pay all their taxes at a disadvantage to those who subsidize their operations by paying only liquor taxes in order to retain the license.

The fiscal note prepared for this bill indicates that the most significant impact is in the area of sales taxes due from on-premise establishments. Of 1,976 active liquor excise (drink tax) accounts, 265 have outstanding liquor tax balances in the amount of \$539,000. Of these same 265 accounts, 175 have outstanding balances for other taxes, primarily sales tax, in the amount of \$876,000. In addition, there are another 143 accounts who do not have a liquor excise balance, but owe other taxes totaling nearly \$946,000. Total non-liquor taxes owed by both on-premise and package licensees are estimated at \$1,828,000. A detailed breakdown of these accounts by tax-type is attached.

Throughout the bill, the proposed new language refers to a "willful" action by an applicant for a license or an existing licensee to be denied a license or to have their license revoked. Using the term "willful" requires a level of intent to be shown for a license or renewal to be denied. The fact that someone was delinquent in the filing of tax returns or payment of taxes would not disqualify them from receiving a license unless KDOR could show specific intent. The liquor enforcement and excise tax statutes, Chapter 79, Article 41 & 41a, allow for a penalty for failing to file a return or pay the tax, regardless of intent. The department suggests the term "willfully" be removed from the proposal. Our current collections procedures for delinquent liquor taxes provide for a written notice and 30-day period to cure the delinquency before citations are issued against the license. This practice provides those who have inadvertently failed to file a timely return or payment an opportunity to correct the deficiency without the potential for a charge of intentional failure to file or pay.

Thank you for your consideration of this important "fair share" legislation. I would be happy to attempt to answer any questions the committee may have.

Sen. Federal & State Affairs Comm.
Date: 2-1-99
Attachment: # 1-1

LIQUOR COMPLIANCE DATA
Report as of 1/18/99

	# Accts	\$ Owed - liquor only	# SA Accts	SA \$	# WH Accts	WH \$	# Consumer Comp Accts	CC \$	# Retailer Comp Accts	RC \$	# Transient Guest Accts	TG \$	# Bingo Accts	BI \$	# Corp Accts	CI \$	Total Cases	Total \$ for Other taxes
LE Owe	85	\$ 265,784.68	5	\$ 3,433.07	3	\$ 1,965.95	0	\$ -	0	\$ -	0	\$ -	0	\$ -	0	\$ -	8	\$ 5,399.02
LE Don't	636	\$ (202.27)	8	\$ 210.61	5	\$ 564.69	0	\$ -	0	\$ -	0	\$ -	0	\$ -	0	\$ -	13	\$ 775.30
LE NF	24	\$ -	0	\$ -	1	\$ 31.80	0	\$ -	0	\$ -	0	\$ -	0	\$ -	0	\$ -	1	\$ 31.80
Total LE Registrants	745																	
RL Owe	265	\$ 538,654.83	128	\$ 773,963.90	35	\$ 77,446.64	1	\$ 491.72	0	\$ -	0	\$ -	2	\$ 205.02	9	\$ 24,150.61	175	\$ 876,257.89
RL Don't	1356	\$ -	100	\$ 581,614.70	25	\$ 8,455.86	1	\$ 290.89	0	\$ -	4	\$ 85,788.64	4	\$ 432.31	9	\$ 3,130.21	143	\$ 679,712.61
RL NF	346	\$ (385.85)	41	\$ 264,500.44	8	\$ 993.33	1	\$ 222.62	0	\$ -	0	\$ -	2	\$ 47.48	1	\$ 2.40	53	\$ 265,766.27
Total RL Registrants	1976																	
Subtotals																		
Owe	350	\$ 804,439.51	133	\$ 777,396.97	38	\$ 79,412.59	1	\$ 491.72	0	\$ -	0	\$ -	2	\$ 205.02	9	\$ 24,150.61	183	\$ 881,656.91
Don't Owe/NF	2362	\$ (588.12)	149	\$ 846,325.75	39	\$ 10,045.68	2	\$ 513.51	0	\$ -	4	\$ 85,788.64	6	\$ 479.79	10	\$ 3,132.61	210	\$ 946,285.98
Grand Total	2712	\$ 803,851.39	282	\$ 1,623,722.72	77	\$ 89,458.27	3	\$ 1,005.23	0	\$ -	4	\$ 85,788.64	8	\$ 684.81	19	\$ 27,283.22	393	\$ 1,827,942.89

Total Liquor owed & all other taxes \$ 2,631,794.28

Legend:

- LE Owe Number of accounts in Liquor Enforcement with a balance greater than 0 and balance due in other taxes.
- LE Don't Number of accounts in Liquor Enforcement with no balance due and no non-filed periods but a balance due in other taxes.
- LE NF Number of accounts in Liquor Enforcement with non-filed periods with no balance due.

