

Approved: March 17, 1999  
Date

MINUTES OF THE SENATE COMMITTEE ON FEDERAL AND STATE AFFAIRS.

The meeting was called to order by Chairperson Senator Lana Oleen at 11:15 a.m. on March 10, 1999 in Room 254-E of the Capitol.

All members were present except: Senator Harrington, Excused  
Senator Vidricksen, Excused

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

Conferees appearing before the committee:

Jim Conant, Director Alcohol and Beverage Control  
Tuck Duncan, Kansas Wine and Spirits Wholesalers Assoc.  
Neal Whitaker, Kansas Beer Wholesalers Assoc.  
Rebecca Rice, Kansas Retail Liquor Dealers Assoc.  
Don Moler, League of Kansas Municipalities  
David Corliss, City of Lawrence  
Gary Rebenstorf, City of Wichita  
Don Seifert, City of Olathe  
Mike Santos, City of Overland Park  
Eric Arner, City of Lenexa

Others attending: See Attached List

Chairman Oleen recognized Alex Welle, Brandon Converse, Lindsay Converse, and Travis Shilling who are serving as pages for the day and are students at Manhattan High School, where her son and daughter attended.

Chairman Oleen opened the hearing on **SB 16-liquor recodification**

Chairman Oleen called on Eric Arner, City of Lenexa, as an opponent to **SB 16**. Mr. Arner, Assistant City Attorney for the city of Lenexa, stated that after reviewing the League of Municipalities proposed changes and based upon those changes, the City of Lenexa would be supporting **SB 16**. (Attachment 1)

Chairman Oleen recognized Jim Conant, Director of the Alcohol and Beverage Control (ABC), a proponent for **SB 16**. Mr. Conant gave a brief history of the initial efforts to accomplish the simplification of the body of liquor laws. (Attachment 2) Three recommended amendments were intended to eliminate outdated, unnecessary and unenforceable laws and regulations; eliminate duplication among the various acts relating to beverage alcohol and identify related policy issues for separate consideration by the legislature. Fifteen outdated and unenforceable provisions are repealed in this bill. Over 60 statutes are proposed for repeal because they met the task force criteria for duplication. Finally, **SB 16** recognizes and addresses the issue of local regulation. ABC strongly supports **SB 16**.

Chairman Oleen recognized R.E. "Tuck" Duncan, representing Kansas Wine and Spirits Wholesalers Association as proponents to **SB 16**. Mr. Duncan stated that he appeared today in support of the recodification of the Liquor Control Act as set forth in **SB 16**. (Attachment 3). He ask that this legislation move forward without substantive amendments that would frustrate the mission which motivated its drafting.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON FEDERAL AND STATE AFFAIRS, Room 254-E Statehouse, at 11:15 a.m. on March 10, 1999

Don Moler was introduced by Chairman Oleen. Mr. Moler, General Counsel for League of Kansas Municipalities, appeared as a proponent, proposing amendments to **SB 16**. (Attachment 4). Mr. Moler stated that it is not understood why it is necessary to remove the ability of cities and counties to exercise home rule. The league supports the recodification effort and the movement towards finding more uniform and easier to decipher language than is currently found in state statute. However the League cannot support any legislation which preempts the home rule authority of cities. If the amendments that the League have proposed are incorporated in **SB 16**, the League would be able to support the legislation.

Chairman Oleen recognized David Corliss, Director of Legal Services, City of Lawrence, as a proponent with amendments to **SB 16**. Mr. Corliss stated that the City of Lawrence feels that the city home rule authority is essential to effectively respond to the many issues alcohol use bring to a growing urban and suburban community. (Attachment 5). Reliance upon state enabling law for city powers in this area is difficult for cities because the flexibility under home rule is given up. The City of Lawrence uses the home rule over local licenses to address citizens concerns that come to the attention of the local government. The City of Lawrence support **SB 16** with the League's amendments.

Chairman Oleen inquired of Mr. Corliss if the balloon that had been presented by the committee to the parties on **SB 16** precluded the City of Lawrence from doing anything that the city is doing now. Mr. Corliss stated that the answer was no, but the concern of cities is that by relying on enabling statute cities are then relying on the limitations that are prescribed in that statute. Chairman Oleen ask what specifically is not defined in the statute that will cause problems for the cities. Mr. Corliss stated that the term "operating standards" would not be the preferred term- regulations would be better. He stated that if it is not listed in the enabling statute then there is the concern that the city might not have that power.

Chairman Oleen recognized Neal Whitaker, Kansas Beer Wholesalers Association, as a proponent to **SB 16**. Mr. Whitaker stated that the history of the legislation over the liquor control act was created out of conflict. (Attachment 6). Mr. Whitaker stated that this bill is a compromise, but clearly outlines the powers of the cities, the counties and the state. The Kansas Beer Wholesalers Association supports **SB 16** and urges the committee to recommend the bill favorably in its balloon form without additional amendments.

Chairman Oleen called on Gary Rebenstorf, Director of Law and City Attorney for the City of Wichita as a proponent to **SB 16** with amendments. Mr. Rebenstorf stated that the City of Wichita supported the effort to consolidate and streamline the statutes of Kansas controlling alcoholic liquor and drinking establishments. (Attachment 7). However, the City of Wichita is strongly opposed to legislation which preempts local alcohol regulation and negates the power of Home Rule of cities and removes the right of citizens, through their locally elected representatives, to decide the standards which are appropriate for their community. The City of Wichita proposes an additional amendment that would allow the City to charge license fees to cover the costs of enforcement of the laws. The City of Wichita supports amendments of SB 16 that recognize the Home Rule authority of cities to regulate alcoholic liquor and establish license fees to cover the costs of enforcement of the laws. Without said amendments, the City of Wichita requests that the bill not be approved by the this committee.

Chairman Oleen questioned Mr. Rebenstorf about the amendment as proposed by the City of Wichita regarding establishment of license fees under the Home Rule and how Wichita was handling these fees presently. Mr. Rebenstorf stated that Wichita adopted a charter ordinance in 1987; this has been challenged in a municipal court case where the ruling was against the city. The district court ruled against the city and the city tried to appeal this judgement to the Supreme Court, but the court did not think that this was a significant issue of State wide interest and did not take the appeal. The City of Wichita has been sued by 36 club owners in Wichita in a civil action stating that the ordinance is unconstitutional. The city has argued that the city has the Home Rule authority to do that. There is a ruling by the district court agreeing with the club owners and the city is finalizing the hearing so that an appeal to the Kansas Supreme Court can be filed.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON FEDERAL AND STATE AFFAIRS, Room 254-E  
Statehouse at 11:15 a.m. on March 10, 1999

Chairman Oleen recognized Don Seifert, Management Services Director for the City of Olathe, a proponent to **SB 16** with the League of Municipalities amendments. Mr. Seifert stated that the City of Olathe believes local control over establishments where liquor is sold or consumed is essential for enforcement of community standards. (Attachment 8). Olathe does support the general effort to recodify the liquor laws, and would support **SB 16** with the amendments proposed by the League of Municipalities.

Chairman Oleen called on Mike Santos, City of Overland Park, a proponent of **SB 16** with the League of Municipalities amendments. Mr. Santos stated the City of Overland Park continues to support a legislative effort to recodify the state alcohol laws. (Attachment 9). This support is contingent on amendments that will protect the right of local governments to exercise "home rule" authority.

Chairman Oleen called the committees attention to written testimony provided by Judy Moler, Legislative Services Director for Kansas Association of Counties, as a proponent of **SB 16** with the League of Municipalities amendments. (Attachment 10)

Chairman Oleen announced that the hearing on **SB 16** would continue Thursday, March 11, 1999, with discussion and further testimony.

The meeting adjourned at 12:10 p.m. The next meeting of this committee will be on adjournment of the Senate, March 10, 1999.





TESTIMONY BEFORE THE SPECIAL COMMITTEE ON FEDERAL  
AND STATE AFFAIRS  
March 10, 1999

Presented By Eric R. Arner  
Assistant City Attorney/City Prosecutor  
City of Lenexa, Kansas

Chairperson Oleen, members of the Special Committee on Federal and State Affairs, my name is Eric Arner, Assistant City Attorney/City Prosecutor for the City of Lenexa, Kansas. On behalf of the City of Lenexa, I am here today to speak in opposition to Senate Bill 16 concerning alcoholic liquor and cereal malt beverages. As the Assistant City Attorney/City Prosecutor, it is one of my responsibilities to work closely with the Police Department and local drinking establishments, retail liquor and convenience stores to ensure compliance with our alcoholic liquor and cereal malt beverages code provisions. Over the last five years with the City of Lenexa and three years prior to that as retained counsel for the City of Shawnee, I have been able to personally witness the effectiveness of quality local regulation of alcoholic liquor and cereal malt beverage.

It is an admirable and onerous task that this Committee has undertaken to clean up and modernize the liquor laws of this State. Likewise, it is no secret that current State law regulating liquor can be confusing and difficult to understand. As a young municipal attorney, my senior mentor attorney tried to explain the various nuances and subtleties of the various liquor laws. I remember he tried to explain the reasons for the confusion with a historical development of liquor in Kansas from the "by the drink" days through the one time distinction between cereal malt beverages and alcoholic liquor that permitted 18 year olds to consume cereal malt beverages. It is somewhat irrelevant though that State liquor laws can be confusing to understand and often frustrating to administer because the simple fact is that local government has learned under the current structure to deal with liquor issues in an effective manner. Senate Bill 16, as drafted, seriously impedes the ability of local government to continue as effective managers of local alcoholic liquor and cereal malt beverage concerns.

