

MINUTES OF THE HOUSE FED & STATE COMMITTEE

The meeting was called to order by Chairperson Doug Mays at 1:30 p.m. on January 30, 2001 in Room 313-S of the Capitol.

All members were present.

Committee staff present: Theresa M. Kiernan, Revisor of Statutes  
Russell Mills, Legislative Research Department  
Shelia Pearman, Committee Secretary

Conferees appearing before the committee:  
Keith Kocher, Assistant Attorney General, Kansas Lottery  
Julie Hein, Kansas Soft Drink Association  
Glenn O. Thompson, Stand Up for Kansas Executive Director

Others attending: See attached list

Without objection bill was introduced as requested by Representative Ruff regarding repeal of local government option for coverage under PEERA. [HB 2237]

Without objection bill was introduced as requested by Representative Barnes regarding fair share representation fee. [HB 2235]

Without objection bill was introduced as requested by Representative Peterson regarding minimum wages which state contractors pay. [HB 2264]

Without objection bill was introduced as requested by Representative Powell regarding interstate commerce: sales of contact lens via Internet and mail order catalogs. [HB 2285]

Chairman Mays opened hearings on **HB 2021 - Vending machines; permits/locations.**

Written testimony from Senator Lana Oleen was distributed to committee (Attachment #1). The Special Committee on Federal and State Affairs interim study recommended legislation to establish registration for the "Lucky Shamrock" telephone dispensing machine.

Ms. Hein did not believe it was intent of this bill to affect her clients' ability to legally maintain promotions and incentives and suggested revised language which would not interrupt these events. (Attachment #2)

Mr. Thompson addressed the definition of a lottery machine's three required components: chance, consideration and prize. A vending machine which provides a prize as result of consideration or money and involves chance is a lottery machine not a vending machine. Because the Constitution clearly states that only the Kansas Lottery can operate lottery machines, any revisions to this bill should clarify vending machines and sweepstakes machines.

Questions from the committee were addressed by Mr. Kocher who referenced the Reports of the Special Committee on Federal and State Affairs to the 2001 Kansas Legislature (Attachment #3) specifically the Attorney General's opinion (No. 97-26) which concluded if machines and games are operated in a certain fashion they are neither a lottery or a gambling device. He believes the intent of this bill was not to include Lottery dispensing machines and offered an amendment (Attachment #4, specifically line 20) to clarify that vending machines do not include machines which dispense Kansas Lottery products.

The hearing on **HB 2021** was closed.

The committee meeting adjourned at 1:55 p.m. The next schedule meeting is January 31, 2001.

# HOUSE FEDERAL & STATE AFFAIRS COMMITTEE

## COMMITTEE GUEST LIST

DATE: 1/30/01

NAME	REPRESENTING
Whitney Damon	WYCO/FC, KS
Andy Shaw	Kearney Law Office
Ned Whitman	KBWA
Kara Jachardt	Constituent Services
Pete R	KS Clubs & Assoc
Keith Kocher Kocher	KS Lottery
Ed Van Petten	" "
Keith Axton	SEAK
Roger Francko	KGE
Mike Heig	KSDA
Chas Hawnfield	LN Farm Bureau
Larry Stainbrook	" "



TOPEKA

SENATE CHAMBER

TESTIMONY  
HOUSE FEDERAL AND STATE AFFAIRS COMMITTEE  
TUESDAY, JANUARY 30, 2001  
HB 2021

Chairman Mays and members of the committee, thank you for allowing me the opportunity to address you on HB 2021.

HB 2021 is the result of an interim study by the Special Committee on Federal and State Affairs on the issue of "Gambling Policy." The bill is directed at the so-called "Lucky Shamrock" telephone card dispensing machines. The Committee recommended legislation to establish registration for these "Lucky Shamrock" machines similar to the registration requirements for cigarette and tobacco vending machines.

The Committee learned that, in addition to receiving the telephone card, and for no additional cost, the purchaser may participate in a Lucky Shamrock sweepstakes promotion and may win money prizes ranging in value from \$1 to \$1,000. An Attorney General opinion (No. 97-26) has concluded that, if the machines and the games are operated in a certain fashion, they are not either a lottery or a gambling device.

The Committee concluded that a higher degree of state regulation than that which exists today is needed with regard to the Lucky Shamrock and other similar machines. The Committee believed that, at the least, the Kansas Department of Revenue should know the locations of these machines in order to conduct investigations and audits to determine whether the appropriate taxes are being paid. The registration requirements also would include accessibility requirements to keep underage youth from "playing" these machines. HB 2021 would carry out the Committee's recommendations.

I understand that the definition of "vending machine" in the current bill may be overly broad. I would support any attempts to more clearly define the term to limit the application of the bill to the intended types of machines.

Respectfully submitted,

Lana Oleen  
Senate Majority Leader

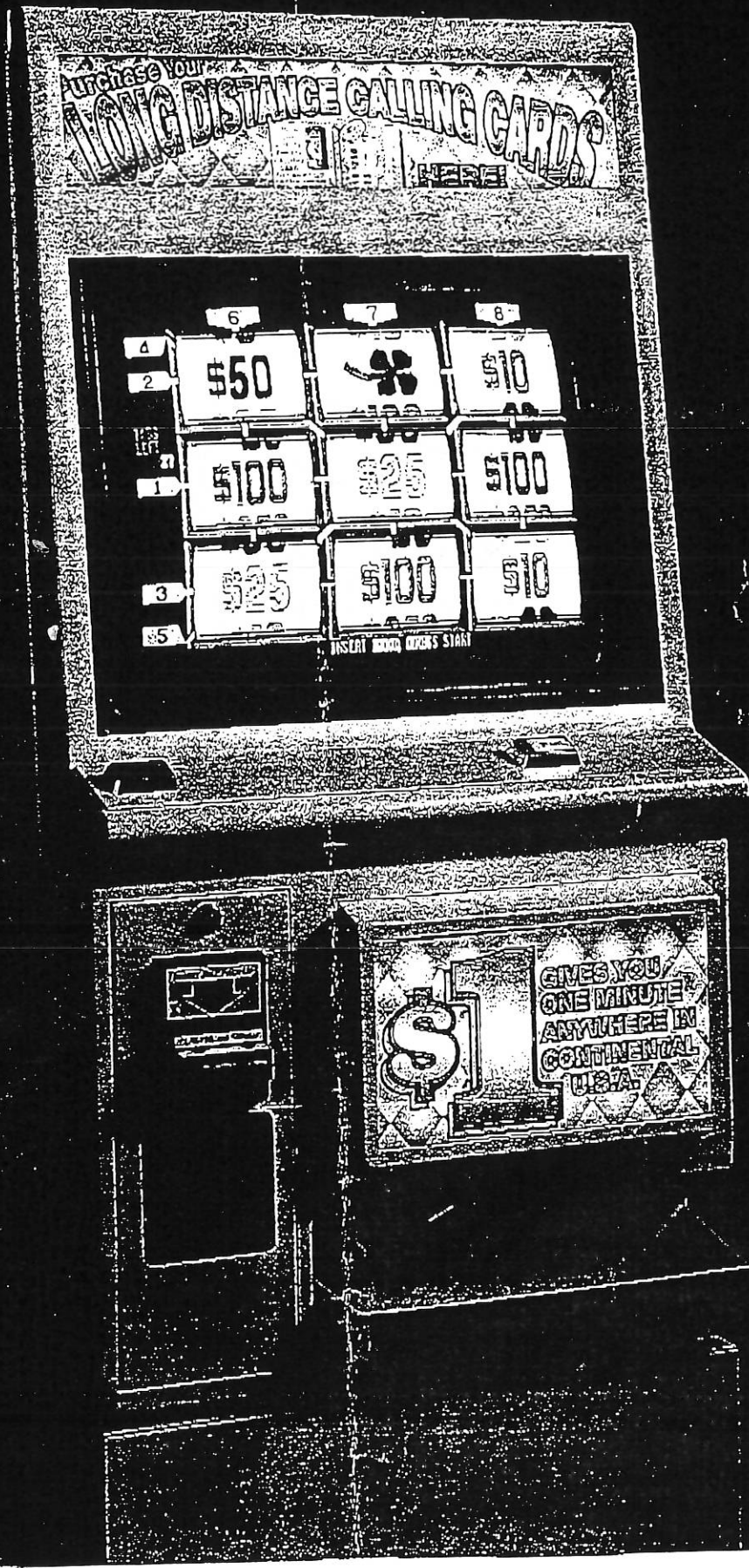
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KS DEPT OF REVENUE

