

MINUTES OF THE HOUSE FEDERAL & STATE AFFAIRS COMMITTEE

The meeting was called to order by Chairperson Doug Mays at 1:35 p.m. on March 19, 2001 in Room 313-S of the Capitol.

All members were present except: Representative Mary Cook, Excused  
Representative Joann Freeborn, Excused  
Representative Broderick Henderson Excused

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

Conferees appearing before the committee:  
Senator Dave Jackson  
Senator James Barnett  
Representative Dennis McKinney  
Representative Lloyd Stone  
Harlan Forslund, Kansas Urban Forestry Council  
Scott Hatstrup, Attorney  
John Parisi, Kansas Trial Lawyers Association  
Theresa Walters, Emporians for Drug Awareness  
Spencer Stewart, Butler County Community College Student  
Randy Rogers, Coffey County Sheriff  
Jim Scott, Kansas Association of Beverage Retailers President  
Marge Roberson, Kansas Association of Beverage Retailers

Others attending: See attached list

The Chairman opened the hearing on SB 133 - Arbor day; last Friday in April.

Senator Jackson authored this bill on behalf of the Kansas Arborist Association and the Kansas Nursery and Landscape Association amending K.S.A. 35-204, the observance of Arbor Day, from the last Friday in March to the last Friday in April. (Attachment #1) This bill has no fiscal impact.

Mr. Forslund voiced support for **SB 133** on behalf of the Kansas Urban Forestry Council. This would provide a larger more variable supply of nursery stock as well as better weather. No opposition has arisen to this bill and additional letters of support are attached to his written testimony (Attachment #2)

The hearing on SB 133 was closed.

Representative Hutchins moved that Committee recommend SB 133 favorable for passage.  
Representative Williams seconded the motion. The motion passed.

The Chairman opened the hearing on HB 2564 - Theft of firearm relieves owner of liability.

Mr. Hatstrup supported the bill which cures a misinterpretation of product liability law by the Kansas Supreme Court last summer. Two recent Kansas cases, *Long v. Turk* 265 Kan. 855 P.2d 1093 (1998) and *Wood v. Groh* 269 Kan.7 P.3d 1163 (2000), illustrate what this bill would protect against. (Attachment #3) Firearms owners with children should securely store their firearms to prevent misuse and not subjected to unlimited liability without proof of their negligence. Firearms owners in Kansas are now at risk of liability even if their firearms are stolen from them or even if they have taken reasonable storage precautions. **HB 2564** does reverse the dangerous idea that firearms owners in Kansas should be responsible for the later misuse of their property by thieves. ?? His suggested amendment is to change Section 1(b), lines 20-21: change to read "of the **use or** discharge of such firearm by another person if **that other person or a third party's** criminal act has contributed to such damages."

Representative McKinney presented the written testimony of John V. Black (Attachment #4) in support of **HB 2564**. Mr. Black cited his concern that *Wood v. Groh* creates a dilemma for gun owners because of

the liability of any actions from the gun even if it is stolen and used in a criminal act.

Mr. Parisi appeared as an opponent of the bill. He referred to *Wood v. Groh* and the parental control in respect to use of a firearm. Copies of this brief were distributed to committee members. The parent has a reasonable duty to exercise control of weapons in their home and what access the child has to the weapon. He stated eliminating liability for negligence and going to a gross disregard standard will have the opposite effect of the intent of the bill.

Written testimony in opposition of **HB 2564** was submitted by Ron Pope (Attachment #5) and Jerry Palmer. (Attachment #6) Mr. Pope commented **HB 2564** would have an opposite effect of its stated purpose and protect those people who are negligent in their maintenance and handling of a dangerous instrumentality. Mr. Palmer noted the purpose of this bill is "to encourage owners of firearms to store such weapons in a responsible manner" and is not a debate about Second Amendment rights.

Additional submitted testimony by Rev. Michael Poage (Attachment #7) and Dr. Manfred Menking (Attachment #8) opposed **HB 2564** because of the perceived misplaced responsibility relative to children accessing and misusing their parents firearms. All encouraged the safe storage and responsible use of firearms.

The hearing on **HB 2564** was closed.

The Chairman opened the hearing on **SB 328 - Beer and cereal malt beverage keg registration act.** Senator Barnett stated Lyons County enacted keg registration in 2000 commenting a keg of beer is equivalent to approximately 175 cans. A packet of support from individuals was distributed to each committee member. (Attachment #9) A 1998 Mothers Against Drunk Driving survey of Kansas law enforcement agencies cited 70 percent of all agencies responding identified beer keg parties as a problem in their jurisdiction. Cities other than Emporia are supportive in registration and believe the state will enact this type of legislation. Testimony included from the Regional Prevention Center of the Flint Hills cites *three risk factors strongly associated with underage alcohol use face adolescents and youth throughout Kansas. These are 1) availability of alcohol and drugs, 2) early age of first alcohol use, and 3) community laws and norms favorable toward alcohol use.*

He submitted an amended Substitute for **SB 328** and clarified reasons for amendments. *Bigs v. City of Wichita* case presently pending in the Kansas Supreme Court regarding licensing if favorable for Bigs would strengthen state's ability to make this type of legislation. If decided in favor of the city, it would strengthen the case of home rule which is not in contradiction to this legislation. He addressed questions of privacy issues raised by the maintaining of records of customers.

Representative Stone noted the Interim Study Committee learned that proponents and opponents acknowledged the problem of underage drinking. He challenged the committee to unveil something that will address this issue should it be decided this legislation is not appropriate.