For example, the City of Lenexa is very concerned with the preemptory language in Senate Bill 16 in that we do not feel that vesting the exclusive power to regulate all phases of control of alcoholic liquor in the State is prudent nor conducive to effective resolutions of local issues. (Senate Bill 16, K.S.A. 41-101, New Section 2) Carving out for local government only the areas of licensing, operating standards and license fees will not permit cities in Kansas to continue the effective regulation of alcoholic liquor and cereal malt beverages. Likewise, the uniform grant of regulatory authority in Senate Bill 16 does not take into account the wide range of issues and concerns at the local level with respect to liquor. A problem drinking establishment or convenience store can have a very disruptive effect on a community. Given the total number of regulated entities in the State versus the limited size of the State regulatory authority, it is not hard to imagine a situation where a local community's concerns would not be equally shared by the State regulatory authority. Senate Bill 16 severely restricts the ability of local government to make decisions about the extent and nature they choose to regulate liquor in their community.

Specifically, in the City of Lenexa we have several examples of drinking establishments or convenience store violations effectively resolved by local regulation. For purposes of this discussion, I will highlight two of those incidents. Within the last month, the Police Department brought to our attention that a local drinking establishment

was staying open beyond the permissible hours of operation as well as permitting employees and selected guests to consume alcoholic liquor after hours. Both the hours of operation and drinking after hours were violations pursuant to City Code. Instead of citing the violators, the City Attorneys office and the Police Department met with the owner of the bar, explained our concerns and worked out a resolution to both of these problems. The ability to resolve this situation effectively and timely, I believe, was because of the relationship between the authority of the City to regulate liquor and our authority to license that facility. It has been my experience that the State regulatory authority in this type of situation would either decide not to investigate or if investigated determine these violations were minor and take little effective corrective action. In either of those two responses by the State regulatory authority, the result for the local community is unacceptable.

Another specific example of effective local regulation potentially preempted by Senate Bill 16 involves a Lenexa convenience store. This particular store had developed a reputation among underage young people in our community as an easy place to buy beer. This rumor was confirmed time and time again in law enforcement contacts with minors to be found in possession of beer. When repeated attempts to direct the owners attention to this problem failed, the City initiated Municipal Court charges against store personnel and the storeowner for sale of beer to minors. Ultimately, the owner was convicted of selling beer to a minor thus making him ineligible for two years to hold a cereal malt beverage license under City Code. Because the owner could not obtain a license to sell cereal malt beverages, he ultimately sold controlling interest in the convenience store. On its face, this result may seem harsh or extreme to some, especially in light of the State regulatory authority taking virtually no action with respect to this owners conviction of selling beer to a minor. But this is just the type of situation that best exemplifies our concern with Senate Bill 16. For the City of Lenexa, this store created significant local problems by repeatedly selling beer to minors. Unfortunately, this set of facts did not rise to the same level of concern at the State level as it did in our community. It is this actual, and under Senate Bill 16, the likely disparity of treatment that we are concerned with if this legislation becomes law.

In conclusion, the preemption of local authority in Senate Bill 16 creates a significant concern for the City of Lenexa with respect to our ability to deal with alcoholic liquor and cereal malt beverage problems. With Senate Bill 16, the permissible scope of fixed regulatory authority relegated to the cities provides us with little or no ability to deal effectively with local liquor concerns. Lastly, Senate Bill 16 creates a uniform state wide community standard of care with respect to the regulation of alcoholic liquor and cereal malt beverage. Senate Bill 16 fails to recognize that a uniform community standard does not adequately reflect the diverse and locally unique liquor issues particular to Kansas cities. Senate Bill 16 severely restricts and limits the ability of cities to determine their own community standards with respect to alcoholic liquor and ultimately how that community deals with issues related to those standards.

For the above reasons, the City of Lenexa lodges its opposition to Senate Bill 16 dealing with alcoholic liquor and cereal malt beverage.

Jim Conant, Director  
Division of Alcoholic Beverage Control  
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200 S.E. 6th Street  
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Division of Alcoholic Beverage Control

Memorandum

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

**FROM:** Jim Conant, Director

**RE:** Senate Bill 16

**DATE:** March 10, 1999

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Thank you for the opportunity to appear before the committee in support of Senate Bill 16, a significant effort to consolidate and simplify the body of liquor laws which have accumulated since the repeal of prohibition. Industry members, along with state and local administrative and enforcement agencies, have struggled with the growing complexity of these laws in recent years, particularly since the enactment of the club and drinking establishment act in 1987. Senate Bill 16 makes significant improvements in terms of consolidating like sections and eliminating duplication while retaining essentially the same basic policies which have governed the traffic in alcoholic beverages for many years.

Initial efforts to accomplish the simplification embodied in Senate Bill 16 began in 1995 when ABC formed the Beverage Alcohol Advisory Task Force. With the blessing of that year's interim Special Committee on Federal & State Affairs, the task force worked on revisions to the liquor laws using the following mission statement as a guide:

"The Beverage Alcohol Advisory Task Force shall review Kansas Statutes relating to the manufacturing, bottling, sale, transportation, furnishing, possession and taxation of alcoholic liquor, cereal malt beverages and nonalcoholic malt beverages and shall recommend amendments to those statutes intended to:

1. Eliminate outdated, unnecessary and unenforceable laws and regulations;
2. Eliminate duplication among the various acts relating to beverage alcohol;
3. Identify related policy issues for separate consideration by the Legislature."

The work of the task force resulted in 1996 House Bill 2675, which was passed by the House Committee on Federal & State Affairs, but did not see debate in the full House due to confusion

Sen. Federal & State Affairs Comm  
Date: 3-10-99  
Attachment: # 2-1

over the bill's impact on local regulation of alcohol establishments. The concept of recodification was revived for further study by the 1998 interim Special Committee on Federal & State Affairs, with an ABC-coordinated task force focusing on possible solutions to clarify the role of local governments in regulating alcohol sellers. Senate Bill 16 is based on the 1996 bill, with the addition of the Special Committee's recommendations regarding local control.

At 114 pages, a detailed review of the bill is not practical in the limited time allotted for this hearing. However, as a participant in both the 1995 and 1998 efforts, I can assure you that the bill in front of you accomplishes the goals set forth in the 1995 mission statement. Goal 1 was to eliminate outdated and unenforceable provisions - 15 statutes are repealed in this category. Goal 2 was to eliminate duplication - all licensing qualifications are consolidated in one section (#29); all license fees are now found in a single section (#28); and many other provisions - where language was duplicated in multiple sections or cross-referencing of several statutes was necessary to understand the requirements placed on a licensee - are now consolidated in one location. In total, over 60 statutes are proposed for repeal because they met the task force criteria. So while the bill is primarily technical in nature, the long-term benefit will be significant to you as future policy issues are debated and to the industry as they try to understand and implement those policies.

Goal 3 was to identify policy issues which needed further clarification, but could not be resolved as part of the simplification effort. While the most significant issue of this nature has turned out to be that of how to structure local regulation, the 1995 task force did raise two issues which are worthy of your attention:

- Repeal of advertising statute - K.S.A. 41-714. After its most recent amendment in 1991, the Attorney General ruled this statute to be vague and unenforceable, primarily due to confusion regarding intent of the billboard provisions. ABC has enforced only the handbill provisions since that ruling. The 1995 task force recommendation to repeal was made solely to bring this issue to the attention of the Legislature.
- Repeal of sale to incapacitated person statute - K.S.A. 41-715. Lacking a clear definition of the term incapacitated, it is not possible to advise licensees of their responsibility under this statute or to enforce it in a consistent manner. Again, the recommendation to repeal was made solely to bring attention to this issue.

Finally, unlike the original bill in 1996, Senate Bill 16 recognizes and addresses the issue of local regulation. While ABC does not have proper status to adopt a position on the merits of home rule vs. statutory delegation, any attempt to clarify this area of continuing confusion is worthy of consideration. ABC must work closely and maintain a cooperative relationship with local agencies in enforcing the state's liquor laws. Senate Bill 16 does not restrict the ability of ABC to enforce state law through our own efforts or in partnership with local agencies. The bill defines clearly those areas which would be reserved to the state and those areas which local governments would be able to regulate based on local standards and concerns in addition to the basic provisions of state law. To that extent, the bill in front of you will move us closer to the original goals of streamlining and clarification of a complex body of law.



March 10, 1999

To: Senate Committee on Federal and State Affairs

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

RE: Senate Bill 16

The committee discussion Tuesday March 9, 1999 regarding this bill and the review of proposed amendments makes it unnecessary for me to review the contents of this legislation. However, that conversation was most enlightening as it focused the areas for debate regarding this legislation.

Let me first address the question: Why do we need SB 16? This recodification of the laws regulating beverage alcohol and cereal malt beverages consolidates similar sections of existing law and eliminates redundant provisions. For those that regulate the industry and for those who are regulated, this revision is a major step in providing clarity and simplicity in the statutes.

The collective labors of the Beverage Alcohol Advisory Task Force (BAATF), and the work done during interim, in achieving simplification without substantive policy changes should be remunerated by your support of this legislation in its current form as set out in the "balloon."