- RL Owe Number of accounts in Liquor Excise with a balance greater than 0 and balance due in other taxes.
- RL Don't Number of accounts in Liquor Excise with no balance due and no non-filed periods but a balance due in other taxes.
- RL NF Number of accounts in Liquor Excise with non-filed periods with no balance.



Kansas Licensed Beverage Association

February 1, 1999

Senator Lana Oleen
Chair of Senate Federal and State Affairs and Members
Kansas Senate
State Capital Building
300 SW 10th Street, Room 254 East
Topeka, KS 66612

Dear Honorable Chair:

The Kansas Licensed Beverage Association represents on-premise alcohol license holders throughout the state of Kansas. Our membership includes Taverns, Drinking Establishments and Restaurants. It seems every year our business is regulated more and more. It is becoming tougher for this industry to attract good and responsible businesses people and tougher to keep them. Responsible serving techniques are being widely implemented in our state and our ability to establish responsible drinking norms is very important.

We are writing you today to provide our perspective on Senate Bill No. 6. We are concerned about the need to guarantee our tax payments with our license renewals. Many members, including myself, have been in business for a decade or more, and have fallen behind in our taxes during the earlier years of our businesses. After paying penalties and late fees we eventually caught up. If this bill were a law 10 years ago, would we be here today? What make us different from other retail businesses, is that we have to pay for our products at the time of purchase. We are not allowed to have a 30-day charge like other retail businesses. We have to pay for our products before we sell them, sometimes leaving us low on our cashflow.

If the spirit of this bill is to protect the State from delinquent taxes, than our excise tax bond should no longer be necessary. The tax bonds our members hold are from \$5000.00 to \$15,000.00. Shouldn't this be enough? If our licenses are suspended or revoked how will we ever pay our taxes.

The KLBA members feel that we are not given prompt notice of delinquent taxes or penalties now, and this makes us very uneasy as to our ability to "pay up" in the short period of time we have during our licensing renewal.

We need your help! We need adequate time to resolve our tax issues.

Thank you,

Rita Madl
President
Kansas Licensed Beverage Association

117 East 8th Street
Lawrence, Kansas 66044



Memberships
Phone: 785-3

Sen. Federal & State Affairs Comm.
Date: 2-1-99
Attachment: # 3-1

HEIN AND WEIR, CHARTERED

ATTORNEYS AT LAW

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Telephone: (785) 273-1441

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*Ronald R. Hein
Stephen P. Weir*

SENATE FEDERAL & STATE AFFAIRS COMMITTEE

TESTIMONY RE: Senate Bill 6

Presented by Ronald R. Hein

on behalf of

Kansas Restaurant & Hospitality Association

February 1, 1999

Madam Chairman, Members of the Committee:

My name is Ron Hein, and I am legislative counsel for the Kansas Restaurant and Hospitality Association. The KRHA is the trade association for approximately 1,200 restaurant and hospitality businesses in Kansas.

The KRHA wishes to express some issues with regards to SB6. First of all, since many of our licensees may be impacted by this type of legislation, we want to express our appreciation that this particular draft of this issue addresses some of the concerns that our association had with regards to previous legislation in this area. For instance, the insertion of the word "willfully" helps protect inadvertent failure to file particular tax returns, and the exemption for situations where there is a formal appeal pending is a good provision.

The KRHA applauds the concept of this type of legislation. When some taxpayers do not pay their taxes, the burden falls upon those people who do pay their taxes to make up any short falls. In that respect, the concept behind this type of legislation is very meritorious.

However, the KRHA wonders why licensees under the Liquor Control Act are, with a handful of others, the only ones to be separated out for this type of legislation. The concept of requiring individuals or businesses who receive a license, or privilege, from the state to first pay their obligations (taxes) to the state is an admirable one. The KRHA would prefer that this type of legislation if it be applied uniformly to all licensees, especially licensees who participate in some sort of business venture.

It does seem somewhat unfair that a person who chooses one business operation would be denied the license, and therefore opportunity, to operate his or her business for failure to pay a tax to the state or local units of government, while another individual in another business or profession that requires a license from the state would be able to continue their business under the same circumstances. Perhaps this committee, and the full legislature, will be addressing this disparity of treatment in future legislation, but the KRHA would have wished that its members who have chosen to obtain liquor licenses would have not been held out for separate treatment under this act.

Thank you very much for permitting me to testify, and I will be happy to yield to questions.

Sen. Federal & State Affairs Comm

Date: 2-1-99

Attachment: # 4-1

**WRITTEN TESTIMONY PRESENTED TO THE
SENATE COMMITTEE ON FEDERAL AND STATE AFFAIRS
FEBRUARY 1, 1999**

Marge Roberson, President
Kansas Retail Liquor Dealers Association

The members of the Kansas Retail Liquor Dealers Association thank you for the opportunity to present testimony regarding the tax collection policy being promoted by the Kansas Department of Revenue. The KRLDA hopes to work with the Department to address any problems with tax collection from liquor retailers, but opposes the inequities inherent in allowing the State to implement this tax collection enforcement tool against a single category of licensees.