Ms. Walters declared the economic cost of alcohol abuse excess that of either tobacco or illicit drugs and noted 12 is the average age when youth begin using alcohol in Kansas. She noted education has its place in prevention of underage drinking, but environmental strategies are far more effective because they reach a broader audience and actually impact the norms of communities where children are being raised. (Attachment #10)

Sheriff Rogers urged support of **SB 328** because the enactment of the Keg Registration Resolutions adopted in Coffey County has produced a significant decrease in "Pasture Parties." (Attachment #11) While the registration has not stopped underage drinking, he noted the Resolution has reduced the amount of alcohol available. Applicable statewide registration would reduce crime, accidents and other related incidents by decreasing purchases of kegs in other counties which do not require registration.

Mr. Stewart discussed his support not only because of first-hand knowledge of frequent peer pressure to participate in keg parties but more importantly that of his infant brother's death due to an alcohol-related crash. (Attachment #12) He also voiced concern that while this legislation will not prevent underage drinking and the use of fake ID's, it will provide a means of tracking and preventing those who blatantly

disregard the current law by providing alcohol to youth under 21.

Ms. Roberson (Attachment #13) is already doing most of the efforts required by the current bill which would not pre-empt more restrictive local ordinances. The keg sales in her Newton store are equivalent to about one weeks sales. As the instructor for the association's *Techniques of Alcohol Management* classes, various community regulations would not only but also violate customer's privacy issues

Mr. Scott has addressed the Committee regarding this issue approximately five times in as many years. As a board member on the National Association of Beverage Retailers, he has surveyed other states to determine the effectiveness of keg registration. (Attachment #14) He cited the following statistics:

1. Rates of alcohol-involved fatalities among drivers 16 - 20 have decreased 33 percent since 1988 representing the largest decrease for any age group (National Highway Traffic Safety Administration, 1999);
2. Since 1982, drinking among teens (12 - 17 years old) is down 45 percent;
3. Since 1982, beer drinking among college freshman is down 32 percent;
4. Since 1982, drunk driving fatalities is down percent;
5. Since 1982, drunk teenage driving is down 65 percent.

Written testimony in opposition was submitted by Marlin and Don Platt (Attachment #15) and John Davis (Attachment #16) all of Wichita.

The hearing on SB 328 was closed and will be re-opened tomorrow.

Representative Hutchins moved that Committee approve the minutes from January 22, January 23, January 24, January 29, January 30, February 5, February 6, February 13, February 15, February 20, and February 28. Representative Novascone seconded. Motion passed.

The committee meeting adjourned at 3:25 p.m. The next scheduled meeting is March 20, 2001.

# House Federal and State Affairs Committee Guest List

DATE: 3/19/01

Phil Bradley	KLDBA
Harlan E. Fossilund	KUFA
Randy L. Rogers	Kansas Sheriffs Assoc.
John Paesi	KTLA
Andy Shaw	Kearney Law Office
Bob Long	KDOR ABC
John Peterson	Arthouse Busch
Teresa Walters	Emporians for Drug Awareness
Roger Trautzy	KGO
Asst. JACK DUNCAN	Ks Wine & Spirits Wholesale
Dan Mauer	KS Family Partnership #557



DAVID D. JACKSON  
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 NORTH SHAWNEE COUNTY  
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 TOPEKA, KANSAS 66617-2305  
 (785) 357-6538  
 OFFICE: STATE CAPITOL BUILDING, ROOM 458-E  
 TOPEKA, KANSAS 66612-1504  
 785 296-7365



COMMITTEE ASSIGNMENTS  
 WAYS AND MEANS  
 ELECTIONS AND LOCAL GOVERNMENT  
 TRANSPORTATION  
 JOINT COMMITTEE ON SPECIAL CLAIMS  
 AGAINST THE STATE

## SENATE CHAMBER

Presently, State Statute 35-204 authorizes and directs that Kansas observe the last Friday in March as Arbor Day. The following parties believe that the date of Arbor Day should be changed to the last Friday in April.

The First Arbor Day was celebrated on April 10, 1872 in Nebraska. Over the years the Nebraska date has been moved to the last Friday in April. This day is a state Holiday in Nebraska and is often referred to as National Arbor Day by horticultural groups.

Historically, in 1999, 99 Kansas cities mostly celebrated community Arbor Day as early as March 26 to as late as the last week in April. Late April, by a large margin, has been the most popular date for community activities. Kansas cities favor moving Arbor Day to the last Friday, in April. At recent organizational meetings, the Kansas Arborist Association, the Kansas Nursery and Landscape Association and the Kansas Urban Forestry Council concurred with the cities on changing Arbor Day to the last Friday in April.

Factors favoring the later date include generally better weather and the market availability of a larger more variable supply of nursery stock.

We are not aware of any opposition to this date change.

Senate Bill 133, introduced on the Senate Floor January 25, 2001 by David D. Jackson and 23 additional Co-sponsors, if passed, would change the date of Arbor Day to the last Friday in April. We hope you can support passage of this Bill.

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 Attachment No. 1  
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Yours Truly,

  
Harlan E. Forslund  
Kansas Urban Forestry Council  
1525 SW Wayne Ave.  
Topeka, KS 66604-2647  
Ph. (785) 235-1753

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Federal and State Affairs Committee  
Senate Bill 133  
February 6, 2001

Ladies and Gentlemen of the Federal and State Affairs Committee:

As a board member of the Kansas Landscape and Nursery Association and their representative to the Kansas Ag Alliance, I come here today to express our support for Senate Bill 133. I also come here as a small business owner. My wife and I own and operate Herynk's Greenhouse and Nursery here in Topeka.