The mission of the Task Force was to "eliminate duplication among the various acts relating to beverage alcohol." That mission has been accomplished. The legislation before you today has been refined by the efforts of the Special Committee on Federal and State Affairs and by the Chairman's perseverance in securing consensus among the interested parties. Recodification only works if all interest groups put their personal agendas aside and legislators agree to support the "higher purpose of clean-up and simplification of the overall body of laws."

To: Senate Committee on Federal and State Affairs  
From: R.E. "Tuck" Duncan  
Kansas Wine & Spirits  
Wholesalers Association  
RE: Senate Bill 16  
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At the time of the House committee hearings in January, 1996, on similar legislation, concern was expressed that the recodification would preempt local regulation of clubs and drinking establishments. The suggested amendments cure those objections. The recodification does not diminish the authority of municipalities to protect the health, safety and welfare of its citizens; nor does it affect the zoning authority often used to geographically segregate beverage alcohol establishments.

Lest us not forget that, as your staff related to you yesterday, in Article 15, Section 10 of the Constitution of the State of Kansas, the citizens of this state granted authority to the Legislature to regulate, license and tax the manufacture and sale of intoxicating liquors, its possession and transportation. Whereas, Article 12, Section 15 relating to city home rule powers are "limited or prohibited by enactment of the legislature applicable uniformly to all cities of the same class..." Powers of municipalities are limited with regard to matters outside the sphere of local affairs and government. Thus, we believe the legislation as before you today is consistent with constitutional principles.

Attempts to change license fees or substantively modify other provisions violate the mission to recodify the law without material policy changes. We opposed any amendments in 1996 that would have frustrated the BAATF's efforts, and we would oppose such suggestions today for inclusion in this bill. Proposals that alter the substantive law undermine the recodification endeavor; therefore, if a substantive proposal has worth, it should be introduced as a separate bill and be debated on its merits.

Thus, we appear today in support of the recodification of the Liquor Control Act as set forth in SB 16 and we trust that this legislation will move forward without substantive amendments that would frustrate the mission which motivated its drafting.

We want to thank the Director of the Alcoholic Beverage Control and his staff for their earlier efforts in this endeavor, and your legislative staff for their patience in responding to multiple inquiries. Thank you for your attention to and consideration of these matters.

(19)SB16.TST



# LEAGUE OF KANSAS MUNICIPALITIES

LEGAL DEPARTMENT □ 300 S.W. EIGHTH □ TOPEKA, KANSAS 66603  
PHONE: (785) 354-9565 □ FAX: (785) 354-4186

**TO:** Senate Federal and State Affairs Committee  
**FROM:** Don Moler, General Counsel  
**RE:** Proposed Recodification of State Liquor Laws — SB 16  
**DATE:** March 10, 1999

First I would like to thank the committee for being willing to allow the League to make comments on behalf of cities across Kansas concerning the proposed recodification of the state liquor laws as provided in SB 16. What follows is a brief memo explaining what we believe to be the current state of the law in this area, what local governments are currently doing under the current statutory and regulatory atmosphere, and what we see as a logical amendments to SB 16.

Currently, cities across the state license and regulate private clubs and drinking establishments located within their jurisdictions. While we have not done a survey on this subject, we are reasonably confident that well in excess of 100 cities statewide promulgate and enforce local private club and drinking establishment licenses. It is our understanding of current law and practice that cities are currently in a position of dual licensure with the State of Kansas with the process being that a licensee will obtain a state license for a private club or drinking establishment and then will take the license and obtain a local license from the city in which it is located for the purpose of operating a club or drinking establishment.

The difficulty of explaining and defending what is going on results from the fact that local licensure is a result of Constitutional home rule in the case of cities and statutory home rule in the case of counties. It is the position of the League and our member cities that the current club and drinking establishment law is nonuniform and thus allows local licensure of these establishments along with local regulation. Therefore, the issue becomes one in which local licensure is the best tool cities and counties can use to control problems with clubs and drinking establishments.

The central concern of the League revolves around the issue of what happens if a uniform, preemptive enactment, as now currently found in SB 16, is passed and signed into law. Our concern is simply that the ability of cities and counties to license and regulate private clubs and drinking establishments could ultimately be preempted in its entirety, despite the grant of authority currently found in new Section 125.

We are of the opinion that the key to the entire issue is to specifically allow local licensure and the promulgation of local regulations by retaining constitutional home rule in this area. We can see no problem with this in that the League believes that it does not change the current practice under current law.

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Attachment: # 4-1

Specifically, the League believes that making the alcoholic liquor and cereal malt beverage laws uniform takes away powers currently able to be exercised by cities as a result of the current nonuniform status of the law. Thus, to make the law both uniform and then preemptive removes all home rule authority and leaves cities and counties at the mercy of the ebbs and flows of state legislation. Thus to preempt local authority, and then to give a modest grant back of power raises the level of concern considerably for cities in Kansas. As a result of this concern, the League is proposing amendments to SB 16. They are contained in balloon form which is attached to this testimony. In a nutshell, we would remove new Sections 2 and 130 in their entirety, and substantially rewrite new Section 125. We then insert a statement specifically giving cities and counties the ability to exercise their home rule authority in the areas of alcoholic liquor and cereal malt beverage. We then leave in those restrictions enumerated by the industry in the summer hearings and task force meetings. These include pricing, advertising content, brand blocking and trade practices. Cities are willing to give these areas of regulation up and leave them the exclusive domain of the state. In return, however, we believe an explicit statement of our local ability to license is necessary along with a quid pro quo of concerning revocation or suspension of licenses. Specifically, we mirror the current language found in new Section 125 by providing that if a local license is suspended by a local government, the state license for that entity is also suspended. We believe this is reasonable given the dual licensing structure being contemplated and the fact that this amounts to a governmental partnership involving the regulation of the liquor and cereal malt beverage industries.

Finally, I would like to say that the League compliments Senator Oleen in her efforts to streamline the complex liquor and cereal malt beverage laws of the State of Kansas. We continue to support the recodification effort and the movement towards finding more uniform and easier to decipher language than is currently found in state statute. Having said that, the League position is simply that we cannot support any legislation which preempts the home rule authority of cities with a modest grant back of authority. Thus, if the League amendments are incorporated into SB 16, the League will be able to support the legislation in that form. If the amendments are not incorporated, we will be forced to oppose it as a matter of home rule and local control.

Thank you very much for being willing to consider offering the League comments on this matter.

SENATE BILL No. 16

By Special Committee on Federal and State Affairs

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AN ACT concerning alcoholic liquor and cereal malt beverages; relating to the regulation thereof; amending K.S.A. 21-3610, 41-101, 41-103, 41-104, 41-105, 41-202, 41-204, 41-206, 41-207, 41-209, 41-211, 41-301, 41-303, 41-304, 41-309, 41-310, 41-313, 41-314, 41-315, 41-317, 41-319, 41-320, 41-321, 41-322, 41-323, 41-326, 41-328, 41-330, 41-331, 41-332, 41-333, 41-334, 41-339, 41-401, 41-402, 41-403, 41-405, 41-406, 41-407, 41-408, 41-410, 41-501, 41-501a, 41-502, 41-507, 41-508, 41-601, 41-602, 41-701, 41-702, 41-703, 41-704, 41-705, 41-706, 41-710, 41-713, 41-718, 41-720, 41-728, 41-729, 41-805, 41-806, 41-901, 41-902, 41-903, 41-904, 41-905, 41-1001, 41-1002, 41-1003, 41-1004, 41-1102, 41-1107, 41-1122, 41-1123, 41-1125, 41-2610, 41-2611, 41-2613, 41-2632, 41-2639, 41-2640, 41-2643, 41-2645, 41-2646, 41-2647, 41-2651, 41-2701, 41-2702, 41-2705, 41-2722 and 75-5118 and K.S.A. 1998 Supp. 8-241, 8-1599, 8-2110, ~~49-101a~~, 41-102, 41-201, 41-302, 41-306, 41-306a, 41-307, 41-308a, 41-311, 41-346, 41-347, 41-708, 41-712, 41-717, 41-719, 41-727, 41-1101, 41-1126, 41-2614, 41-2615, 41-2642, 44-706, 60-2313, 79-41a01, 79-41a03 and 79-41a07 and repealing the existing sections; also repealing K.S.A. 41-203, 41-205, 41-208, 41-210, 41-305, 41-308, 41-312, 41-316, 41-318, 41-324, 41-325, 41-327, 41-329, 41-335, 41-336, 41-337, 41-338, 41-340, 41-341, 41-342, 41-343, 41-344, 41-345, 41-409, 41-412, 41-501c, 41-510, 41-707, 41-711, 41-714, 41-715, 41-721, 41-722, 41-723, 41-724, 41-725, 41-726, 41-801, 41-803, 41-1105, 41-1111, 41-1112, 41-1114, 41-1115, 41-1116, 41-1117, 41-1118, 41-1119, 41-1120, 41-1121, 41-1124, 41-1127, 41-2604, 41-2605, 41-2606, 41-2607, 41-2608, 41-2609, 41-2612, 41-2619, 41-2620, 41-2621, 41-2623, 41-2625, 41-2626, 41-2627, 41-2628, 41-2629, 41-2630, 41-2631, 41-2633, 41-2633a, 41-2634, 41-2635, 41-2636, 41-2644, 41-2648, 41-2649 and 41-2650. and K.S.A. 1998 Supp. 19-101i, 41-308b, 41-709, 41-2601, 41-2622, 41-2637 and 41-2641.