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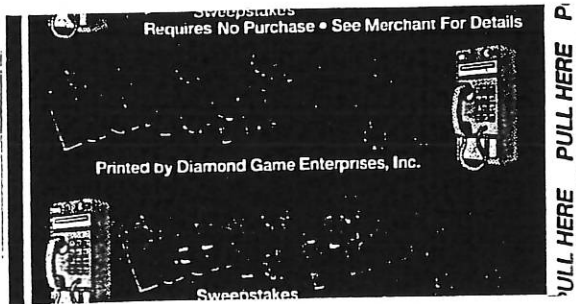
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## House Federal and State Affairs Committee

**Testimony Re: HB 2021**

**Presented by Julie J. Hein**

**on behalf of**

**Kansas Soft Drink Association**

**January 30, 2001**

Mr. Chairman, Members of the Committee:

My name is Julie Hein, and I represent the Kansas Soft Drink Association (KSDA), which is the state trade association of the soft drink bottling companies operating in Kansas.

The KSDA does not have an official position on the general concept or intent of HB 2021. As Ron Hein testified yesterday regarding HB 2109, the Kansas Soft Drink Association is concerned about the definition of vending machine specifically at Sec. 1(c), set out at Page 1, Lines 16-20. Based upon our reading of this language, we are concerned that any carbonated or non-carbonated drink vending machine which dispenses a product which is currently involved with any sort of promotion that utilizes a chance of winning a prize.

For example, if a company were to have a promotion whereby prizes were awarded for certain beverages dispensed from a machine and marked on the cap as indicating that the purchaser wins merchandise or cash, that would appear to be illegal. As you are all probably aware, occasionally promotions such as this will be conducted with numerous products. It is highly common for bottle caps to be marked as winners or other promotions to be used which award merchandise or cash.

We do not believe it was the intent of the legislation to include such machines that are used to dispense products, but the language appears to be sufficiently broad to include not only the products marketed in vending machines by the soft drink industry, but by numerous other commercial products.

Although we would certainly offer to work with the Revisor's office and the bill sponsors to try to tighten the language down so that it does not include carbonated and non-carbonated beverage vending machines, we hesitate to suggest specific language so as to not exclude machines that the sponsor was legitimately trying to address.

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I understand that Legislative Research does see some concerns with the definition of vending machine in HB 2021. I understand that they are aware that the language defining vending machine might impact our industry, and perhaps other industries.

Once again, we would offer to assist with crafting language that would exclude vending machines utilized in our industry if this committee would desire to have assistance from our industry in doing so.

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



Reports of the  
Special Committee on Federal and  
State Affairs  
to the  
2001 Kansas Legislature

**CHAIRPERSON:** Senator Lana Oleen

**VICE-CHAIRPERSON:** Representative Tony Powell

**RANKING MINORITY MEMBER:** Senator Sherman Jones

**OTHER MEMBERS:** Senators U. L. "Rip" Gooch, Nancey Harrington, and Ben Vidricksen; Representatives Joann Freeborn, Ruby Gilbert, Gary Hayzlett, Broderick Henderson, Becky Hutchins, Lloyd Stone, and Dan Thimesch

**STUDY TOPICS**

- The reduced role and importance of the duties of the Division of Alcoholic Beverage Control of the Department of Revenue and liquor enforcement efforts in recent years
- Gambling policy—fiscal, law enforcement, and social ramifications, including especially Indian gambling in Northeast Kansas and "Lucky Shamrock" machines
- Handicapped accessibility for dwellings
- Mediation and alternative dispute resolution
- Review of the policy contained in SB 666, which would have enacted the Plumbing, Mechanical, Heating, Refrigeration, Air-Conditioning, and Ventilation Certification Law and Protection Act
- Underage drinking generally, including beer keg registration

*December 2000*

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# SPECIAL COMMITTEE ON FEDERAL AND STATE AFFAIRS

## ALCOHOLIC BEVERAGE CONTROL

### CONCLUSIONS AND RECOMMENDATIONS

The Committee recommends that liquor law enforcement efforts be enhanced through the addition of new enforcement positions to handle the increased workload of Alcoholic Beverage Control (ABC). To finance this expansion, the Committee recommends that a fee increase be enacted on six specific license fees and that the additional revenues be earmarked exclusively for liquor law enforcement efforts. The Committee also recommends that the refund system for liquor licensees be eliminated; that the Director of ABC become a member of the Governor's Substance Abuse Prevention Council; and that the Legislative Post Audit Committee consider approving a follow-up audit concerning expenditures from the Local Alcoholic Liquor Fund by cities and counties.

**Proposed Legislation:** The Committee recommends one bill on this topic.

### BACKGROUND

The Legislative Coordinating Council (LCC) charged the Special Committee on Federal and State Affairs to examine "the reduced role and importance of the duties of the Division of Alcoholic Beverage Control (ABC) of the Department of Revenue and liquor enforcement efforts in recent years."

### COMMITTEE ACTIVITY

The Committee received briefings by staff regarding the organization and funding of the ABC Division of the Kansas Department of Revenue (KDOR). The staff memorandum reviewed the evolution of the agency since the late 1940s and noted that the agency grew to 78.0 FTE positions by 1954. Five years later in FY 1960, ABC had been reduced to 55.0

FTE positions, a count that was maintained until the FY 1980 when the staffing level was 50.0 FTE positions. Another growth in staffing occurred throughout the 1980s and early 1990s as nonalcoholic beverage duties (bingo and the drug tax) were assigned to ABC and revised liquor laws were passed (such as county option liquor by the drink). During the 1990s, reductions and transfers of staff out of ABC reduced the staffing level to 32.0 FTE positions by FY 2001. For FY 2001, the approved ABC budget is \$2.047 million with 32.0 FTE positions authorized. For FY 2001, the Governor recommended and the Legislature approved a restructuring of the tax fraud unit in ABC, resulting in the elimination of 4.0 FTE positions.

The Committee also received a briefing by staff of the Division of Legislative Post Audit who reviewed a 1998 perfor-

mance audit entitled Reviewing the Regulatory Activities of the Division of Alcoholic Beverage Control (No. 98-41). The 1998 audit reached three main conclusions regarding the enforcement efforts of the ABC Division:

- Because of the many non-liquor-related duties assigned to liquor control agents in recent years, agents now spend much less time on liquor enforcement.
- Given the new duties and the decrease in staff time devoted to liquor enforcement, some things have suffered while efforts to identify sales to minors has improved.
- Kansas liquor licensees' high noncompliance rates with laws prohibiting sales to minors suggest that additional enforcement efforts could or should be taken to identify and penalize violators.

The Committee also received a detailed briefing by the Acting Director of Alcoholic Beverage Control and members of his staff, as well as comments by the Secretary of Revenue. In his presentations, the Acting Director reviewed the mission of ABC and provided a history of the organization and staffing of the agency. The Acting Director also discussed the current organization and structure of the ABC Division, as well as the liquor-related duties of ABC. These liquor-related duties include licensing, industry regulation, underage enforcement, brand registration/gallonage tax, licensee administrative actions, and administrative hearings. The Acting Director noted that enforcement activities include controlled buy investigations, Cops In Shops, bar checks, licensee contacts, routine inspections, complaint investigations, license application investi-

gations, training, and delinquent tax collection efforts. The Acting Director also reviewed the compliance and licensing activities of ABC, as well as the current budget of the Division. Lastly, the Acting Director discussed the additional duties assigned to ABC, which include tobacco regulation, bingo regulation, the drug tax program, and the criminal tax fraud program.