Arbor Day could be an excellent opportunity to help children understand how and why they can and should be stewards of the environment. Every year we see pictures in the newspaper of some official planting a tree with a group of children. But I question how enjoyable the experience is, and what the memories are. Do they really remember planting the tree? Or do they remember how muddy, wet, and cold it was. The best type of learning comes from hands on, enjoyable experiences. Planting trees in April is usually a far better experience than planting in March. The availability and selection of trees is also much better in April.

You have lived here in Kansas long enough to know what March is like. Some years its nice, and some years its really cold, windy, and miserable. Changing Arbor Day to the last Friday in April will give Mother Nature time to get her act together. Even the Governor and Senators might look forward to going outside to plant a tree when the weather is more cooperative. There are probably more of these tree planting ceremonies going on in April then in March, anyway, pretending that they are Arbor Day ceremonies.

Aside from nicer weather, by moving Arbor Day to April, Kansas celebrations will then be in sync with Arbor Day celebrations in Nebraska, home of Arbor Day. Combining the highly promoted Nebraska Arbor Day with Kansas Arbor Day and the proximity Earth Day activities, would all serve to reinforce what we are trying to teach kids.

Arbor Day just needs better weather to make it an excellent opportunity to teach children how to be good stewards of the environment.

I urge you to support Senate Bill 133.

James F. Herynk  
Kansas Landscape and Nursery Association  
7331 SW 61st  
Topeka, Kansas 66610  
785-478-4862

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February 2, 2001



**Kansas Forest Service**  
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E-mail: kfs@lists.oznet.ksu.edu  
<http://www.kansasforests.org>

**TO:** Senate Committee on Federal and State Affairs,  
Senator Harrington, Chairperson

**FROM:** Eric Berg, Urban and Community Forestry Coordinator,  
Kansas Forest Service

**SUBJECT:** SB 133 - Amendment of State Arbor Day

Madam Chair and committee members; I am Eric Berg, Urban and Community Forestry Coordinator with the Kansas Forest Service at Kansas State University. I appreciate the opportunity to testify before your Committee regarding SB 133, on changing the state proclamation for Arbor Day.

As the State Forestry Agency in Kansas, one of the services we are responsible for is the state wide coordination and promotion of the Tree City USA Program. This program is administered on a national level by the National Arbor Day Foundation. This program, both on a national and state wide basis seeks to provide educational materials and support for communities which are actively managing their community forest resource. More importantly however is the publicity, citizen pride and recognition this program brings to a community for their management efforts.

The proclamation, recognition and celebration of Arbor Day is the backbone of the Tree City USA Program. Based on the Tree City USA applications from across the state, which requires annual proof of Arbor Day observance and proclamation, the vast majority of communities in the State of Kansas are currently holding their local activities and proclamation at the end of April. In visiting with community tree board members it is commonly felt that the end of April provides a better opportunity in which to hold an outdoor Arbor Day celebration and public event.

Senate Bill 133, with the recommended date change from the last Friday in March to the last Friday in April, will better allow communities and local tree boards the opportunity to promote, recognize and celebrate this event given the more favorable spring weather, availability of nursery stock and currently ongoing National Arbor Day public service announcements and promotions.

Again, I thank you for the opportunity to speak to you on behalf of the Kansas Forest Service regarding SB 133.

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Ladies and Gentlemen of the Federal and State Affairs Committee:

The Kansas Arborist's Association Board of Directors at our annual conference this past January discussed and by unanimous consent approved the intent of Senate Bill 133. That is, changing the date that the State of Kansas officially observes Arbor Day from the last Friday in March to the last Friday in April.

The Kansas Arborist's Association is an organization that has as its mission the following purposes: To stimulate interest in the planting and preservation of shade and ornamental trees. To improve tree preservation through good arboricultural practices. To cooperate in the conservation of trees and in the beautification of the countryside. To initiate and encourage scientific investigations into the various problems encountered in the practice of tree preservation and to cooperate in making the results available. To sponsor an annual meeting devoted to the exchange and presentation of information that will aid in the improvement of the practice of tree preservation and arboriculture. To encourage the display and demonstration of materials and equipment used in the practice of arboriculture by manufacturers or distributors. To administer the certification of arborist's in the State of Kansas.

The Kansas Arborist's Association is made up of individuals and corporations that care about trees and the advancement of the field of arboriculture. Arbor Day has traditionally been a day that stood out as a day set aside to honor trees and tree stewardship. Many members of the Kansas Arborist's Association are responsible for coordinating a local Arbor Day event and each one has faced the pitfalls of a late March observance. Some of these pitfalls include, lack of quality trees for a ceremonial tree planting, cold weather that is often here in late March and difficulty in getting materials to school children who might be on a spring break. Moving the date to the last Friday in April would decrease the likelihood that these and other problems will be faced.

The Kansas Arborist's Association supports Senate Bill 133 and asks for your support for its passage. Thank you.

Terry L. Bertels  
Kansas Arborist's Association Board Member  
Manager of Horticulture and Forestry, City of Topeka  
201 NW Topeka Blvd  
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February 6, 2001

Senate Bill No. 133

Dear Senators:

On behalf of the Kansas Urban Forestry Council and the people of Kansas we respectfully request your careful consideration of this very important legislation.

The primary mission of the Kansas Urban Forestry Council is to provide guidance to the residents of Kansas through education, training, volunteer coordination and technical assistance. We feel that as Kansans become more aware of how important trees are to the quality of life, they will realize the need to plant and care for trees close to their homes and workplaces.

Arbor Day is a nationally celebrated observance that encourages tree planting and tree care. The Kansas Urban Forestry Council works towards achieving its mission and that of Arbor Day by working with various communities on Arbor Day celebrations and activities. The current March date for Arbor Day makes this challenging due to unfavorable weather conditions.