1 Be it enacted by the Legislature of the State of Kansas:

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Section 1. K.S.A. 41-101 is hereby amended to read as follows:41-101. ~~This act~~ (a) Sections 1 through 125, and amendments thereto, shall be known and may be cited as the "Kansas liquor control act."  
(b) If any provision of this act or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and, to this end, the provisions of this act are severable.

New Sec. 2. ~~The power to regulate all phases of the control of the manufacture, distribution, sale, possession, transportation and traffic in alcoholic liquor and the manufacture of beer regardless of its alcoholic content hereby is vested exclusively in the state and shall be exercised as provided in this act. No city or county shall adopt any ordinance or resolution in conflict with the provisions of this act. Any ordinance or resolution of any city or county in effect at the time this act takes effect or is thereafter adopted which is in conflict with the provisions of this act shall be null and void. Except as specifically provided by section 125, and amendments thereto, no city or county shall adopt any ordinance or resolution which is in addition or supplemental to the provisions of the liquor control act. Any such additional or supplemental ordinance or resolution of any city or county which is in effect at the time this act takes effect or is thereafter adopted which exceeds the authority granted by this act shall be null and void. Nothing contained in this section shall be construed as preventing any city or county from adopting ordinances or resolutions declaring acts prohibited or made unlawful by this act as unlawful or prohibited in such city or county and prescribing penalties for violation thereof, but the minimum penalty in any such ordinance or resolution shall not be less than the minimum penalty prescribed by this act for the same violation and the maximum penalty in any such ordinance or resolution shall not exceed the maximum penalty prescribed by this act for the same violation.~~

1 New Sec. 125. (a) For the purpose of protecting the public health,  
 2 safety and welfare, the governing body of any city may regulate the sale  
 3 of alcoholic liquor by the issuance of local licenses to persons selling  
 4 alcoholic liquor at retail, class A or B clubs, drinking establishments, ca-  
 5 terers and temporary permit holders. Upon adoption of an ordinance by  
 6 the governing body of a city which requires the issuance of a license as  
 7 authorized by this section, no person shall sell alcoholic liquor within the  
 8 corporate limits of the city unless such person holds a valid license issued  
 9 by such city.

10 The board of county commissioners of any county may regulate the  
 11 sale of alcoholic liquor outside the corporate limits of cities by the issu-  
 12 ance of local licenses to class A or B clubs, drinking establishments, ca-  
 13 terers and temporary permit holders. Upon adoption of a resolution by  
 14 the board of county commissioners of any county which requires the  
 15 issuance of a license as authorized by this section, no person shall sell  
 16 alcoholic liquor outside the corporate limits of cities within such county  
 17 unless such person holds a valid license issued by such county.

18 (b) On and after July 1, 1999, and upon payment of the fee authorized  
 19 by subsection (c), any person who is qualified to be licensed under the  
 20 liquor control act shall qualify for the issuance of a license issued by a  
 21 city or county under the provisions of this section. A person who does not  
 22 hold a valid state license or whose state license is under suspension shall  
 23 not be issued a license pursuant to this section.

24 (c) (1) On and after July 1, 1999, the governing body of any city and  
 25 the board of county commissioners of any county which issues a license  
 26 under the provisions of this section may adopt operating standards for  
 27 such licensees.

28 (2) Operating standards may include, but shall not be limited to:

- 29 (A) Employee requirements, including residency and training
- 30 requirements;
- 31 (B) conduct in and around the licensed premises;
- 32 (C) zoning;
- 33 (D) security requirements;
- 34 (E) hours of operation;
- 35 (F) building code requirements; and
- 36 (G) advertising, subject to the provisions of paragraph (3)(B) of this
- 37 subsection.

(a) Except as provided in this section, nothing contained in this act shall in any way restrict or inhibit the ability of cities or counties in Kansas to exercise their home rule or statutory powers to locally license and otherwise regulate persons or establishments selling alcoholic liquor by the package, Class A or B clubs, Drinking Establishments, Caterers, Temporary Permit holders, Cereal Malt Beverage retailers or any other person or establishment selling at retail alcoholic liquor or cereal malt beverage.



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~~(3) Operating standards shall not include:~~

- ~~(A) Pricing restrictions;~~
- ~~(B) advertising content;~~
- ~~(C) brand blocking; and~~
- ~~(D) trade practices.~~

(b) The governing body of any city or the board of county commissioners of any county which issues local licenses regulating the sale and use of alcoholic liquor shall not include in their local regulations any restrictions on:

~~(d) On or after July 1, 1999, the governing body of any city and the board of county commissioners of any county may suspend, restrict or revoke the license of any licensee who violates operating standards adopted pursuant to the provisions of this section. The suspension or revocation of a license issued by the state under the liquor control act shall be deemed to be a suspension or revocation of a license issued by a city or county.~~

(c)

the terms of a local license.

~~(e) The governing body of a city and the board of county commissioners of a county may impose a fee for a local license issued pursuant to this section. Such fee shall be in lieu of and shall not exceed the occupational tax established pursuant to section 28, and amendments thereto.~~

The suspension or revocation of a license issued by a city or county shall be deemed to be a suspension or revocation of a license issued by the state.

~~(f) This section is enabling legislation for the enactment of operating standards by cities and counties for the protection of the public health, safety and welfare. This section is not intended to prevent the enactment or enforcement of additional or supplemental laws and regulations concerning operating standards which are not in conflict with the provisions of this section or other provisions of this act.~~

Sec. 127. K.S.A. 41-2702 is hereby amended to read as follows: 41-2702. (a) No retailer shall sell any cereal malt beverage without having first secured a license for each place of business as herein provided. ~~In ease such place of~~ If such business is located within the corporate limits of a city, the application for license shall be made to the governing body of such city. In all other cases, the application for license shall be made to the board of county commissioners in the county in which such place of business is to be located, ~~except that~~. The application for license to sell on railway cars shall be made to the director as hereinafter provided.

(b) A board of county commissioners shall not issue or renew a retailer's license without giving the clerk of the township where the place of business is to be located written notice by registered mail of the filing of the application for licensure or renewal. The township board ~~may~~,

1 within 10 days of such notice, may file advisory recommendations as to  
2 the granting of such license or renewal ~~and~~. Such advisory recommen-  
3 dations shall be considered by the board of county commissioners before  
4 such license is issued. If an original license is granted and issued, the  
5 board of county commissioners shall grant and issue renewals thereof  
6 upon application of the license holder, if the license holder is qualified  
7 to receive the same and the license has not been revoked as provided by  
8 law.

9 (c) An application for a retailer's license shall be verified and upon a  
10 form prepared by the attorney general of the state and shall contain:

- 11 (1) The name and residence of the applicant;
- 12 (2) the length of time that the applicant has resided within the state  
13 of Kansas;
- 14 (3) the particular place of business for which a license is desired;
- 15 (4) the name of the owner of the premises upon which the place of  
16 business is located; and
- 17 (5) a statement that the applicant is a citizen of the United States and  
18 not less than 21 years of age and that the applicant has not within two  
19 years immediately preceding the date of making application been con-  
20 victed of a felony, any crime involving moral turpitude, drunkenness, driv-  
21 ing a motor vehicle while under the influence of intoxicating liquor or  
22 violation of any other intoxicating liquor law of any state or of the United  
23 States.

24 (d) In addition to the fee provided by subsection (e), each application  
25 for a retailer's license to sell cereal malt beverages for consumption on  
26 the licensed premises shall be accompanied by a fee as follows:

- 27 (1) For licensure of a place of business other than a railway car, a fee  
28 of not less than \$25 nor more than \$200, as prescribed by the board of  
29 county commissioners or the governing body of the city, as the case may  
30 be; and
- 31 (2) for licensure to sell on railway cars, a fee of \$100.

32 (e) Each applicant for a retailer's license or renewal of such a license  
33 shall submit to the director a copy of the completed application for such  
34 license or license renewal, together with a fee of \$25. Upon receipt of  
35 such application, the director shall authorize a state stamp to be affixed  
36 to the license. No such stamp shall be affixed to any license except such

1 stamps as provided by the director and no retailer's license shall be issued  
2 or renewed unless such stamp has first been affixed thereto.

3 (f) The director shall remit to the state treasurer all fees collected by  
4 the director hereunder, and the state treasurer shall credit the same to  
5 the state general fund, except that the director may provide for the de-  
6 posit in the cereal malt beverage tax refund fund of such amounts as  
7 necessary for the refund of any license fees collected hereunder.

8 (g) The board of county commissioners of the several counties or the  
9 governing body of a city shall issue a license upon application duly made  
10 as otherwise provided for herein, to any retailer engaged in business in  
11 such county or city and qualified to receive such license, to sell only cereal  
12 malt beverages in original and unopened containers, and not for con-  
13 sumption on the premises. The annual license fee for such license, which  
14 shall be in addition to the fee provided by subsection (e), shall be not less  
15 than \$25 nor more than \$50.

16 (h) No license issued under this act shall be transferable.