The Committee also received testimony from representatives of the liquor industry, as well as other interested conferees. The testimony of representatives of the liquor industry generally indicated a dissatisfaction with the restructuring of ABC by various Secretaries of Revenue and the assignment of non-liquor-related duties to ABC enforcement agents. Several industry representatives mentioned problems with the Department of Revenue's telephone system, lack of computer services, delays in processing and renewing the various licenses and permits, and a shortage of appropriate funding to allow ABC to properly carry out its assigned duties.

The Chairman also appointed a three-member Subcommittee on ABC to receive input from both the ABC Director and staff, and representatives of the liquor industry. The Subcommittee met on two occasions to hear testimony. The Acting Director of ABC compared Kansas liquor enforcement efforts to those in the surrounding states, as well as the various taxes and fees generated in those states. The Acting Director also reviewed the various Kansas liquor taxes which generate approximately \$73.5 million annually, while the various license fees generate about \$2.5 million annually, although some \$900,000 of this is transferred to the Department of Social and Rehabilitation Services. At the request of the Chairman, the Acting Director had prepared a budget



proposal which would add 19.0 FTE positions to ABC. The Acting Director stated that these additional positions would allow the Division to function at a high level of efficiency.

Representatives of the liquor industry presented a proposed "Restructuring Plan" regarding the ABC Division for review by the Subcommittee. The proposed restructuring plan contained three major components:

- The creation of a liquor licensee fee fund to fund statutorily-assigned ABC functions, and the return of ABC to its previous independent status, under the KDOR umbrella;
- It is estimated by the Department that additional funds from industry taxes might be necessary to perform the required statutory functions because such functions exceed traditional licensee services by including general public health and welfare services, *i.e.*, underage consumption and industry tax collections; the additional operating revenues would originate from a state dollar-for-dollar match of licensee fees; and
- The use of ABC agents on duties not assigned by statute only when statutory authority is obtained and funding is placed in the fee fund to offset the costs of providing this service.

#### CONCLUSIONS AND RECOMMENDATIONS

The Committee concludes that ABC has, in recent years, experienced a reduced role and importance of its duties and liquor enforcement efforts. This reduced role has come about as a result of two actions:

- Staff reductions and transfers of staff out of ABC reduced the staffing level to 32.0 FTE positions in FY 2001; and
- The assignment of additional duties to ABC agents, including tobacco regulation, bingo regulation, the drug tax program, and the criminal tax fraud program.

The first action (staff reductions) was reviewed and approved by the Legislature through the appropriation process. The second action (assignment of additional duties) was largely the result of administrative decisions by the various Secretaries of Revenue. As a result of these two actions, the enforcement efforts of the ABC agents have been diluted and liquor law enforcement efforts have suffered.

The Committee recommends that liquor law enforcement efforts be enhanced through the addition of new enforcement positions to handle the increased workload of ABC. To finance this expansion, the Committee recommends that a fee increase be enacted on six specific license fees and the additional revenues be earmarked exclusively for liquor law enforcement efforts. The Committee also recommends that the refund system for liquor licensees be eliminated; that the Director of ABC become a member of the Governor's Substance Abuse Prevention Council; and that the Legislative Post Audit Committee consider approving a follow-up audit concerning expenditures from the Local Alcoholic Liquor Fund by cities and counties. The Committee recommendations are discussed in detail in the following paragraphs.

**Additional Revenues for Enforcement.** The Committee believes that additional revenue is necessary to allow for enhanced enforcement efforts regarding the liquor laws and an expansion of the

enforcement staff positions. The Committee recommends that the additional staff be devoted exclusively to enforcement of the liquor laws. The Committee also recommends a fee increase be enacted for six of the liquor license fees, as follows:

- Liquor license application fee:
  - Initial—from \$50 to \$100
  - Renewal—from \$10 to \$100
- Supplier's permit fee—from \$25 to \$100
- Brand registration fee—from \$25 to \$50
- Salesman's permit fee—from \$10 to \$25
- Cereal malt beverage license stamp fee—from \$25 to \$50

The Committee proposal is estimated to result in additional license fee revenue of \$661,315 which would be earmarked for enhanced enforcement of the liquor laws. Under current law, all license fee revenues go into the State General Fund. Under the Committee recommendation, the current license fees would continue to be deposited in the State General Fund; however, the new revenues resulting from the fee increase would flow into a new ABC General Fees Fund to be used for liquor enforcement efforts. There would be no loss to State General Fund receipts.

The Committee also became aware that most liquor licensees are eligible for a refund of the license fee should they decide to cease operations at some point during the license period. The Committee believes that such a system of license fee refunds is not needed and creates additional work for the license staff. The Committee proposal will eliminate this refund system.

### **Expansion of Liquor by the Drink.**

The Committee notes that five counties approved liquor by the drink at the November 7, 2000, election, which will result in an additional enforcement workload for the Division of Alcoholic Beverage Control.

Allen, Cheyenne, Pratt, and Rooks counties approved the sale of liquor by the drink with the stipulation that establishments must make at least 30 percent of their money from food sales. Brown County approved liquor by the drink with no food sale requirement.

Kansas now has 51 counties authorized to sell liquor by the drink with a food sales requirements, 13 counties serving liquor with no other requirements and 41 dry counties.

**Governor's Substance Abuse Prevention Council.** The Committee received a briefing on the role of the Governor's Substance Abuse Prevention Council, which was created by Executive Order No. 98-9 by the Governor on October 14, 1998. The mission of the Council is to promote the development, implementation, maintenance, and evaluation of a coordinated interagency system in order to maximize resources and encourage partnerships, both public and private, for the purpose of eliminating the abuse of alcohol and drugs. The Council, which is co-chaired by the Secretary of Social and Rehabilitation Services and the Commission of Juvenile Justice Authority, includes the agency heads of the Departments of Corrections, Health and Environment, Transportation, and other agencies as requested by the co-chairs. The Commissioner of Education and the Attorney General are requested to serve on the Council.

The Committee recommends to the Governor and the co-chairs that the Director of ABC be invited to serve on the Council and provide an additional resource for input into this area.

**Liquor Taxes Earmarked for Treatment and Prevention.** The Committee notes that current law presently earmarks a portion of several of the liquor taxes for treatment and prevention purposes. For example, 10 percent of the gallonage tax on spirits and 5 percent of the drink tax (clubs and drinking establishments) are earmarked for the Community Alcoholism and Intoxication Programs Fund; receipts to this fund in FY 2000 were \$695,000 and \$1.13 million, respectively. This fund is expended by the Secretary of SRS to provide financial assistance to community-based alcoholism and intoxication treatment programs.

In addition, 70 percent of the drink tax (clubs and drinking establishments) is earmarked for the Local Alcoholic Liquor Fund; receipts to this fund in FY 2000 were \$15.9 million. This funding is distributed back to local cities and counties and is to be used, as directed by statute, in three areas: general fund, parks and recreation, and special alcohol and drug programs funds. The Committee notes that a 1995 audit (No. 95-45) conducted by the Division of Post Audit found that about 11 percent of the expenditures made by local units did not fit the criteria outlined in the law. The Committee recommends that the Legislative Post Audit Committee consider whether a follow-up audit in this area may be warranted.

Also, any revenues generated by a local option sales tax imposed on liquor retailers by cities or townships goes into the local unit's general fund. Lastly, 50 percent of the revenue generated by the

Club, Drinking Establishment, and Caterer Annual License Fees goes into the Alcoholism Treatment Fund; FY 2000 receipts to this fund were \$1.0 million. This funding is used by the Secretary of SRS to implement the Secretary's responsibilities to establish, coordinate, and fund programs for the prevention and treatment of alcohol abuse.