Your support of this change will help to foster a positive environment that will allow communities, schools, organizations and local tree boards a better opportunity to promote, recognize, and celebrate Arbor Day.

In support of this legislation you will undoubtedly make Kansas a better place to live, work and play. Thank you for your time and consideration.

Sincerely:

Jim Finlen, Chairman  
Kansas Urban Forestry Council

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Statement before the Kansas House Fed. & State Aff's Committee  
in support of HB 2564, March 14, 2001

**Scott G. Hattrup** (*Univ. of Kansas*: B.G.S., 1989; J.D., 1995) is an attorney practicing in Lenexa, Kansas. He is also a certified firearms instructor and competitive shooter.

HB 2564 cures a fundamental misinterpretation of product liability law by the Kansas Supreme Court last year and protects law-abiding Kansas firearms owners from unwarranted liability as a result thereof, and I therefore **support** it.

A basic understanding of the area of law known as products liability is necessary to understand why HB 2564 is necessary, specifically the doctrine known either as strict liability, ultrahazardous activities, or inherently dangerous products. These are all different names for the same basic concept of finding an owner or manufacturer of a product liable for its misuse, even if the product has been stolen, used outside normal guidelines, or otherwise removed from the control of either the owner or manufacturer. Strict liability permits liability without negligence.

Two recent Kansas cases provide an apt illustration of why this bill is needed, what it would protect against, and more importantly, what it would not protect against.

The first case, *Long v. Turk*, 265 Kan. 855, 962 P.2d 1093 (1998), involved one seventeen year old shooting another in the head, killing him. The shooter was tried as an adult and convicted of manslaughter after establishing an extensive record as a juvenile. The shooter's father had regularly given his son permission to take the firearm and carry it around Topeka in a vehicle, ostensibly for self-defense, even with the shooter's violent history. The victim's mother sued the shooter's father in a civil action for wrongful death, seeking to impose liability for the father for having provided the firearm. The Kansas Supreme Court made the right decision in this case, sending it back to district court for trial after summary judgment in favor of the shooter's father. The Court, however, for the first time found that firearms were "inherently dangerous," although such a finding was unnecessary to its decision. The shooter's father could easily have been found to have violated, K.S.A. 21-4204a, unlawfully transferring a firearm to a minor, which should have been enough to impose liability upon him for the later wrongful acts. HB 2564 would **not** relieve Mr. Turk's liability for giving his dangerous son a firearm due to the gross and wanton negligence proven through the criminal act of giving a firearm to a minor.

A more recent case, *Wood v. Groh*, 269 Kan. 420, 7 P.3d 1163 (2000), involved one fifteen year old shooting and seriously injuring his girlfriend while at an unchaperoned party involving alcohol consumption by minors. Ed Groh, the shooter in this case, had only one previous minor run in with the law. One day while his parents were away from the residence, Ed Groh broke into a locked gun case and took his father's .22 target pistol, the magazine, and some ammunition. Ed and another teenaged friend spent the day drinking beer and shooting at the cans. Later that evening, they attended a party and continued consuming alcohol. While at the party, Ed started waving the gun around and passing it to his friends. Some of them held it up to their mouths or heads, pulling the trigger. In the early morning hours of the next day, Ed was following his girlfriend up the stairs of the party house when he fired the pistol into her buttock, causing her very serious injuries.

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After trial, the jury found the parents only 10 percent at fault, probably for failing to secure the firearm as thoroughly as they could have. Ed Groh, the shooter, was found 70 percent at fault, and the victim 20 percent, probably for consuming alcohol while underage at a party where people were waving a gun around and pulling the trigger. The Kansas Supreme Court reversed the decision and sent it back to the trial court for a finding of strict liability against the parents because their son had used their firearm, which was an inherently dangerous instrumentality under the law of the first case mentioned, *Long v. Turk*. This would allow the court to find that all of the damages sustained by the victim were properly paid by the shooter's parents, who had very little to do with the facts of the shooting itself.

It is a fact pattern similar to the *Wood v. Groh* case that HB 2564 would protect against. Firearms owners with children should securely store their firearms to prevent misuse. When they do, or when firearms owners without children have their guns stolen from them, they should not be subject to unlimited liability without proof of their negligence. HB 2564 would not reward those who unlawfully transfer firearms to minors because this criminal act is proof of the gross or wanton negligence required by the bill. HB 2564 does reverse the dangerous idea that firearms owners in Kansas should be responsible for the later misuse of their property by thieves.

In closing, I urge your support for HB 2564. When you vote on this bill, please remember the many law-abiding firearms owners in Kansas now at risk of liability even if their firearms are stolen from them, or even if they have taken reasonable storage precautions.



JOHN V. BLACK  
THOMAS V. BLACK

306 SOUTH OAK  
PRATT, KANSAS 67124  
TELEPHONE (316) 672-5671  
FAX (316) 672-5675

March 12, 2001

Kansas State House of Representatives  
Federal and State Affairs Committee  
Topeka, KS 66612

Ladies and Gentlemen:

WRITTEN TESTIMONY

This testimony is prepared in support of House Bill 2564, which concerns liability relating to firearms.

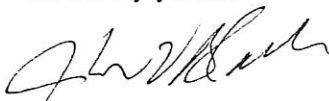
The Kansas Supreme Court in the case of Wood v. Groh, 269 Kan 436, established a principle that a person can be liable for the consequences of the use of an inherently dangerous instrumentality even though there is an intervening criminal act. This is a very severe remedy with far-reaching implications.