17 (i) ~~(1) The governing body of any city and the board of county com-~~  
18 ~~missioners of any county which issues a license under the provisions of~~  
19 ~~this section may adopt operating standards for such licensees.~~

20 ~~(2) Operating standards may include, but shall not be limited to:~~

21 ~~(A) Employee requirements, including residency and training~~  
22 ~~requirements;~~

23 ~~(B) conduct in and around the licensed premises;~~

24 ~~(C) zoning;~~

25 ~~(D) security requirements;~~

26 ~~(E) hours of operation;~~

27 ~~(F) building code requirements; and~~

28 ~~(G) advertising, subject to the provisions of paragraph (3)(B) of this~~  
29 ~~subsection.~~

30 ~~(3) Operating standards shall not include:~~

31 ~~(A) Pricing restrictions;~~

32 ~~(B) advertising content;~~

33 ~~(C) brand blocking; and~~

34 ~~(D) trade practices.~~

35 ~~(4) The governing body of any city and the board of county commis-~~  
36 ~~sioners of any county may suspend, restrict or revoke the license of any~~  
37 ~~licensee who violates operating standards established pursuant to the pro-~~

The governing body of any city or the board of county commissioners of any county which issues local licenses regulating the sale and use of cereal malt beverages shall not include in their local regulations any restrictions on:





1 *visions of this section.*

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Sec. 130, K.S.A. 1998 Supp. 19-101a is hereby amended to read as follows: 19-101a. (a) The board of county commissioners may transact all county business and perform all powers of local legislation and administration it deems appropriate, subject only to the following limitations, restrictions or prohibitions:

(1) Counties shall be subject to all acts of the legislature which apply uniformly to all counties.

(2) Counties may not consolidate or alter county boundaries.

(3) Counties may not affect the courts located therein.

(4) Counties shall be subject to acts of the legislature prescribing limits of indebtedness.

(5) In the exercise of powers of local legislation and administration authorized under provisions of this section, the home rule power conferred on cities to determine their local affairs and government shall not be superseded or impaired without the consent of the governing body of each city within a county which may be affected.

(6) Counties may not legislate on social welfare administered under state law enacted pursuant to or in conformity with public law No. 271-74th congress, or amendments thereof.

(7) Counties shall be subject to all acts of the legislature concerning elections, election commissioners and officers and their duties as such officers and the election of county officers.

(8) Counties shall be subject to the limitations and prohibitions imposed under K.S.A. 12-187 to 12-195, inclusive, and amendments thereto, prescribing limitations upon the levy of retailers' sales taxes by counties.

(9) Counties may not exempt from or effect changes in statutes made nonuniform in application solely by reason of authorizing exceptions for counties having adopted a charter for county government.

(10) No county may levy ad valorem taxes under the authority of this section upon real property located within any redevelopment area established under the authority of K.S.A. 12-1772, and amendments thereto, unless the resolution authorizing the same specifically authorized a portion of the proceeds of such levy to be used to pay the principal of and

1 interest upon bonds issued by a city under the authority of K.S.A. 12-  
2 1774, and amendments thereto.

3 (11) Counties shall have no power under this section to exempt from  
4 any statute authorizing or requiring the levy of taxes and providing sub-  
5 stitute and additional provisions on the same subject, unless the resolution  
6 authorizing the same specifically provides for a portion of the proceeds  
7 of such levy to be used to pay a portion of the principal and interest on  
8 bonds issued by cities under the authority of K.S.A. 12-1774, and amend-  
9 ments thereto.

10 (12) Counties may not exempt from or effect changes in the provi-  
11 sions of K.S.A. 19-4601 to 19-4625, inclusive, and amendments thereto.

12 (13) Except as otherwise specifically authorized by K.S.A. 12-1,101  
13 to 12-1,109, inclusive, and amendments thereto, counties may not levy  
14 and collect taxes on incomes from whatever source derived.

15 (14) Counties may not exempt from or effect changes in K.S.A. 19-  
16 430, and amendments thereto. *Any charter resolution adopted by a*  
17 *county prior to July 1, 1983, exempting from or effecting changes in*  
18 *K.S.A. 19-430, and amendments thereto, is null and void.*

19 (15) Counties may not exempt from or effect changes in K.S.A. 19-  
20 302, 19-502b, 19-503, 19-805 or 19-1202, and amendments thereto.

21 (16) Counties may not exempt from or effect changes in K.S.A. 13-  
22 13a26, and amendments thereto. *Any charter resolution adopted by a*  
23 *county, prior to the effective date of this act, exempting from or effecting*  
24 *changes in K.S.A. 13-13a26, and amendments thereto, is null and void.*

25 (17) Counties may not exempt from or effect changes in K.S.A. 71-  
26 301, and amendments thereto. *Any charter resolution adopted by a*  
27 *county, prior to the effective date of this act, exempting from or effecting*  
28 *changes in K.S.A. 71-301, and amendments thereto, is null and void.*

29 (18) Counties may not exempt from or effect changes in K.S.A. 19-  
30 15,139, 19-15,140 and 19-15,141, and amendments thereto. *Any charter*  
31 *resolution adopted by a county prior to the effective date of this act,*  
32 *exempting from or effecting changes in such sections is null and void.*

33 (19) Counties may not exempt from or effect changes in the provi-  
34 sions of K.S.A. 12-1223, 12-1225, 12-1225a, 12-1225b, 12-1225c and 12-  
35 1226, and amendments thereto, or the provisions of K.S.A. 1998 Supp.  
36 12-1260 to 12-1270, inclusive, and amendments thereto, and 12-1276,  
37 and amendments thereto.

1 (20) Counties may not exempt from or effect changes in the provi-  
2 sions of K.S.A. 19-211, and amendments thereto.

3 (21) Counties may not exempt from or effect changes in the provi-  
4 sions of K.S.A. 19-4001 to 19-4015, inclusive, and amendments thereto.

5 (22) Counties may not regulate the production or drilling of any oil  
6 or gas well in any manner which would result in the duplication of reg-  
7 ulation by the state corporation commission and the Kansas department  
8 of health and environment pursuant to chapter 55 and chapter 65 of the  
9 Kansas Statutes Annotated and any rules and regulations adopted pur-  
10 suant thereto. Counties may not require any license or permit for the  
11 drilling or production of oil and gas wells. Counties may not impose any  
12 fee or charge for the drilling or production of any oil or gas well.

13 (23) Counties may not exempt from or effect changes in K.S.A. 79-  
14 41a04, and amendments thereto.

15 (24) Counties may not exempt from or effect changes in K.S.A. 1998  
16 Supp. 79-1611, and amendments thereto.

17 (25) Counties may not exempt from or effect changes in K.S.A. 1998  
18 Supp. 79-1494, and amendments thereto.

19 (26) Counties may not exempt from or effect changes in subsection  
20 (b) of K.S.A. 19-202, and amendments thereto.

21 (27) Counties may not exempt from or effect changes in subsection  
22 (b) of K.S.A. 19-204, and amendments thereto.

23 (28) Counties may not levy or impose an excise, severance or any  
24 other tax in the nature of an excise tax upon the physical severance and  
25 production of any mineral or other material from the earth or water. *Any*  
26 *resolution adopted by any county prior to the effective date of this act*  
27 *imposing or levying any such tax is null and void.*

28 (29) Counties may not exempt from or effect changes in K.S.A. 79-  
29 2017 or 79-2101, and amendments thereto. *Any charter resolution*  
30 *adopted prior to the effective date of this act, which affected the provi-*  
31 *sions of K.S.A. 79-2017 or 79-2101, and amendments thereto, is hereby*  
32 *declared to be null and void.*

33 (30) Counties may not exempt from or effect changes in K.S.A. 2-  
34 1915, 2-3302, 2-3305, 2-3307, 17-5904, 17-5908, 47-1219, 65-171d, 74-  
35 5065, 74-5066, 74-8902, 74-8905 and 79-32,117, K.S.A. 1998 Supp. 2-  
36 3318, 17-5909, 65-1,178 through 65-1,199 and 79-32,204, and  
37 amendments thereto.

1       ~~(31) Counties may not exempt from or effect changes in the liquor~~  
2 ~~control act, and amendments thereto.~~

3       ~~(b) Counties shall apply the powers of local legislation granted in~~  
4 ~~subsection (a) by resolution of the board of county commissioners. If no~~  
5 ~~statutory authority exists for such local legislation other than that set forth~~  
6 ~~in subsection (a) and the local legislation proposed under the authority~~  
7 ~~of such subsection is not contrary to any act of the legislature, such local~~  
8 ~~legislation shall become effective upon passage of a resolution of the~~  
9 ~~board and publication in the official county newspaper. If the legislation~~  
10 ~~proposed by the board under authority of subsection (a) is contrary to an~~  
11 ~~act of the legislature which is applicable to the particular county but not~~  
12 ~~uniformly applicable to all counties, such legislation shall become effec-~~  
13 ~~tive by passage of a charter resolution in the manner provided in K.S.A.~~  
14 ~~19-101b, and amendments thereto.~~

15       ~~(c) Any resolution adopted by a county which conflicts with the re-~~  
16 ~~strictions of subsection (a) is null and void.~~

17



# City of Lawrence KANSAS

CITY COMMISSION

MAYOR  
MARTIN A. KENNEDY

COMMISSIONERS  
ERVIN E. HODGES  
BONNIE AUGUSTINE  
BOB MOODY  
JOHN NALBANDIAN

MIKE WILDGEN, CITY MANAGER

CITY OFFICES 6 EAST 6th  
BOX 708 66044-0708 785-832-3000  
TDD 785-832-3205  
FAX 785-832-3405

To: Senator Lana Oleen, Chair, Federal and State Affairs Committee  
& Committee Members  
From: David Corliss, Director of Legal Services *David Corliss*  
Date: March 10, 1999  
Re: Senate Bill 16 - State & Local Liquor Law ReCodification

The City of Lawrence appears in support of Senate Bill 16; provided that necessary amendments to Senate Bill 16 are adopted to protect city home rule powers. The City of Lawrence supports the proposed amendments to Senate Bill 16 proposed by the League of Kansas Municipalities.