**Education and Training.** The Committee is aware that most of the programs for education and training for retailers and servers are conducted by the industry. The Committee believes that these educational effort should remain in the private sector. While the ABC Division does offer some assistance to these programs, the Committee recommends that the state agency not become directly involved in education and training programs.

**ABC Memorandum of Agreement.** The Committee became aware that a memorandum of agreement had been drafted to delineate and define the duties and responsibilities of the Division of ABC and the Customer Relations Core Process of Tax Operations of the Department of Revenue (CR). The agreement sets forth in some detail the relationship between ABC and CR with regard to various duties and licensing responsibilities. Of particular interest to the Committee are provisions in the agreement transferring the Licensing Segment from CR to the ABC Division. The location of the Licensing Segment in CR was a source of concern for many representatives of the liquor industry. The agreement also specifies that the Brand Registration Marketing Section will transfer from the Licensing Segment and will report directly to the Director of ABC. The Committee notes that the agreement was signed by the Secretary of Revenue, the Director of ABC, and the CR Core Process



Manager on December 8, 2000. The Committee also notes that the Secretary of Revenue has since resigned. The Committee expresses its support for this agreement which realigns some duties and

gives ABC more control over the licensing process. The Committee urges the new Secretary of Revenue to follow both the letter and spirit of the agreement.

## GAMBLING POLICY

### CONCLUSIONS AND RECOMMENDATIONS

The Committee recommends the introduction of legislation to establish registration for "Lucky Shamrock" machines similar to the registration requirements for cigarette and tobacco vending machines.

**Proposed Legislation:** The Committee recommends one bill on this topic.

### BACKGROUND

At its meeting on August 23, 2000, the Legislative Coordinating Council (LCC) transferred a study topic from the Legislative Budget Committee to the Special Committee on Federal and State Affairs. A portion of the transfer relating to "Lucky Shamrock" machines had been requested by Chairman Oleen and Vice Chairman Powell. The LCC took action to allow the Special Committee to study the following charge:

*Gambling policy—fiscal, law enforcement, and social ramifications, including especially Indian gambling in Northeast Kansas and "Lucky Shamrock" machines.*

### COMMITTEE ACTIVITY

The Special Committee determined that, because of time constraints and the number of assigned topics, the Committee would not be able to conduct a broad study of gambling policy in Kansas. The

Special Committee decided to limit the scope of this study to the issue of "Lucky Shamrock" machines. The Committee received a briefing on this topic from Committee staff and from a Deputy Attorney General.

The material below is summarized from Attorney General Opinion No. 97-26, which discussed the legality of a machine known as the "Lucky Shamrock Phone Card Dispenser." According to the opinion, Lucky Shamrock Emergency Phone Cards are sold in dispensing machines around the state. A patron wanting to purchase a Lucky Shamrock Emergency Phone Card inserts \$1 into the machine and receives a card good for one minute of long distance telephone time. In addition to receiving the telephone card, *and for no additional cost*, the purchaser may participate in a Lucky Shamrock sweepstakes promotion. Such phone card contains nine symbols which entitle winning combinations to receive money prizes ranging in value from \$1 to \$1,000. The symbols also are coded on

the back of the card and can be read by the dispensing machine. The opinion noted that a person does not have to purchase the phone card in order to play the sweepstakes, as sweepstakes tickets are available free from the retail outlet and also through the mail.

The Deputy Attorney General who drafted Attorney General Opinion No. 97-26 reviewed the opinion for the Special Committee. The opinion, dated March 17, 1997, contains the following synopsis: *If the element of consideration is absent from the Lucky Shamrock Phone Card game in that no purchase is necessary for participation in this sweepstakes promotion, it is our opinion that the game is not a lottery. Furthermore, the Lucky Shamrock Phone Card Dispenser, as described herein, does not meet the statutory definition of a gambling device. This conclusion assumes that the machine and the game will be operated as described herein and not used in an illegal way. (Citations omitted.)*

The opinion notes that there are three essential elements of a lottery: (1) consideration; (2) prize; and (3) chance. The opinion relies heavily on the notion that, because no purchase is necessary to play the sweepstakes, there is no element of consideration present. The opinion also concluded, under the facts presented to the Attorney General's office, that the Lucky Shamrock machines do not meet the statutory definition of a gambling device. The opinion noted that any deviation from the facts presented could result in a different conclusion.

The Committee also was advised that there have been two requests asking the Attorney General to reconsider and revise or withdraw the opinion. These requests were made by a county attorney (December 9, 1997), and a state Senator (March

31, 2000). The Attorney General has declined to either revise or withdraw the opinion because of her belief that the opinion states the law accurately. However, the Attorney General in a letter dated June 12, 2000, states that:

*I have since learned that not all retailers are offering free tickets as I was informed they would, yet the distributor of the machine has taken portions of my opinion, possibly out of context, and placed it on the machine making it appear to be an endorsement of the machine.*

A listing was developed of known locations of these machines in Kansas. This listing was forwarded to the Kansas Department of Revenue (KDOR) with the Committee's request that KDOR investigate to determine whether the appropriate taxes are being paid on these machines.

The Special Committee also received testimony from a distributor who has provided for the placement of Lucky Shamrock machines in Kansas since March of 1997. The distributor stated that the machines have a payout of 60 to 70 percent of gross receipts; that the manufacturer and distributors do police the operation of the games at the retail locations; that there are approximately 150 Lucky Shamrock machines in Kansas; that the retail store owner is responsible for paying sales tax on the tickets; and that the retail store owner usually splits the net profit 50/50 with the distributor.

Representatives of the Kansas Department of Revenue (KDOR) presented a report on the inquiry which the Committee had requested on the operation of these games in Kansas. The report by the KDOR representatives concluded that:

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- The tickets are supposed to be available for free, but the investigators did find locations where the retailers' employees were not complying with this;
- The machines and tickets are manufactured by a California company, Diamond Game Enterprises, Inc., and have been placed in truck stops, bars, bingo parlors, and restaurants throughout the state;
- The retailers generally have the keys and handle all the money from the machines, and the company that owns the machines makes money by selling rolls of tickets (prepaid phone cards) to the retail locations;
- The retailers collecting money from the machines should be remitting sales tax on those gross receipts, and most retail outlets contacted appeared to be remitting the sales tax;
- Some retailers were remitting sales tax on net proceeds, which is improper, or were not remitting the appropriate sales tax, but, in those instances, the discrepancies appeared to be due to lack of knowledge and not any attempt to evade taxes; and

- The parties contacted were generally cooperative with the investigators and the Kansas Truck Stop Association stated that it is willing to help make sure that its members are in compliance with Kansas tax laws.

## CONCLUSIONS AND RECOMMENDATIONS

The Committee concludes that a higher degree of state regulation than that which exists today is needed with regard to the Lucky Shamrock and other similar machines. The Committee believes that, at the least, KDOR should know the locations of these machines in order to conduct investigations and audits to determine whether the appropriate taxes are being paid.

The Committee recommends that legislation be introduced to establish registration requirements for these machines similar to the registration requirements for tobacco and cigarette vending machines. The registration requirements also would include accessibility restrictions to keep underage youth from "playing" these machines. The legislation would include any type of vending machine operation which includes a cash "prize."

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# HANDICAPPED ACCESSIBILITY FOR DWELLINGS

## CONCLUSIONS AND RECOMMENDATIONS

The Committee recommends the introduction of a new bill, similar to 2000 Sub. for SB 304, to establish accessibility standards for certain publicly-funded dwellings.

**Proposed Legislation:** The Committee recommends one bill on this topic.

## BACKGROUND

The request to study the topic of handicapped accessibility for publicly-funded dwellings was made by Representative Powell. The House Federal and State Affairs Committee held hearings on Sub. for SB 304 during the 2000 Session. The bill became very controversial because of concerns about the actual costs of implementing the proposal. In his letter to the Legislative Coordinating Council, Representative Powell stated, "Because of the seriousness of this issue, and the sensitivity we must have towards accessibility in public housing for the disabled, I believe that further study of this issue was warranted. Specifically, the Legislature needs to have definitive information with regard to the true costs of this proposal."