In the case of Wood v. Groh, the father of a teenage son had a gun in a locked cabinet. He had one key to the cabinet and carried it on his key ring in his pocket. His teenage son was with a group who were consuming alcohol and partying. During the day, he used a screwdriver to open his father's locked gun cabinet and removed a .22 caliber handgun. The gun was not loaded. However, there was a loaded clip stored in the cabinet, and he removed it as well. Thus, we had a breaking and entering and theft. In spite of the precautions the father had taken in locking up the gun and making sure the key was not available by carrying it on his person, the son still managed to get the gun. The son then left, went to one party and was drinking. Then, about 1:30 or 2:00 a.m. went to another friend's house to drink more beer. At 2:30, he returned to a party at the home of the individual who was injured where there had been drinking and started upstairs with the lady who was injured. The gun discharged and struck her in the buttocks. Her parents then sued the son's parents, and the court found that the parents could be liable even though there were several criminal acts that intervened.

The firearm had been stored in a reasonable manner and reasonable precautions had been taken to keep it secure. Yet, after several criminal acts, the injury occurred. This principle as Justice Abbott in his dissent aptly said, "makes it almost absolute liability to own a gun. What more can a gun owner do than lock up an unloaded gun and keep control of the key."

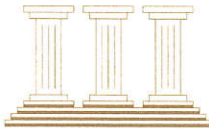
This obviously presents quite a dilemma for ranchers and farmers who carry guns in their pickups to protect their livestock from predators. Under this principle, although they had the gun in the pickup and locked up, if someone broke into the pickup, they could be liable for anything done with the gun. This simply is not right and needs to be remedied. I urge you to support and pass House Bill 2564.

Sincerely yours,



JOHN V. BLACK  
Attorney at Law  
JVB/dkp

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KANSAS TRIAL LAWYERS ASSOCIATION

*Lawyers Representing Consumers*

TO: Members of the House Federal and State Affairs Committee

FROM: Ron Pope  
Kansas Trial Lawyers Association

RE: HB 2564

DATE: March 14, 2001

Mr. Chairman and members of the House Federal and State Affairs Committee, thank you for the opportunity to appear before you today on behalf of the Kansas Trial Lawyers Association. I am Ron Pope, a practicing attorney from Topeka and a member of the KTLA Executive Committee. The Kansas Trial Lawyers Association opposes House Bill 2564.

The stated purpose of House Bill 2564 is to encourage owners of firearms to “store such weapons in a responsible manner...”. In Kansas, we enjoy a freedom for the ownership of firearms. With freedom comes responsibility. In his acceptance speech, Woodrow Wilson stated that, “responsibility is proportionate to an opportunity and opportunity is a result of freedom”.

In our lives, we have the responsibility to act as reasonable prudent citizens of the state of Kansas. That is the legal negligence standard. It has been for years and is the sound public policy of this state, that the freedom of gun ownership requires that the owners be responsible in their care and treatment. That is, the owners should do what a reasonable prudent Kansas citizen would do under the same or similar circumstances. This is already the law of the state of Kansas.

House Bill 2564 would serve to discourage the prudent and reasonable citizen of the responsible maintenance and storage of weapons. House Bill 2564 raises the bar, and indicates that Kansas citizens would not be responsible for their own negligent acts. Responsible people should be responsible gun owners, we should not legislate a lack of responsibility. We should not discourage forethought and contemplation in the storage or maintenance of firearms.

I speak to you not only as a trial lawyer, but also as a gun owner. I have enjoyed hunting for years. I have participated in target practice and shooting competitions. I have also had the enjoyment of sharing these opportunities with my child. As hunter safety is taught in the state of Kansas, all hunters must be responsible in the carrying and maintenance of their guns. This bill would serve to abrogate the very responsible tenants that we have taught our children. It would indicate that if you are negligent in your storage or securing of your firearm, you would not be liable for the injury to others. As this bill is written, it would allow the innocent victim to have no legal recourse for the negligent storage, handling or securing of a firearm.

*Terry Humphrey, Executive Director*

In the struggles for freedom, social and personal responsibility, the legislature must look at each and every bill to determine whether or not it serves a stated purpose. This House Bill 2564 would shift the equities away from the innocent victim to afford protection to the negligent party. This is not morally responsible. This is not socially responsible. This is not politically responsible. Ramsey Clark said it best, "There is no conflict between liberty and safety. We will have both or we will have neither." In the words of George Bernard Shaw, "Liberty means responsibility, that is why most men dread it". I would urge you not to pass House Bill 2564. The bill in essence would have an opposite effect of a stated purpose and protect those people who are negligent in their maintenance and handling of a dangerous instrumentality. We do not afford those immunity protections for any other instrumentality that has the potential danger of a gun. We should not afford those special immunities for guns eroding the personal responsibility and accountability of gun owners.

Thank you for the opportunity to express KTLA's concerns regarding HB 2564. We respectfully request that the committee not support this bill.

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HOUSE BILL NO. 2564: AN ACT CONCERNING FIREARMS:  
RELATING TO THE LIABILITY FOR THE DISCHARGE THEREOF

JERRY R. PALMER, #636Z  
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Topeka, KS 66603-3287  
palmerjer@networksplus.net  
(785) 233-1836 (Office)  
(785) 233-3703 (Fax)

I truly wish I was able to be with you but the late notice and a commitment I had made could not be adjusted to appear before your Committee this afternoon. I want to, though, express the feelings of the Kansas Trial Lawyers Association that House Bill 2564 should not be enacted.