The preservation of City home rule authority in the area of local liquor regulation is an important priority of the Lawrence City Commission. Lawrence has a comprehensive local liquor law, including licensing requirements; the authority to impose additional conditions on licensees for public safety purposes; the authority to revoke or suspend licenses for public safety purposes; and additional requirements related to sexually orientated entertainment and alcohol.

For example, Lawrence is currently imposing additional licensure conditions on two drinking establishments located in the Oread neighborhood immediately east of the University of Kansas campus. These conditions include such issues as: hiring private security, hours to dispose of trash, additional lighting requirements, noise issues, and hours of operation of outdoor facilities. See attached Ordinance No. 7078. These conditions were the result of a lengthy dialogue with establishment owners and neighborhood representatives. The legal authority for these licensure requirements is **city home rule authority**. Without home rule powers, the community would not have the legal tools to respond to the significant neighborhood concerns.

Another example involves the possible City imposition of earlier closing hours (close at 12:00 a.m. versus the 2:00 a.m. allowed by law) on a particular establishment in Lawrence. Attached to my testimony is a listing (Exhibit D) of police reports from 1998 from the drinking establishment. The City Commission will consider next week -- after the second hearing on the matter -- whether to adopt an ordinance to close this establishment at 12:00 a.m. because of the continuing concerns that late hour operations harm public safety. Local problem, local solutions. Again, no state law anticipates a city ordering earlier closing hours for one particular establishment based on public safety considerations. Without **city home rule authority** the city could not respond to this issue.





Lawrence has other examples of home rule powers and alcohol: neighborhood nuisance, occupancy code violations, a food sales requirement for new licensed premises in the downtown zoning district, sexually oriented entertainment. The point is that **city home rule authority** is essential for Lawrence to effectively respond to the many and varied issues which alcohol use and drinking establishments bring to a growing urban and suburban community.

We appreciate the many and strong efforts which have been made to improve Senate Bill 16 to reflect city home rule authority. Reliance upon state enabling law for city powers in this area is difficult for cities because we give up flexibility under home rule. Reliance upon a state enabling statute is a secondary preference -- we would prefer to rely on home rule powers because the city powers would not be interpreted within the framework of an enabling statute but under the wider authority of home rule.

We urge the Committee to continue the difficult efforts to accomplish the goals of rewriting the State's liquor laws, while also ensuring that the dual licensing scheme and city home rule powers in the area of liquor are protected. We support Senate Bill 16 with the League's amendments. Thank you for your efforts on this important topic.

#### Attachments

Glossary of Terms

Ordinance No. 7078

Exhibit D - Los Amigos Hearing

## A Limited Glossary on Terms Used in the Testimony

**Home Rule** -- All cities in Kansas have home rule authority pursuant to Article 12, Section 5 of the Kansas Constitution. Cities have the power to adopt ordinances on “their local affairs and government.” The sphere of what is “local” is not defined by the Kansas Constitution, however, city home rule powers are subject to: constitutional limitations; State enactments which preempt city powers; State enactments applicable uniformly to all cities; and State enactments on certain topics (limits of indebtedness). Home rule is also subject to general preemption and conflict legal rules.

Home Rule is exercised in two ways:

- 1) Ordinary ordinance. If there is no preemption or conflict, a city may adopt an ordinance by a simple majority vote of the governing body. Relevant examples include: local licensure (no State preemption or conflict); sexually oriented entertainment ordinance (no State law on topic).
- 2) Charter ordinance. The Home Rule amendment specifically provides authority for a city to exempt itself from a State law (an enactment) which applies to the city but does not uniformly apply to all Kansas cities. Such charter ordinances can also provide substitute provisions replacing the non-uniform state law. Charter ordinances require a 2/3 vote and are subject to a public protest petition and possible referendum. There are numerous examples of city charter ordinances on topics ranging from bonding authority, municipal court procedures, taxation authority, etc.

**Preemption** -- State laws which expressly state that the law forbids local action or regulation in an area or topic. Kansas courts have determined that implied preemption is not favored and the legislature must expressly state preemption in order for it to have effect. If the State has expressly preempted local laws, a city may not legislate or regulate on the preempted topic. (The legal rules for preemption analysis are different at the federal level).

**Conflict** -- As a general legal rule of interpretation, a city law may be more stringent (but not less stringent) than a State law on a certain topic without the city law being in conflict with State law. The frequent example is in the area of fines. Unless the State has preempted on the subject, a city may adopt parallel legislation without a conflict. A relevant example is in the area of liquor licensing: There is no preemption so cities have adopted local licensure laws which parallel and supplement the State licensing scheme.

**Enabling Statute** -- An enabling statute is a State law which establishes explicit authority for a city to exercise certain powers, usually as defined and limited by the enabling statute. Most enabling statutes were enacted prior to home rule. Since the adoption of home rule the need for enabling statutes has been dramatically reduced because cities now have home rule powers to enact laws on their local affairs and government. Examples of frequently used enabling statutes include the planning and zoning statutes and the general improvement and assessment statutes (K.S.A. 12-6a01 *et seq.*). As a general rule cities may use their home rule powers to copy what is authorized under enabling statutes -- as long there is no conflict or preemption. A key issue for analysis is whether the enabling statute is solely permissive (e.g. “Any city may...”) or whether it contains mandatory procedures or prohibitions (e.g. “If any city does X, then it shall do Y...”).

**ORDINANCE NO. 7078**

**AN ORDINANCE OF THE  
CITY OF LAWRENCE, KANSAS  
ESTABLISHING CERTAIN  
LICENSURE CONDITIONS ON  
THE DRINKING ESTABLISHMENT  
LICENSE OF THE HAWK**

**BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF LAWRENCE, KANSAS:**

Section 1. The City of Lawrence, Kansas hereby determines that public health, safety, and welfare requires that certain licensure conditions be imposed upon the drinking establishment license of the Hawk, 1340 Ohio. For purposes of the licensure conditions and this ordinance, the term "Licensee" shall mean the owner of the drinking establishment license issued by the City of Lawrence, Kansas for the Hawk, 1340 Ohio, "the establishment." The following conditions are hereby imposed upon the drinking establishment license of the establishment:

A. The Licensee shall maintain adequate trash, garbage and litter containers on the property of the establishment in such a manner as to reasonably provide adequate disposal of trash, garbage and litter from the establishment. The Licensee shall only dispose of trash, garbage, and refuse into the containers between the hours of 7:00 a.m. to 10:00 p.m..

B. Within thirty (30) days of the adoption of this ordinance, the Licensee shall present to the City detailed plans for the installation and maintenance of additional outdoor lighting of the establishment in such a manner to provide additional lighting for security purposes. Within sixty (60) days after approval of the plans by the City, the Licensee shall install the additional outdoor lighting of the establishment. The reasonable maintenance and repair of the outdoor lighting shall be a condition of the license of the establishment.

C. The Licensee shall agree to participate in a meeting, if such meeting is called by the City of Lawrence or the Oread Neighborhood Association within one hundred eighty (180) days after the adoption of the ordinance, concerning the illegal parking of vehicles in the vicinity of the establishment.

D. The Licensee shall retain and engage the services of a professional private security service to provide private security service to the outdoor vicinity and environs of the establishment (generally the area of 14th and Ohio) during the days and hours of: Thursdays, 11:30 p.m. to Fridays 2:30 a.m.; Fridays, 11:30 p.m. to Saturday, 2:30 a.m.; Saturdays, 11:30 p.m. to Sundays, 2:30 a.m.; provided that no security services shall be required on the days when the establishment is not operating. Within ten (10) days of the adoption of this ordinance, the Licensee shall present to the City detailed plans for the engagement of professional private security services, including the name of the engaged firm and the required services which shall include a minimum of the retention of one private security officer on patrol at or near the establishment during the required hours. The engagement of the professional private security services shall begin within twenty (20) days of the adoption of the ordinance. The Licensee may cooperate in the engagement of private security with other nearby drinking establishments or other licensed premises. The Licensee shall provide a written report to the City on the tenth (10th) day of every month detailing paid invoices from the private security service of the required private security patrols.

E. The Licensee shall neither operate nor occupy, nor allow patrons, customers, vendors or employees to occupy, the outdoor portions of the licensee's licensed premises, including the outdoor

patios and beer garden areas, after 12:00 a.m. Provided, that upon at least five (5) days receipt of notice to 1) City Clerk's Office, City Hall, 6 East 6th Street, Lawrence, Kansas, 66044, and 2) Oread Neighborhood Association, P.O. Box 442065, Lawrence, Kansas, 66044, the Licensee may use the outdoor portions of the licensed premises, including the outdoor patios and beer garden areas, only for 1) home football games of the University of Kansas; and 2) Spring graduation of the University of Kansas; and 3) three (3) additional days per calendar year from 12:00 a.m. to 2:00 a.m.

F. The Licensee shall not operate sound amplification systems (stereos, radios, etc.) in the outdoor portions of the Licensee's licensed premises, including the outdoor patios and beer garden areas. The Licensee shall make all reasonable efforts to reduce noise and sounds (including the operation of sound amplifications systems) from the inside of the licensed premises which would unreasonably disturb the neighborhood and adjacent properties.