### 2000 Sub. for SB 304

Sub. for SB 304 would have established accessibility standards for certain dwellings. The bill would have required that any single family residence and each individual living unit in a duplex or triplex which is constructed, reconstructed or structurally remodeled or rehabilitated with public financial assistance would have to meet certain accessibility standards. The required accessibility standards include an accessible entrance on an accessible route, accessible doors and doorways, accessible routes within the dwelling, reinforcement in

walls for future installation of grab bars and accessible light switches, electrical outlets and other controls.

Subject to the exclusions provided by the act, the term "public financial assistance" is defined to include:

- A building contract with any state agency;
- Any real estate received by the owner through a donation by the state;
- Tax credits, exemptions, or rebates;
- Grant assistance from state funds;
- State loan guarantees; and
- Federal funds administered by the state or a state agency.

The act would not apply to a:

- Private residence which is owner-occupied;
- Private residence for which an individual tax credit or rebate is received;
- Private residence which is financed under certain specified federal housing programs;

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- Private residence for which rental vouchers or certificates are accepted under a specific federal program; or
- Dwelling which is financed with public funds other than state or federal funds.

The bill also would have established accessibility standards for the structural reconstruction, rehabilitation or remodeling of certain dwellings which were constructed prior to July 1, 2000. However, the term "reconstruction, rehabilitation or remodeling" would not include replacement of roofs or gutters, painting, siding work, plumbing work, weatherization or storm windows or other remodeling work excluded pursuant to rules and regulations adopted by the Secretary of Administration.

Persons receiving public financial assistance for dwellings covered by this act would be required to sign an affidavit of intent to comply with the requirements of the act. Any person who accepts public financial assistance and fails to comply with the act would be ineligible to receive public financial assistance in the future.

The Secretary of Administration is authorized to waive any requirement of the act, upon application for such waiver. If the Secretary determines that compliance with the act is financially or environmentally impractical, the Secretary may waive the requirement. The Secretary must render a decision on any requested waiver within 60 days. The Secretary is directed to adopt rules and regulations for the implementation of this section.

The Senate Committee of the Whole amended the bill during the 2000 Session to:

- Require the Secretary of Administration to give notice of all waiver applications to the Secretary of Commerce and Housing, who is authorized to submit recommendations and comments concerning the waiver requests to the Secretary of Administration;
- Provide that proceedings to consider a waiver request will be conducted in accordance with the Kansas Administrative Procedures Act and appeals from the decisions of the Secretary of Administration will be governed by the act for Judicial Review and Civil Enforcement of Agency Actions; and
- Exempt from the act
  - Any dwelling which is under contract for occupation by the owner; or
  - Any dwelling the design or construction of which commenced prior to July 1, 2000.

2000 for SB 304 passed the Senate and was referred to the House Committee on Federal and State Affairs. That Committee held hearings on the bill and several members expressed concerns about the actual costs of implementing the proposal and its financial impact on construction costs for dwellings. The bill died in the House Committee.

### COMMITTEE ACTIVITIES

Proponents who presented testimony in favor of the bill included representatives of the Kansas Disability Rights Action Coalition for Housing (KDRACH); Living Independently in Northwest Kansas (LINK); the Topeka Independent Living Resource Center (TILRC); Tenants to Homeowners, Inc; the Wichita Independent-

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ent Living Resource Center; and Stardusters Crime Prevention. A representative of the Department of Administration, while neutral on the bill, expressed several concerns and recommendations. A representative of the Kansas Manufactured Housing Association provided information on manufactured housing and accessibility. A representative of the Kansas Building Industry Association expressed opposition to a state mandate for a housing code of any type and pointed out a number of concerns with specific provisions of the bill. The Director of Community Development for the City of Parsons expressed the concern that the city would have to increase the price of its new homes in order to comply with the requirements contained in the bill. A representative of the Department of Commerce and Housing also provided requested information to the Committee. Estimates of the additional costs of complying with the new requirements contained in 2000 Sub. for SB 304 ranged from minimal (T. Wilkinson, LLC) to \$5,000 (City of Parsons).

## CONCLUSIONS AND RECOMMENDATIONS

The Committee concludes that there is a need for legislation in Kansas to ensure that certain dwellings which include public funding should meet the five minimal "visitability" standards contained in 2000 Sub. for SB 304.

The Committee approved, without dissent, a motion to introduce a new bill essentially similar to 2000 Sub. for SB 304 to require that certain dwellings meet these accessibility standards. The new bill contains essentially the same provisions as Sub. for SB 304 with one change: the waiver procedure will be the responsibility of the Department of Commerce and Housing and the waiver provision applies only to the requirement of an accessible entrance. Other changes in the new bill are technical and clarifying in nature. (A detailed explanation of the provisions of Sub. for SB 304 is found in the front of this report.)

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# MEDIATION AND ALTERNATIVE DISPUTE RESOLUTION

## CONCLUSIONS AND RECOMMENDATIONS

The Committee supports the concept of mandatory mediation that can be ordered by the court under the Dispute Resolution Act. Further, the Committee concludes that a provision of law should be enacted to deal with the avoidance of mediation, when ordered, and the consequences of bad faith in complying with an order of mediation which can result in the award of reasonable attorney fees to the other party.

In the area of labor disputes, the Committee recommends an amendment to allow the Secretary of Human Resources to pay for the costs of mediation.

The Committee further directs that statutory language be drafted to direct the Kansas Supreme Court to adopt rules regarding standards for mediation.

All three of these recommendations are to be incorporated into one bill.

**Proposed Legislation:** The Committee recommends one bill on this topic.

## BACKGROUND

Early in the 2000 Interim the topic of mediation and alternative dispute resolution was submitted to and approved for study by the Legislative Coordinating Council. The topic was then assigned to the 2000 Interim Committee on Federal and State Affairs to do the following:

- Analyze current practices in this area;
- Explore the possibility of legislative expansion in mediation and in alternative dispute resolution;
- Review what other states are doing with these issues; and
- Consider other specific issues that may develop regarding mediation and alternative dispute resolution.

In addition, the 2000 Legislature passed SB 150 which deals with domestic

relations, including parenting and child custody matters.

One of the provisions in SB 150 allowed courts to order mediation for the division of property, typically the family home. Custody can hinge on which party gets the house. Until this time, courts could only order mediation for child custody, residency, and parenting arrangements.

In general, mediation and alternative dispute resolution measures are defined and scattered throughout the Kansas statutes, specifically, in Chapter 5, the Dispute Resolution Act, and Chapter 23 dealing with domestic relations.

Statutorily, the types of cases that may be accepted for dispute resolution include the following:

- Civil claims and disputes, including, but not limited to, consumer and commercial complaints and disputes:



involving allegations of shoplifting, between neighbors, between business associates, between landlords and tenants, involving matters under the Small Claims Procedure Act, involving farmers-lenders within communities;

- Disputes concerning child custody and visitation rights and other areas of domestic relations;
- Juvenile offenses and disputes involving juveniles;
- Disputes between victims and offenders, in which the victims voluntarily agree to participate in mediation;
- Disputes involving allegations of unlawful discrimination under state or federal laws;
- Disputes referred by county attorneys or district attorneys;
- Disputes involving employer and employee relations under KSA 72-5413 through 72-5432, and amendments thereto, or KSA 75-4321 through 75-4337, and amendments thereto; and
- Disputes referred by a court, an attorney, a law enforcement officer, a social service agency, a school or any other interested person or agency, including the request of the parties involved.