The current state of Kansas law on the topic of the civil liability of a gun owner has been expressed in the case of *Long v. Turk*, 256 Kan. 855, 962 P.2d 1095 (1998). That case dealt with a 17 year old boy driving down Huntoon Street in Topeka, near Westboro, who got into an argument with the owner of a van traveling beside him. They exchanged remarks for about three or four blocks and then the van executed a right turn. The 17 year old in the car pulled out a .357 magnum with a hollow point bullet and fired it into the back of the van. The bullet went through the rear window, through the rear seat, and killed a 17-year-old passenger, thus destroying two families.

The evidence was mixed as to whether the gun had been entrusted to the youthful shooter, or whether the youthful shooter had removed it from his father's hiding place to which the shooter had access. The Kansas Supreme Court decided:



1. A .357 magnum handgun is a dangerous instrumentality and the highest degree of care is required in safeguarding such handgun. The degree of care has to be commensurate with the dangerous character of the instrumentality and a duty to exercise the highest degree of care never ceases, and
2. The legislative policy behind K.S.A. 21-4203 and 21-4204(a) support our holding that a person owes the public a duty to store a handgun in a safe and prudent manner, taking into consideration the type of handgun, where the ammunition is located, and the circumstances of the gun's use. The factual determination is required to decide whether the steps a person took to safeguard the handgun met the highest degree of care test.

Our firm was so concerned about this information getting out to the right people that we secured the list of federally registered gun dealers in the State of Kansas and mailed a copy to each of them of the relevant portions of the opinion urging them to notify their customers of the potential liability and the products available to safeguard the weapons such as trigger-locks and gun safes.

In the course of that case we came across the shocking statistics regarding gun use by minors. There are three kinds of catastrophic events that can occur when underage people get access to weapons for which use they are not intended.

1. They accidentally kill someone,
2. They intentionally kill someone, and
3. Most often they kill themselves.

The standard of "the highest degree of care" for "dangerous instrumentalities" is a concept well embedded in the State of Kansas cases dating back more than 100 years.

What has happened in schools in recent years around the country, most notably Columbine High School in the adjacent state of Colorado, are frequent reminders of what happens when an arsenal is available to a minor.

THIS IS NOT A DEBATE ABOUT SECOND AMENDMENTS RIGHTS OR WHO CAN OWN A GUN. This is an issue that goes only to the subject of responsible gun ownership. People who own guns have a responsibility to the public that they will be used by the owner or the people to whom they delegate the right to use the weapon. Further, that the owner will use adequate means, commensurate with the risks, to keep the weapon out of the hands of unauthorized users. It is not unlike the responsibility for owning a dog in a city; except that dogs infrequently kill and guns frequently are the implements of death or major injury.

This bill has as a stated purpose, "to encourage owners of firearms to store such weapons in a responsible manner." But the method prescribed is completely at odds with the purpose. What the law would do is create essentially two new defenses for gun owners when they are used by other persons and actually cause harm:

1. The owner is only liable in a case of gross or wanton negligence, and
2. If the owner uses reasonable precautions to store the firearms in a secure manner they are not liable to persons harmed by another person "if an intervening causative criminal act has contributed to such damages."

Intervening causative criminal act means, for example,

1. A homicide,
2. A gun used during the commission of a robbery,
3. An aggravated battery.

But it also includes other criminal acts:

1. Theft of the gun, or
2. Discharge of a firearm within the city limits of a city prohibiting discharge of firearms.

There is a constitutional premise that is violated by this act. The Kansas Constitution requires a "quid pro quo" when a common law remedy is being supplanted by a statute. The typical quid pro quo example that is used is workers' compensation. Workers lost the right to sue their employers for negligent acts but on the other were not subject to the defenses that employers had, such as fellow/servant rule, and the law also provided a schedule of remedies for all persons who were injured on the job without the proof of fault. Multiple Kansas Supreme Court cases have addressed the subject of constitutional "quid pro quo" and it is founded in §18 of the Kansas Constitution and is a concept of due process under the Fourteenth Amendment to the United States Constitution. Clearly this bill violates that provision.

Likewise, it probably is also violative of equal protection concepts found in both the state and federal Constitutions.

The reason the proposal should be rejected, though, is that the remedy is totally contradictory to the avowed purpose. What encourages people to "store such weapons in such a responsible manner," is by extending liability to those who do not "take reasonable

precautions to store such firearms in a secure manner." The test of ordinary negligence, and with respect to guns, "the highest degree of care" is what encourages the safe locking and storing of weapons.

It is not too much for the citizens of Kansas to ask of people who own guns to store them properly or pay the civil consequences. It must be remembered that nothing happens to the owner of a gun, unless and until, someone is actually injured with the weapon that he or she owns. Somebody has suffered a loss; they have either suffered an injury or they have lost a member of their family. The only question is, "who shall bear the consequence of that loss and in what proportion?" The Kansas Supreme Court has made a decision of public policy on that topic and it should not be disturbed by this piece of legislation. There is no good public policy reason to relieve a negligent gun owner of liability to an innocent victim. This bill should not be passed.



**Written testimony to the  
House Federal and State Affairs Committee  
HB 2464  
Presented by Rev. Michael Poage  
Minister of Fairmount United Church of Christ  
Wichita, Kansas**

My name is Michael Poage. I am Minister of Fairmount United Church of Christ in Wichita Kansas. I have worked for many years to build community in Northeast Wichita. I have ministered to the families of those lost to gun violence. I see every day the pain that comes as a result of senseless acts of violence with a gun. I support laws that make it more difficult for children, teenagers, and the mentally ill to get guns.

I am opposed to House Bill 2564 for several reasons. This bill runs counter to its stated purpose of encouraging safe storage of firearms. This bill also ignores the moral responsibility of gun owners. Finally, this bill removes the ability of gun violence survivors to demand civil responsibility from gun owners.