**Section 2.** The conditions of licensure established in Section 1 of this Ordinance shall constitute continuing conditions of licensure on the establishment, including any annual renewals of the establishment license. The failure to comply with the conditions of licensure shall be grounds for the revocation or suspension of the license, all as provided by law.

*Adopted* this \_\_\_\_\_ day of \_\_\_\_\_, 1999.

***PASSED***

\_\_\_\_\_  
Martin A. Kennedy, Mayor

ATTEST:

\_\_\_\_\_  
Raymond J. Hummert, City Clerk

## EXHIBIT D

The following details information obtained from the Lawrence, Kansas Police Department indicating calls for service at the location of the licensee, Los Amigos, 508 Locust Street during 1998. The relevancy of this material includes the time of day for the reported incidents, the severity of the reported incidents, the appropriate connection to the operation of the licensee, and the continuing potential harm to the public health, safety and welfare if the licensee continues to operate after 12:00 a.m. (Midnight).

Date	Time	Nature of Incident Reported to Police Department
2/2/98	1:30 a.m.	Police called to 508 Locust. Reported battery.
2/22/98	1:45 a.m.	Battery reported. Attack began in restroom and proceeded to front entrance of establishment.
2/26/98	1:45 a.m.	Battery inside establishment reported.
4/2/98	1:30 a.m.	Victim allegedly cut by knife from fellow patron inside establishment.
4/4/98	1:53 a.m.	Police Officer performing crowd control outside Los Amigos when a fight broke out, victim injured.
4/4/98	11:54 p.m.	Patron cited for Minor in Possession. Trial pending. Bench warrant issued.
4/11/98	12:47 a.m.	Reporting party reported hearing two gunshots in the area of Los Amigos.
4/16/98	2:00 a.m.	Fight reported in parking lot of Los Amigos.
5/24/98	2:25 a.m.	Police responded to remove patrons from Los Amigos. Fight among patrons reported. Patron brought open container of beer into establishment and cited for violation.

8/16/98	1:45 a.m.	Battery reported inside establishment.
9/1/98	1:50 a.m.	Battery reported inside establishment.
9/4/98	Between 10:35 pm. - 1:15 a.m.	Criminal damage to car of establishment patron parked in 400 block of Locust Street.
9/18/98	1:22 a.m.	Area check of Los Amigos alley. Suspect allegedly possessed marijuana.
9/18/98	1:55 a.m.	Battery reported in parking lot outside establishment.
10/1/98	1:48 a.m.	Suspect possessed open bottle of beer in parking lot of establishment.
10/2/98	1:20 a.m.	Suspect cited for minor in possession. Trial pending.
10/30/98	12:30 a.m.	Battery reported inside establishment.
10/30/98	2:00 a.m.	Battery reported. Fight broke out at closing of establishment.
11/24/98	3:40 a.m.	Suspect had alcoholic drinks out on the bar after closing hours. Trial pending.
11/30/98	11:30 p.m.	Criminal damage to vehicle parked in establishment parking lot report.
12/6/98	12:45 a.m.	Car stereo in vehicle parked in establishment parking lot reported stolen.

In reviewing the police responses to requests for service it is important to note that the establishment caters to college students and has reduced hours of operation during times when college is not in session, e.g. winter break, summer break.





**Testimony  
before the  
Senate Federal and State Affairs Committee  
March 10, 1999  
By  
Neal Whitaker  
Kansas Beer Wholesalers Association**

Madame Chairperson and Members of the Committee:

**Senate Bill 16** began as a fairly dry subject.... assemble the scattered liquor control act into a single or easily understood law that made very few policy changes. Now it has become alive with murmurs from every corner about what it might or might not do. Following the discussion yesterday and last week, I believe it is important that we examine how we got to this place in 1999 from the 1880's.

First, for the record, Carrie Nation was not born in Kansas. She was born in Girard City, Kentucky, as Carrie Moore in 1846, daughter of a plantation and slave owner. According to Edward Behr, author of Prohibition, Thirteen Years That Changed America, she became a rebel and a misfit while still a child. After several misfortunes, she wound up the wife of a "henpecked preacher, lawyer, and occasional journalist, David Nation," who established a small law practice in Medicine Lodge. Here is the important part of the history I want to read from this book...

This was our beginning.

Almost 60 years later the people of Kansas voted on a constitutional amendment allowing the legislature to provide for prohibition of intoxicating liquors in certain areas, regulate, license and tax the manufacture and sale of intoxicating liquors. The very next year the 1949 Session of the Kansas Legislature passed Substitute for Senate Bill 9, introduced by the Senate Federal and State Affairs Committee, into law which legalized the package sale of alcoholic beverages. The Journal record of that legislative action was fairly clear that the legislature was withholding the power to license and regulate the stores to the state. Cities were referred to casually in the act as being required to be notified when a person applied for a retail license. Cities could pass laws regulating activities of the licensees but no mention was made of local licensure only a reference to collection of an occupation or license tax. It is interesting to note when the original Senate Bill 9 passed the Senate licensed liquor retailers were to be restricted to first and second class cities and townships having a population in excess of 20,000. The House later amended the bill to provide that third class cities and townships having a population greater than 11,000, which had voted in favor of the 1948 constitutional amendment

could also have within their limits packaged alcohol sales. It is easy to understand, looking back to the 1880's, why the legislature chose to retain the power and control over the sale of alcoholic beverages in Kansas. That is our history.

And finally, Edward Behr ended his book with these words, "We tend to forget an important lesson: that those who know no history condemn themselves to repeat it, either as tragedy or as farce."

This bill may appear to be filled with conflicts. But, the liquor control act was created out of conflict. I can assure you that every single line ever printed in the Kansas Statutes concerning beer, cereal malt beverage, wine and spirits has been hotly debated both by the public and in these halls and is a result of compromise based on all the history that had gone before it. **Senate Bill 16** is a compromise. **Senate Bill 16** clearly outlines the powers of the cities, the counties and the state.

**We support Senate Bill 16 and urge the Committee to recommend the bill favorably.**



DEPARTMENT OF LAW  
OFFICE OF CITY ATTORNEY  
CITY HALL — THIRTEENTH FLOOR  
455 NORTH MAIN STREET  
WICHITA, KANSAS 67202-1635  
(316) 268-4681  
FAX: (316) 268-4335

**TO: Senate Federal and State Affairs Committee**

**FROM: Gary E. Rebenstorf, Director of Law and City Attorney**

**DATE: March 10, 1999**

**RE: Senate Bill No. 16, as amended**

**Position**

The City of Wichita has supported and continues to support the effort to consolidate and streamline the statutes of Kansas controlling alcoholic liquor and drinking establishments. The Mayor of the City of Wichita, as well as other representatives of the City, have worked toward that goal in attending and testifying at hearings and meetings regarding Senate Bill No. 16. The City of Wichita is willing to cooperate in fashioning legislation that will improve alcoholic liquor regulation in the state of Kansas. However, the City of Wichita is strongly opposed to legislation which preempts local alcohol regulation and negates the power of Home Rule of cities. The City of Wichita supports amendments to Senate Bill No. 16, proposed by the League of Kansas Municipalities and herein by the City of Wichita, which remove the preemption language and maintain the Home Rule powers of cities in the liquor regulation field, including license fees to cover the cost of regulation. Without said amendments, the City is opposed to the bill.

**Provisions of Senate Bill No. 16**

Section 2 of the current bill places all power of regulation and licensing of alcoholic liquor in the state and preempts cities and counties from having ordinances in conflict with state law. All city ordinances are required to have the same minimum and maximum fines as established by state law. All fees for licenses are set and controlled by state law. The impact of such provisions is to take away the home rule authority of cities and counties to regulate and license alcohol and beer establishments. The City of Wichita is opposed to legislation that diminishes the Home Rule authority of cities, and removes the right of citizens, through their locally elected representatives, to decide the standards which are appropriate for their community.

Sen. Federal & State Affairs Comm.  
Date: 3-10-99  
Attachment: # 7-1

## **Home Rule**

Home Rule is the power given to cities directly by Article 12, Section 5 of the Kansas Constitution to provide them “the largest measure of self government.” The public safety aspect of alcoholic liquor regulation is so fundamental to the overall well being of a municipality that without local control, cities lose a valuable and irreplaceable means by which community standards can be effectively enforced. The authority to license and regulate the sale of liquor, without limitation, based upon locally developed criteria, along with the ability to revoke or suspend a license when local regulations are violated is essential to the health, safety and welfare of all cities.

Clearly, the regulation of the sale and consumption of alcoholic liquor is an area of local concern. While there is concurrent state concern in this area, state statutes should not be an impediment to the exercise of Home Rule authority by cities so long as there is no conflict. The governing bodies of some cities may conclude there is sufficient protection in the state statutes regulating alcoholic liquor, while others may see the necessity for more stringent rules.

It is difficult to perceive what state wide interest will be served by taking away the Home Rule authority of cities in the area of alcohol regulation. While the goal of proposed legislation may be to prevent uncertainty and confusion, liquor regulations are just one of many laws that vary from city to city. A licensee who desires to open a drinking establishment in any particular location will be subject to all the specific laws of that city including zoning, building, fire, health and criminal codes, which may or may not be the same as any other city in Kansas. Why, then, should liquor laws be any different? In the interest of good government, cities must continue to address by local ordinance the public safety concerns that may be as unique and diverse as each city is different.