### COMMITTEE ACTIVITIES

The Committee heard from several individuals experienced in mediation. These included Art Thompson, the Dispute Resolution Coordinator with the Office of Judicial Administration (OJA);

Larry Rute, the Director of Litigation for Kansas Legal Services, Inc. (KLS); District Court Judge Robert W. Fairchild; Jeanne Erickson, mediator; George Wolf, Chief of Appeals and Alternative Dispute Resolution, Kansas Department of Human Resources; Tom Laing, InterHab and Martha Hodgesmith, Director of Community Supports and Services, Department of Social and Rehabilitation Services (SRS).

Mr. Thompson informed the Committee about the requirements of the Dispute Resolution Act and the major projects by the Advisory Council on Dispute Resolution currently underway. One project, which includes a survey of judges, mediators, and a random sample of attorneys is intended to lead to recommendations to the Supreme Court on ways to improve and expand the use of dispute resolution. The Council also is conducting a series of meetings to determine how to proceed with the development of mediation centers as contained in the act. Further, in cooperation with the University of Kansas, the OJA is conducting a research project on the effects of child custody and parenting time mediation on courts. OJA is also at work, with other organizations, on the use of kinship care mediation with an effort to place children in extended family placements who otherwise might have been placed in foster care.

Mr. Thompson indicated efforts are underway to expand the use of mediation in western Kansas. He further acknowledged that the Council has approved a small grant to train judges in the use of settlement conferences and to offer training to provide more mediators, especially bilingual mediators, in the domestic relations area. Finally, Mr. Thompson explained that the Council is developing a dispute resolution training program to be offered to court employees to assist in addressing disputes with parties who

frequent local courts. He provided information regarding the importance of confidentiality in mediation and dispute resolution. According to Mr. Thompson, states using mediation in an expanded capacity include Texas, Oklahoma, Colorado, and Nebraska. Mr. Thompson recommended legislation to expand the ability of the court to order mediation in specific cases labeled as "bad faith" deliberate and intentional avoidance of ordered mediation. A party found to be acting in bad faith could be subjected to pay the reasonable attorney fees of the other party.

Mr. Thompson recommended a statutory amendment to provide that, in labor disputes, the costs of mediation and related factfinding services would be covered by the Secretary of the Department of Human Resources, when officially requested to do so.

Mr. Rute presented testimony about mediation services for the low-income population and on behalf of the Kansas Human Rights Commission. He recommended the Legislature provide funding to permit one or more mediation centers, as a pilot project, to serve as a one stop service provider, to those persons involved in family law matters.

District Court Judge Robert W. Fairchild, Lawrence, a judge/mediator explained that he was one of the first attorneys in Kansas to use mediation frequently in his practice. Judge Fairchild is currently the Chairman of the Dispute Resolution Council for the Kansas Supreme Court. He was supportive of efforts to expand the use of mediation.

Jeanne Erickson, a nonjudge mediator, addressed the Committee regarding the merits of mediation as well as some of the problems inherent in the mediation process.

George Wolf, Chief of Appeals and Alternative Dispute Resolution, Kansas Department of Human Resources, focused on how mediation can be used effectively in government. The conferee shared information regarding the varied measures that can be used in problem solving activities within communities. He stated that his staff could be effective in educating other state agency personnel how to resolve conflict.

#### CONCLUSIONS AND RECOMMENDATIONS

The Committee supports the concept of mandatory mediation that can be ordered by the court under the Dispute Resolution Act. Further, the Committee concluded that a provision should be enacted to deal with the avoidance of mediation, when ordered, and the consequences of bad faith in complying with an order of mediation which could result in the award of reasonable attorney fees to the other party.

In the area of labor disputes, the Committee recommends an amendment to allow the Secretary of Human Resources to pay for the costs of mediation.

The Committee further directs that statutory language be drafted to direct the Kansas Supreme Court to adopt rules regarding standards for mediation.

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**PLUMBING, MECHANICAL, HEATING, REFRIGERATION,  
AIR-CONDITIONING, AND VENTILATION  
CERTIFICATION LAW AND PROTECTION ACT**

**CONCLUSIONS AND RECOMMENDATIONS**

The Committee recommends the Plumbing, Mechanical, Heating, Refrigeration, Air Conditioning, and Ventilation Certification Law and Protection Act not be enacted.

The Committee further recommends that community colleges and area vocational technical schools, in conjunction with plumbing and mechanical trades' associations and professions, develop a statewide training program for these trades and professions.

**Proposed Legislation:** None.

**BACKGROUND**

**2000 SB 666**

The Special Committee on Federal and State Affairs was charged by the Legislative Coordinating Committee (LCC) to review the policy contained in SB 666, which would have enacted the Plumbing, Mechanical, Heating, Refrigeration, Air Conditioning, and Ventilation Certification Law and Protection Act.

SB 666 was introduced by the Senate Committee on Federal and State Affairs during the 2000 Legislative Session. The Committee took no action on the bill after its hearing. The bill's subject was suggested as an interim topic by Senator Oleen.

The bill would require the Board of Technical Professions to certify plumbers, mechanical, heating, ventilation, and air conditioning (HVAC) contractors, and refrigeration contractors. The Board of

Technical Professions would establish requirements for master and journeyman certifications, including a certification fee, examination, and continuing education programs.

The bill would establish an advisory board to advise the State Board of Technical Professions regarding the plumbing and mechanical system contracting trades. The advisory board would consist of 13 members appointed by the Governor for three year terms. The Board would be composed of: four certified masters and journeyman plumbers; four mechanical system contractors with at least five years of experience; one vocational educator; two plumbing and mechanical system code inspectors; one mechanical engineer; and one ex officio member.

Violations of the act could result in a \$500 fine for each act of violation and for each day of such violation.

The Board of Technical Professions estimated an annual revenue generated from fees of \$5,000,000 and a total operating budget of \$416,907.

## COMMITTEE ACTIVITIES

The Special Committee heard from representatives of Kansas Department of Health and Environment, the Kansas State Board of Technical Professions, the League of Kansas Municipalities, the American Institute of Architects in Kansas, the Kansas Society of Professional Engineers, and the Kansas Consulting Engineers, all of whom spoke in opposition to the state regulation of these trades and professions. They cited the loss of local government's authority to license and regulate these trades and professions, the lack of resources of the Board of Technical Professions to handle the increased workload for certification, the financial cost required to regulate these professions, and the additional bureaucracy that would be created, as the main reasons for opposing the enactment of the provisions of 2000 SB 666.

Representatives from the Kansas/Missouri Chapter of the International Association of Plumbing and Mechanical Officials, the City of Wellington, and the Kansas Plumbing, Heating, Cooling Contractors Association spoke in favor of statewide regulation of the plumbing and mechanical trades. They cited the dis-

crepancies in the qualifications of plumbers and mechanical contractors due to the lack of required minimum apprenticeship training, especially in small towns and counties where licenses are not required, and the lack of uniformity in standards to insure safe and accurate work as reasons to support the enactment of the provisions of 2000 SB 666. They also supported the creation of a stand-alone plumbing/mechanical board or a General Board of Building Trades to administer a uniform state certification for these trades and professions.

## CONCLUSIONS AND RECOMMENDATIONS

The Committee recommends the Plumbing, Mechanical, Heating, Refrigeration, Air Conditioning, and Ventilation Certification law and Protection Act not be enacted.

The Committee further recommends that community colleges and area vocational technical schools with plumbing and mechanical trades' associations and professions develop a statewide training program for these trades and professions.

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# UNDERAGE DRINKING—INCLUDING KEG REGISTRATION

## CONCLUSIONS AND RECOMMENDATIONS

The Committee concludes that underage drinking is a problem which is prevalent throughout the state. The Committee recommends that education efforts, prevention efforts, and law enforcement efforts should be enhanced and coordinated. The Committee took no action on the issue of beer keg registration.