It is obvious that this bill runs counter to its stated purpose of encouraging safe storage of firearms. This bill does the opposite – to allow, even encourage, gun owners to store their firearms irresponsibly with no repercussions.

Gun owners have both a civil responsibility and a moral responsibility. Because firearms are inherently dangerous tools, owning a firearm comes with a certain moral responsibility to make certain that it is never misused. Limiting the liability of gun owners sends the message to gun owners that the safe storage of firearms is somehow optional. We have seen so many instances of gun violence by children with their parents' guns. Just look at the news the past few weeks. A message needs to be sent to gun owners that their primary responsibility in owning a gun is to prevent the misuse of that gun.

This bill also removes the ability of gun violence survivors to demand civil responsibility from gun owners. When gun violence is at the hands of children, gun violence survivors should be able to hold someone accountable. Surely there comes a point when we must acknowledge that those who provide tools of violence to children, either through omission or commission, are at least in part responsible for the effects of that violence. Those harmed by gun violence should be able to demand redress from those who enabled gun violence. Gun violence survivors have that right under Kansas law, and this bill is an attempt to deny that right.

While I am not a legal scholar, I did notice last year when the Kansas Supreme Court held that the "highest degree of care" is required from gun owners in Wood v Groh. "Gross and wanton negligence" is a very different standard than the "highest degree of care". I suspect that this bill is an attempt to remove the rights of gun violence survivors to seek redress provided by the Kansas Supreme Court.

Because of these reasons, I must in good conscience strongly oppose this bill. I urge you to do the same.

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State Affairs

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**Written testimony to the  
House Federal and State Affairs Committee  
HB 2564**

**Presented by Dr. Manfred Menking, retired pediatrician  
Wichita, Kansas**

As a retired pediatrician, I am concerned about HB2564. I am concerned for two reasons. First, I do not think that this bill adequately defines what is meant by "stored in a secure manner." Second, I think that this bill does what we so often do in current society – it undermines the responsibility of parents.

On the first matter – this bill does not define what safe storage is. As a member of the American Academy of Pediatrics, I counseled patients in my practice to take every precaution if there were guns in the home. I agree with the American Academy of Pediatrics that parents with children in the home should remove their guns from the home. Beyond that, there were definite guidelines that I recommended to my patients concerning safe storage. I think that any new laws that deal with safe storage ought to, at the very least, define what safe storage is. I know that many pediatricians in Kansas have worked to pass Child Access Prevention bills. HB2564 seems to be introduced in order to limit any future Child Access Prevention laws. That is a grave concern to me.

On the second matter – this bill undermines the responsibility of parents. Parents are charged with the responsibility of raising their children. Part of that responsibility is protecting children from undue influences, including such inherently dangerous tools as firearms. **Parents, in their own homes, have both the right and the responsibility to oversee and correct the actions of their children.** By limiting the liability of parents, HB2564 wrongly places the onus of gun ownership not on the parents, but on the children. So often in our society, we encourage parents to abdicate responsibility in raising children. We leave too much responsibility in the hands of others. We use TV, movies and video games as the babysitter. We leave all education up to the school systems. Now this bill tells parents to leave the responsibility of raising their children in the hands of the children themselves. **This is like asking children to raise themselves in a moral vacuum.**

In light of these two concerns, I must most strongly voice my opposition to HB2564. I urge you to remove any and all support you may have given this bill.

Thank you for your time and consideration.

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State Affairs

Date 3/19/2001

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JAMES A. BARNETT  
 SENATOR, 17TH DISTRICT  
 HOME ADDRESS: 1400 LINCOLN  
 EMPORIA, KS 66801  
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 TOPEKA, KANSAS 66612-1504  
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TOPEKA

SENATE CHAMBER

COUNTIES  
 CHASE, COFFEY, GEARY,  
 LYON, MARION, MORRIS,  
 OSAGE AND WABASHSEE

COMMITTEE ASSIGNMENTS  
 VICE CHAIR: PUBLIC HEALTH AND WELFARE  
 MEMBER: FEDERAL AND STATE AFFAIRS,  
 FINANCIAL INSTITUTIONS AND  
 INSURANCE

## TESTIMONY SB 328

Mr. Chairman and members of the House Federal and State Affairs Committee, thank you for the opportunity to speak in support of SB328.

The intent of this bill is to reduce high risk underage drinking. The pattern of underage drinking is often to drink until all of the alcohol has been consumed or one passes out.

A keg of beer provides a large quantity of alcohol that can be easily purchased by an adult. Due to a lack of appropriate labeling on the keg, the adult procuring the keg cannot be easily held responsible for their actions. That issue represents another important aspect of this bill - personal responsibility.

Youthful drinkers can easily find someone age 21 or over who will purchase a keg of beer. They freely do so, knowing they will not be identified as the purchaser. A keg of beer contains approximately 174 cans. Finding someone to purchase that many cans, cases, or 6-packs becomes more difficult.

There is also a preventive aspect of this bill. During 1998, MADD surveyed law enforcement agencies throughout the state. Seven deaths and approximately 80 injuries were attributed to keg parties. Although this legislation will not prevent all of those, I do believe we can prevent some.

I have spoken with a number of retail liquor store dealers regarding this issue. Most of them already have a very detailed form that they complete when selling a keg. The identification on the particular keg is the lacking piece. I commend the retail liquor dealers for their efforts to reduce underage sales. When listened to, they actually are asking for greater enforcement and greater oversight by the state of Kansas.

We have the opportunity to work together to increase personal responsibility and to reduce the number of deaths associated with high risk underage drinking.

I ask for your support of SB328.