## **Underage Drinking**

One of the major concerns of the City of Wichita is restricting access to drinking establishments by minors. Current state law, as well as the current version of Senate Bill No. 16, permits minors to be on the premises of establishments that sell liquor by the drink. Wichita police officers advise that when minors have increased access to alcohol, there is increased consumption of alcohol by minors. Wichita has developed a unique licensing scheme designed to prohibit minors from being on the premises of establishments that are traditional “night clubs,” and which emphasize the consumption of alcohol, as opposed to dining or recreational activity. Under Wichita’s ordinances, minors are prohibited from entering or remaining on the premises of a drinking establishment, while they are allowed to be on the premises of a drinking establishment/restaurant.

In February of 1998, Wichita’s City Council, in cooperation with local licensees, further restricted access to alcohol by minors by expanding the definition of a drinking establishment/restaurant. Additional requirements were imposed on establishments wanting to allow minors on the premises, and the food sale revenues used to determine license classifications are to be computed over a 6-month period of time, which allows police to

determine more quickly whether an establishment is emphasizing the sale of food or the sale of liquor. In addition, penalties for allowing consumption of alcohol by minors on the premises of the establishment were increased.

Wichita police officers have indicated that the most effective tool they have in fighting criminal activity at establishments that sell alcohol, is the threat of suspending or revoking a local liquor license. Under current ordinances, several grounds exist pursuant to local regulation for the chief of police or the City Council to suspend or revoke a local liquor license. When this occurs, the establishment can no longer do business for a designated period of time. There is no requirement in the current bill that the suspension or revocation of a local license will be a basis for the mandatory suspension or revocation of a state license under the proposed legislation. Such a requirement should be included in the proposed legislation, or action on the part of a city to suspend or revoke a local liquor license will be meaningless.

The City of Wichita has worked long and hard to develop ordinances designed to limit the access of minors to drinking establishments and to enhance the penalties against club owners who allow minors to enter and/or consume alcohol on their premises. If this bill in its current form is adopted, the ordinances will be declared null and void. One of the goals of the state liquor control act is to keep minors from purchasing, possessing or consuming alcohol. Preemption of local control does not help cities control alcohol consumption by minors.

#### **License Fees**

Cities should not be preempted from establishing licensing fees that cover the cost of enforcement of the liquor laws by the cities. The majority of liquor law enforcement is by local police. The expenses of regulating clubs and drinking establishments do not typically fall on the State, but are born by cities and taxpayers. The fees established by the current version of Senate Bill No. 16 are clearly inadequate to provide a fee that covers the cost of regulation in Wichita. A cap on licensing fees is an unfunded mandate for cities. Cities should be able to charge a reasonable fee commensurate with the costs to regulate and not increase property taxes to offset these costs due to a State imposed fee.

The City of Wichita adopted a charter ordinance under its Home Rule authority in 1987 to authorize the establishment of license fees for all alcoholic liquor and cereal malt beverage licenses. In order to preserve such Home Rule charter ordinance authority the City of Wichita proposes the following amendment to be inserted in Section 28 of the bill, as subsection (t):

“(t)” Notwithstanding the provisions of Section 28 of this Act, cities that have exercised Home Rule charter ordinance authority prior to January 1, 1999, to establish license fees for all alcoholic liquor and cereal malt beverage licenses may continue to operate under such Home Rule charter ordinance authority.”

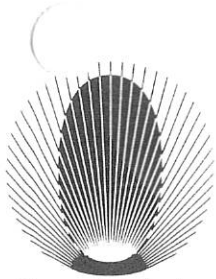


**Conclusion**

The loss of local control under Home Rule in the area of alcoholic liquor sales and consumption will have a negative impact upon the City of Wichita, as well as all municipalities. Wichita's citizens will be required to endure the nuisances and the public safety hazards these establishments inherently create, while paying the price for local police to enforce laws. Laws which are uniquely tailored to the needs of a particular locality will be rendered ineffective without the ability to tie their enforcement to the ability of a licensee to maintain his or her license to operate a drinking establishment. Therefore, it is imperative that Home Rule authority over the licensing of establishments which sell alcoholic liquor remain as a method by which Kansas citizens can have a voice in determining the type of activity they are willing to accept or reject within their community.

The City of Wichita supports amendments of Senate Bill No. 16 that recognize the Home Rule authority of cities to regulate alcoholic liquor and establish license fees to cover the costs of enforcement of the laws. Without said amendments, the City of Wichita requests that the bill not be approved by the Senate Federal and State Affairs Committee.





City of Olathe

MEMORANDUM

**TO:** Members of the Senate Federal and State Affairs Committee

**FROM:** Donald R. Seifert, Management Services Director *DRS*

**SUBJECT:** **SB 16** – Liquor Law Recodification

**DATE:** March 10, 1999

On behalf of the city of Olathe, thank you for the opportunity to appear today concerning **SB 16**. The city appreciates the many hours of effort by all parties on this issue. For many years, the regulation of the liquor industry in the state of Kansas has evolved into a partnership of state and local licensing and enforcement. The city of Olathe believes local control over establishments where liquor is sold or consumed is essential for enforcement of community standards. Our governing body is not in favor of legislation that diminishes local control in this area. However, the governing body supports the general effort to recodify the liquor laws, and would support **SB 16** with the amendments proposed by the League of Municipalities.

The city's primary concern with **SB 16** continues to be Section 2 of the bill as now proposed. Section 2 is a direct preemption to local home rule, and represents a major public policy shift with respect to alcohol. As currently written, it has conflicting provisions the city fears will result in litigation to determine its meaning. The city believes the grant of authority contained in new Section 125 of the bill is not an equal substitute for home rule preempted in Section 2.

After review by legal staff, the city also has concerns with other sections of **SB 16**. In the bill, K.S.A. 41-2608 has been repealed. This statute requires the city to approve the zoning of an establishment prior to issuance of a license. Without such language, the city fears state license approval in inappropriate zones. In addition, new Section 127 of the revised bill removes powers the city already has in the area of cereal malt beverage regulation.

Thank you for the opportunity to comment on this bill. With these changes, the city stands ready to support the recodification process.

rc

Sen. Federal & State Affairs Comm.  
 Date: 3-10-99  
 Attachment: # 8-1



City Hall • 8500 Santa Fe Drive  
Overland Park, Kansas 66212  
913/895-6000 • FAX 913/895-5003

March 9, 1999

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

FROM: Ed Eilert, Mayor  
City of Overland Park, Kansas

RE: Recodification of State Liquor Laws

As you know, under current law, to include the principles of "home rule," many Kansas municipalities license and co-regulate with the state the sale of alcoholic liquor by clubs and drinking establishments. These municipal licensing ordinances give local communities the ability to establish and enforce community standards for the sale of alcoholic liquor within their respective communities. Local regulation is critical to the effective enforcement of public safety laws designed to protect communities from the dangers associated with the sale of alcohol. For example, persons who are interested in selling alcohol in Overland Park understand that when their license application is reviewed by the Overland Park City Council, elected representatives of the local community will be considering their personal and professional qualifications to sell alcohol in the community. Licensees are also aware that violations of local liquor laws are subject to review by these elected officials either through suspension or revocation hearings or when the licensee's application to renew his or her license is reviewed each year.

The City of Overland Park continues to support a legislative effort to re-codify the state alcohol laws. The City's support for Senate Bill 16 is contingent, however, on amendments that will protect the right of local governments to exercise their "home rule" authority. This authority will permit local governments to deal effectively with the unique public safety issues that arise in individual communities. We believe that any limitation on the authority of Kansas municipalities to regulate in the area of alcohol regulation will adversely impact local communities. The City supports an amendment proposed by the League of Kansas Municipalities that would remove preemption language from Senate Bill 16 and specifically recognize the broad home rule authority of local governments, to include the right to revoke, suspend and cancel local liquor licenses.

A handwritten signature in black ink, appearing to read 'Ed Eilert'.

Ed Eilert  
Mayor

Sen. Federal & State Affairs Comm.  
Date: 3-10-99  
Attachment: # 9-1



**KANSAS  
ASSOCIATION OF  
COUNTIES**

**WRITTEN TESTIMONY  
Before the Senate Federal and State Affairs Committee  
concerning SB 16  
March 10, 1999  
By Judy Moler, Legislative Services Director**

Senator Oleen and Members of the Committee, I am writing in support of the recodification of the state liquor laws as contained in **SB 16** before you with one caveat. The Kansas Association of Counties is concerned that the language in **SB 16** is ambivalent at best regarding the issues of nonuniformity and preemption of local control. The Kansas Association of Counties has long held firm on the issues of local control and home rule authority granted to counties by statute. In an attempt to remedy the ambivalence currently contained in **SB 16**, the Kansas Association Counties supports the amendments forwarded by the League of Kansas Municipalities. There are certain issues surrounding the enforcement of liquor legislation including licensure and regulation that are best handled at the local level. We believe that the language forwarded by the League remedies any ambivalence contained in **SB 16** and would allow for the recodification of the liquor laws to the satisfaction of the state and local governments.

We would ask for your favorable passage of SB 16 with the League's proposed amendments.

The Kansas Association Of Counties, an instrumentality of member counties under K.S.A. 19-2690, provides legislative representation, educational and technical services and a wide range of informational services to its member counties. Inquiries concerning this testimony should be directed to the KAC by calling (785) 233-2271

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Sen. Federal & State Affairs Comm.  
Date: 3-10-99  
Attachment: # 10-1