**Proposed Legislation:** None.

## BACKGROUND

The Legislative Coordinating Council (LCC) charged the Special Committee on Federal and State Affairs to conduct an interim study on the topic of “underage drinking, including keg registration.” The original request for this study came from Representative Tony Powell on behalf of the House Committee on Federal and State Affairs. That Committee had held hearings on the topic of beer keg registration during the 2000 Session. In his request letter, Chairman Powell noted that:

This study should take a broad view of the topic, including an assessment of the enforcement efforts of the Division of Alcoholic Beverage Control, a review of the educational and drug resistance programs operated by state agencies and private entities, and hearings to receive input from officials of the Kansas Department of Revenue and liquor licensees who are regulated by the ABC. One component of this study should be to examine the policy of beer keg registration.

Representative Lloyd Stone also submitted a request that a task force or interim study committee be appointed to

study the issue of underage drinking.

## The Legal Drinking Age in Kansas

In 1880, the voters approved an amendment to the *Kansas Constitution* prohibiting the manufacture and sale of intoxicating liquors in Kansas (Article 15, Sec. 10). That provision remained unchanged in the *Constitution* for 68 years.

In 1937, the Kansas Legislature enacted a new law that categorized beer with an alcoholic content of 3.2 percent or less by weight as cereal malt beverage (CMB). This law authorized the sale of CMB for both on- and off-premise consumption throughout the state. This law set the minimum legal age for the purchase and consumption of CMB at 18 years.

In 1948, the voters approved a constitutional amendment that authorized the Legislature to “. . . regulate, license and tax the manufacture and sale of intoxicating liquor . . . (and) regulate the possession and transportation of intoxicating liquor.” (Article 15, Sec. 10) The amendment also “forever prohibited” the open saloon. The amendment meant that package liquor sales could be authorized and regulated, but that the sale of liquor by the drink in public places was prohibited.

In response to the 1948 amendment, the 1949 Legislature enacted the Liquor Control Act. The act authorized package sale of liquor in counties in which the 1948 amendment had been approved. The act created a system of regulating, licensing, and taxing those package sales. The Office of State Director of Alcoholic Beverage Control—which latter became the Division of Alcoholic Beverage Control (ABC)—was created to enforce the act. The act prohibited the sale to or consumption of liquor by any minor, which was defined in other statutes as a person under the age of 21 years.

In response to a federal mandate which required states to adopt a uniform minimum drinking age of 21 or face the possible loss of federal highway funding, the 1985 Legislature raised the minimum age for consumption of cereal malt beverage to 21 for persons born after July 1, 1966. The increased minimum drinking age was actually phased-in over a three-year period. Persons born before July 1, 1966, were able to consume CMB at age 19. Another bill enacted in 1985 created new penalties for the underage purchase or consumption of alcoholic liquor or CMB.

### **The Minimum Age for Employment**

Individuals who sell and dispense alcoholic liquor generally must be 18 years of age or older. Persons under 21 must, in most cases, be under the supervision of someone who is 21 or older. The following summarizes the age requirements for several types of employment.

A liquor retailer (liquor store) must be 21 years of age to be eligible for licensure.

A person must be 18 to work in an establishment selling CMB for off-premise

consumption. For on-premise sales of CMB, an employee must be 18 in a restaurant, but 21 to work in a bar.

In clubs and drinking establishments, an employee must be 18 for the serving of liquor, and 21 for the mixing and dispensing of liquor. Both must be under the supervision of a person over the age of 21. The same provisions apply to employment in a microbrewery or farm winery.

The statutes do not impose any restrictions on employees of liquor manufacturers or distributors.

### **Beer Keg Registration Bills**

In recent years, the Kansas Legislature has considered several bills which would have established a requirement for the registration of beer kegs by the retailer. Two such bills were considered by the 2000 Legislature: SB 394 by Senator Stephens and HB 2604 by Representative Stone. The two bills are briefly summarized below.

**SB 394.** The bill would have established a new requirement on beer and cereal malt beverage retailers that the retailer affix an identification number to all kegs having a capacity of four or more gallons. The bill would have required the retailer to maintain certain records to establish the identity of the purchaser. The bill would have provided for the suspension, by the Director of ABC or by the licensing city or county, of a retailer's license for five business days upon violation of the new requirement. The bill would have created a penalty of a class B nonperson misdemeanor to possess an unregistered beer keg or to remove or deface the required keg identification number. The bill would have allowed for inspections by law enforcement personnel at any reasonable times. The Depart-

ment of Revenue indicates that the bill would have had no fiscal impact.

**HB 2604.** The bill is identical to SB 394 with one additional provision. HB 2604 contained a provision not found in SB 394 which provided that it shall be a defense to any criminal prosecution or civil action if the defendant sold beer or CMB in compliance with the requirements of the bill. The Department of Revenue indicates that the bill would have had no fiscal impact.

### Local Action by Cities and Counties

It appears that at least five counties have enacted county resolutions mandating keg registration. These counties are Lyon, Coffey, Marion, Morris, and Chase. Several cities, including Emporia, have also adopted local ordinances which mandate keg registration. In addition, the League of Kansas Municipalities has developed a sample ordinance to be used by cities in adopting keg registration requirements.

### COMMITTEE ACTIVITIES

The Special Committee received testimony from representatives of the following groups and organizations:

- Law enforcement organizations;
- Providers of alcohol education programs and alcohol safety action programs;
- The Department of Social and Rehabilitation Services;
- Academics who have conducted studies on the issue especially the study commissioned by the Kansas Department of Transportation;

- The liquor industry, including retailers and wholesalers; and
- The Kansas Department of Revenue's Division of ABC;

The Committee also received several briefings by Committee staff on the legal issues associated with the topic of underage drinking.

The Director of ABC stated that there are three areas of agency focus: industry regulation, revenue collection, and underage enforcement. He noted that the ABC enforcement activities with regard to underage drinking include controlled buy investigations, Cops in Shops, bar checks, licensee contacts, routine inspections, complaint investigations, and training for both the industry and law enforcement. He stated that underage drinking is prevalent and a problem in the state. He also discussed a proposed "Underage Drinking Reduction Initiative" which will be included in the ABC FY 2002 budget request.

Various representatives of the liquor industry reviewed their efforts to combat underage drinking, which include education programs and cooperation with the ABC. Many industry representatives noted the increasing problem of fake ID cards, many versions of which are available on the Internet. A representative of the brewing industry stated that, while teen drinking rates have declined in recent years, underage drinking generally and illegal drinking on college campuses need sustained attention. Retailer representatives discussed the training program called "Techniques of Alcohol Management" or "TAM" to help licensees and their employees to understand what the alcohol laws are, how to obey them, how to handle the sale of alcohol legally, and

how to minimize the problems faced in refusing an alcohol sale. Representatives of the Kansas Association of Beverage Retailers expressed opposition to legislation on beer keg registration.

A Wichita State University (WSU) professor reviewed a recent study done by WSU for the Kansas Department of Transportation on the issue of underage drinking in Kansas. The professor reviewed a number of the findings contained in the report *Safe, Sound, and Legal: The Kansas Enforcing the Underage Drinking Project: Needs Assessment and Leadership Conference Report*. One of the findings contained in the report states that Kansas has enacted most of the laws recommended by underage drinking enforcement and prevention experts, with the exception of legislation on keg registration. Another finding stated that the establishment of the Governor's Substance Abuse Prevention Council holds promise for the development of coordinated prevention efforts.

A representative of the Juvenile Justice Authority (JJA) stated that JJA approaches the issue of underage drinking in five ways: case management and juvenile intensive supervised probation; juvenile intake and assessment services; prevention block grant programs; federal grants; and placement into custody or juvenile community corrections.

A representative of the Department of Social and Rehabilitation Services (SRS) discussed SRS' concept of prevention and SRS' efforts toward prevention activities in Kansas communities. The Kansas Association of Addiction Professionals

expressed support for beer keg legislation, as did Emporians for Drug Awareness and the Emporia Police Department.

## CONCLUSIONS AND RECOMMENDATIONS

The Special Committee concludes that underage drinking is a problem which is prevalent throughout the state. The Committee believes that education efforts, prevention efforts, and law enforcement efforts by the Division of ABC need to be enhanced and coordinated. The Committee is supportive of the appointment of the Governor's Substance Abuse Prevention Council and is optimistic that this Council will enhance the coordination of the various agencies and groups involved in the prevention and education areas.