Liquor retailers do not wish to oppose effective tax collection. In fact, retailers pay liquor taxes, sales taxes, payroll taxes, and income taxes, as well as license fees to state and local licensing agencies. We encourage the Department to enforce tax collection in order to maintain a level playing field for all liquor licensees. There is nothing worse than working to comply with the regulations of the liquor business, only to find that your competitor is not doing the same.

The Division of ABC reviews license applications annually and may deny liquor licenses on the basis of a number of criteria. Likewise, local agencies have the opportunity to review licenses for compliance on the local level. We have always considered payment of liquor and business related taxes to be a part of our professional responsibility.

Retailers are very concerned that the policy promoted in this bill will have greater than intended effects on liquor licensees. At this point, we have not received any statistics from the Department that would suggest our members are ignoring their tax responsibilities. We would certainly be interested in those numbers and would cooperate with the Department to bring delinquent licensees into compliance.

If retailers are ignoring their tax responsibilities and a statutory change is truly necessary to collect revenue due to the State, we encourage the Committee to consider amending this bill to include only business related taxes. We are unsure how this law would be implemented and are concerned about potential use of the law to remove an individual's source of income as a result of an unrelated dispute. Some will argue that many liquor licensees are already subject to a similar law as a lottery licensee. However, I must gently remind the Committee the threat of losing my lottery license due to mistaken identity or a divorce dispute is negligible compared to losing my liquor license.

As retail liquor store owners, we are willing to accept increased responsibility for the legal execution of our business. Liquor licensees are subject to a long list of rules and regulations

Sen. Federal & State Affairs Comm.
Date: 2-1-99
Attachment: # 5-1

governing the way we do business. KRLDA supports the highly regulated three tier liquor distribution system, which is designed to control and monitor the sale of liquor in this state.

The Department of Revenue has the same ability to collect taxes from liquor licensees as any other taxpayer in the state, with the added benefit of much closer scrutiny in the form of increasingly regular audits. Retailers appreciate the steps taken by the Department to keep us informed and current. Legal applications may be used to enforce the tax statutes to collect from me and any other business, whether or not it is licensed by the State of Kansas. If an individual has refused to pay taxes owed, these legal remedies may subsequently result in prosecution. Legal prosecution could justifiably result in the nonrenewal of an individual's liquor license.

As a liquor licensee, I am very concerned that bypassing current legal procedure and implementing this policy will result in an inequitable system of applying tax enforcement. We could implement this policy today, with the understanding that the current Department of Revenue would only use this tool to collect taxes in extreme circumstances. But this provides an inequitable enforcement tool against the liquor industry. We can not anticipate the agenda of future administrations nor their application of this policy. It is an inherently dangerous policy, because it applies directly to the taxpayer's source of income, his business, and is not limited to business related taxes.

If this committee decides that it is important to provide the Department with this collection tool, the legislation could be broadened to include all businesses and individuals licensed by the State of Kansas, removing the inherent inequity in the bill.


I would urge you to consider carefully the implications of this policy. Is it necessary to expedite tax collection by implementing an inequitable and potentially heavy handed tax collection policy? KRLDA continues to support the Division of ABC and the implementation of State liquor laws to insure the regulated distribution of our retail products. We affirm our commitment to the legal and honorable standards of good business practices and welcome continued communication with the Department of Revenue and the Kansas Legislature for the resolution of these issues.

Thank you for your consideration of these comments.

Kansas Retail Liquor Dealers Association
P.O. Box 3842
Topeka, KS 66604-6842
785-266-3963

MEMORANDUM

TO: Senate Committee on Federal & State Affairs

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

Date: February 1, 1999

RE: Senate Bill 6

On behalf of the Kansas Wine and Spirits Wholesalers Association, I respectfully submit this written testimony, having previously testified on this subject matter during the 1998 Legislative Session.

We respectfully suggest that the concept of this legislation would be better implemented if the committee were to use the language of the lottery act. KSA 74-8708 provides that lottery retailers prior to issuance of or renewal of a license:

"[B]e current in payment of all taxes, interest and penalties owed to any taxing subdivision where the lottery retailer will sell tickets or shares," and

"[B]e current in filing all applicable tax returns and in payment of all taxes to the State of Kansas, excluding items under formal appeal pursuant to applicable statutes;"

We suggest this language is less onerous than that of SB 6, and will accomplish the same purpose to ensure compliance. Thank you for your attention to and consideration of this matter.

Sen. Federal & State Affairs Comm
Date: 2-1-99
Attachment: # 6-1