Regarding enhanced enforcement efforts by the Division of ABC, the Committee is recommending (under its study *Alcoholic Beverage Control*) that several liquor license fees be increased and that the additional revenue be dedicated to liquor law enforcement efforts, including underage drinking enforcement. The fee increase proposal approved by the Committee will generate an additional \$660,000 earmarked for liquor law enforcement efforts. (For a detailed discussion of this proposal, see the Special Committee's report *Alcoholic Beverage Control*).

The Committee took no action on the issue of beer keg registration.

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# HOUSE BILL No. 2021

By Special Committee on Federal and State Affairs

1-5

8  
9 AN ACT concerning certain vending machines; requiring permits there-  
10 for; restricting the location thereof.  
11

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

13 Section 1. As used in this act:

14 (a) "Director" means the director of taxation.

15 (b) "Division" means the division of taxation.

16 (c) "Vending machine" means any machine, contrivance or device  
17 from which may be purchased a product, merchandise or service upon  
18 the insertion of money into such machine, contrivance or device and  
19 evidence of such purchase may be redeemed for a monetary prize at the  
20 premises upon which the vending machine is placed.

21 (d) "Vending machine operator" means any person who places a  
22 vending machine, owned, leased or operated by such person, at locations  
23 where products, merchandise or services are sold from such machine.  
24 The owner or lessee of the premises upon which a vending machine is  
25 placed shall not be considered the operator of such machine, nor shall  
26 the owner or lessee, or any employee or agent of the owner or lessee be  
27 considered an authorized agent of the vending machine operator, if the  
28 owner or lessee does not own or lease the vending machine and the  
29 owner's or lessee's sole remuneration from the vending machine is a flat  
30 rental fee or commission based upon the number or value of the products,  
31 merchandise or services sold from such machine, or a combination  
32 thereof.

33 Sec. 2. (a) A vending machine operator shall obtain a vending ma-  
34 chine permit for each vending machine operated by the operator. A vend-  
35 ing machine operator may submit one application for all permits for vend-  
36 ing machines operated by the operator. The vending machine permit shall  
37 be securely and visibly attached to the vending machine and shall contain  
38 such information as the director may require.

39 (b) The application for a vending machine permit shall list the brand  
40 name and serial number of each machine and such other information as  
41 required by the director. Except in accordance with proper judicial order  
42 or as otherwise provided by law, it shall be unlawful for any officer or  
43 employee of the division to divulge or make known in any way the location

but not including vending machines which exclusively dispense Kansas lottery products.

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of any vending machine to any person not an officer or employee of the division, except that such information may be divulged to any law enforcement officer for use in the officer's official duties. Any officer or employee revealing any such location in violation of this provision, in addition to the penalties otherwise provided, shall be dismissed from office.

(c) The vending machine operator may move vending machines from one location to another and, if a vending machine becomes inoperative or is disposed of, the permit for such machine may be transferred to another machine. A vending machine operator, within 10 days, shall notify the director of the brand name and serial number of any vending machine that becomes inoperative or that the operator disposes of, sells, acquires or brings into service in this state as additional machines.

(d) A vending machine permit shall be issued by the director for a biennium, or portion thereof. Application for such permit shall be made on a form prescribed by rules and regulations of the secretary of revenue and shall be accompanied by a permit fee of \$25 for each vending machine.

Sec. 3. (a) Whenever the director has reason to believe that any person required to obtain a permit under this act has violated any of the provisions of this act, the director shall notify the person by certified mail of the director's intention to suspend or revoke the person's permit or permits. Within 10 days after the mailing of the notice, the person may request a hearing in writing before the director. The hearing shall be conducted in accordance with the provisions of the Kansas administrative procedure act. If, after such hearing, it appears to the satisfaction of the director that the person has violated any of the provisions of this act, the director may suspend or revoke the person's permit or permits. In addition, the director may deny the application of the person for a permit or permits for a portion of the succeeding calendar year for such period as the director determines is necessary but in no case for a period ending more than one year following the date upon which the permit or permits were suspended or revoked.

(b) If a person continues to engage in activities requiring a permit under this act after having notice or knowledge of the suspension or revocation of the person's permit or permits or after becoming more than 10 days delinquent in the payment of any penalty imposed pursuant to this act, the state shall be entitled, in any proceedings brought for such purposes, to have an order and judgment restraining and enjoining such unlawful activity and no bond shall be required for the issuance of any such restraining order or injunction.

Sec. 4. (a) Any vending machine to which is not attached a permit as required by this act and any product, merchandise or other property

in such vending machine are declared to be common nuisances and contraband.

(b) Any vending machine, product, merchandise or other property constituting a common nuisance and contraband as provided by this section may be seized by the director or the director's authorized agent or any duly constituted peace officer with or without process or warrant and shall be subject to forfeiture as provided in this act. The party making the seizure shall deliver to the owner of the property and to the persons found in possession of the property a receipt stating from whom the property was seized, the place of seizure and a description of the property seized. A duplicate of the receipt shall be filed in the office of the director and shall be open for public inspection.

(c) Any vending machine, product, merchandise or other property seized shall be listed and appraised by the officer making the seizure, and turned over to the county sheriff of the county in which the seizure is made and a receipt therefor taken. The person making the seizure immediately shall make and file a written report thereof showing the name of the person making the seizure, the place where, and the person from whom the property was seized, and inventory and appraisal thereof, at the usual and ordinary wholesale price of the articles received to the director of taxation. The county or district attorney of the county in which the seizures are made, at the request of the director, may file in the district court forfeiture proceedings in the name of the state of Kansas, as plaintiff, and in the name of the owner or person in possession, as defendant, if known, and if unknown in the name of the property seized. The clerk of the court shall issue summons to the owner or person in whose possession such property was found, directing such person to answer within 10 days. If the property is declared forfeited and ordered sold, notice of the sale shall be posted in five public places in the county not less than 10 days before the date of the sale. The proceeds of any public sale shall be deposited with the clerk of the court, who after deducting costs, including the costs of the sale, shall pay the balance to the treasurer of the county in which the sale was conducted. The county treasurer shall credit the entire amount thereof to the county general fund.

Sec. 5. The director of taxation shall administer and enforce the provisions of this act. The secretary of revenue shall adopt rules and regulations for the administration of this act. For the purpose of enforcing this act the director may call to the director's aid any law enforcement officer of this state to prosecute all violators of any of the provisions of this act. The police of any city shall have the right to inspect all premises, records and invoices pertaining to sales from vending machines within the city at all reasonable times.

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1 Sec. 6. (a) Except as provided by subsection (b), it shall be unlawful  
2 for any person to sell any product, merchandise or service from a vending  
3 machine in any establishment, or portion of an establishment, which is  
4 open to minors.

5 (b) The provisions of subsection (a) shall not apply to:

6 (1) The installation and use by the proprietor of the establishment,  
7 or by the proprietor's agents or employees, of vending machines behind  
8 a counter, or in some place in such establishment, or portion thereof, to  
9 which minors are prohibited by law from having access;

10 (2) the installation and use of a vending machine in a commercial  
11 building or industrial plant, or portions thereof, where the public is not  
12 customarily admitted and where machines are intended for the sole use  
13 of adult employees employed in the building or plant; or

14 (3) a vending machine which has a lock-out device which is inoper-  
15 able in the continuous standby mode and which requires manual activa-  
16 tion by the person supervising the operation of the machine each time  
17 any product, merchandise or service is purchased from the machine.

18 Sec. 7. Any person who violates any of the provisions of this act,  
19 except as otherwise provided in this act, shall be guilty of a misdemeanor  
20 and upon conviction shall be punished by a fine of not more than \$1,000  
21 or imprisonment for not more than one year, or by both.

22 Sec. 8. This act shall take effect and be in force from and after its  
23 publication in the statute book.

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