Senator Jim Barnett

JAB/gkp

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 State Affairs

Date 3/19/2001

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OF THE VICE PRESIDENT  
STATE CAPITOL, 255-E  
TOPEKA, KANSAS 66612-1504  
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CHAIRMAN:  
FINANCIAL INSTITUTIONS AND  
LONG TERM CARE TASK FORCE  
HEALTH CARE REFORM LEGISLATIVE  
OVERSIGHT COMMITTEE

MEMBER:  
ASSESSMENT AND TAXATION  
CONFIRMATIONS  
INTERSTATE COOPERATION  
ORGANIZATION, CALENDAR AND RULES  
PUBLIC HEALTH AND WELFARE

**SANDY PRAEGER**

VICE PRESIDENT • KANSAS SENATE

TESTIMONY ON SB 328  
SENATE FEDERAL AND STATE AFFAIRS COMMITTEE  
February 21, 2001

Madame Chair and members of the Committee:

I appear before you today in support of SB 328 and the enactment of a statewide keg registration.

The Lawrence Police Department frequently responds to problems associated with house parties and other gatherings where beer is provided. Kegs are a frequent means of dispensing the beer at larger gatherings. Many of these activities include underage individuals at parties who are drinking beer. While law enforcement attempts to determine who is responsible for the keg and ensuring that no minors are using it, the keg is suddenly an "orphan" – with no one claiming responsibility for it. Without anyone claiming the keg, proper enforcement of our underage drinking laws in this situation is made much more difficult. Keg registration, providing an affixed identification on kegs which can be traced back to both the retailer and then the purchaser, is viewed as a helpful means of locating the responsible individual or individuals using the keg.

While keg registration is seen as a useful tool for the enforcement of underage drinking laws, when the Lawrence City Commission considered this issue last year, a number of opponents questioned whether a local ordinance would be effective because neighboring cities and counties, without the law, could still sell kegs without registration. I support the City Commission's position of a statewide keg registration law which does not preempt the authority of other communities to enact their own local keg registration law as well as SB 328.

Thank you for your consideration of the bill.

Senator Sandy Praeger

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Cooperative Extension Service  
 K-State Research and Extension  
 Pottawatomie County Extension Office  
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March 15, 2001

Rep. Doug Mays  
 State Capital, Rm 313-S  
 Topeka, KS 66601

Dear Representative Mays and Committee,

This past summer I led a coalition of organizations and involved citizens in an effort to pass a keg registration ordinance in Pottawatomie County. The county commissioners tabled the issue twice. It has never been voted on.

I thought it would be important to share the facts behind our attempt as you make decisions regarding state legislation. We were approached initially by Teresa Walters when Wabaunsee County enacted keg registration. It was natural to want adjoining counties to follow suit and our coalition and the community expressed overwhelming support for the measure. We first approached the Wamego City Council as the largest city in Pottawatomie County. The council voted unanimously in favor of a countywide ordinance. After we made a presentation to the county commissioners, they followed up with surveys to beer retailers (only two were returned, one in favor, one against) and meetings with liquor sales lobbyists.

In our second meeting with the commissioners they chose no action, stating they preferred to wait to see if the state legislature would take the lead. They also felt that a local ordinance would be ineffective without a broad based statewide plan. The commissioners did not seem to feel that registration would be a hardship on retailers but they did express the desire for stronger parental controls.

A large number of parents were quite vocal in their support of registration. In testimony before the commissioners we heard from a coach who loses players every season to the proliferation of keg parties, sheriff's data that showed approximately fifty unclaimed kegs per year found at underage drinking parties, and a mother who attributes her young son's suicide to the drinking problem he developed in high school.

As a coalition we have never said that we thought that keg registration was a cure-all for our problems with underage drinking. We see it simply as a powerful tool to supplement the work we are already doing in trying to keep kids safe. Please do what you can to pass this bill!

Sincerely,

Gayle Doll, M.S.  
 Substance Abuse Prevention Grant Coordinator

Pottawatomie County  
 Kansas State University  
 Agriculture Experiment  
 Station and Cooperative  
 Extension Service  
 K-State, County Extension  
 Council, Extension Districts  
 and U.S. Department of  
 Agriculture Cooperating  
 All educational programs  
 and materials available  
 without discrimination on  
 the basis of race, sex, or  
 religion, national origin, sex,  
 age, or disability.

"Knowledge  
 for Life"

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TESTIMONY IN SUPPORT OF KEG REGISTRATION - SENATE BILL 328

February 21, 2001

Senator Nancey Harrington and members of the Federal and State Affairs Committee:

Recently the issue of alcohol use among children and youth below the minimum legal drinking age of 21 has received substantial attention at local, state, and national levels. Reducing underage alcohol use is an important issue for many reasons – not least are those relating to the health, safety, and success of the young people throughout the state of Kansas. We ask you to help us in our efforts to reduce the unacceptably high incidence of alcohol use among our children and youth below the minimum legal drinking age by supporting Senate Bill 328 requiring that kegs be registered at the point of purchase. ***Keg registration is a prime example of an environmental strategy addressing community-based risk factors for adolescent substance abuse.***

Environmental strategies (e.g., law and policy changes) are far more effective than individual strategies (e.g., Red Ribbon Week, DARE, and substance abuse prevention curriculums) because they impact a broader population and influence the norms and context in which children live, learn, and grow.

Just as medical researchers have found risk factors for heart disease such as diets high in fat, lack of exercise, and smoking, researchers have also found a set of risk factors for adolescent alcohol and other drug abuse. We know that the more risk factors for heart disease are present, the greater the likelihood a person will suffer a heart attack. This is also true with risk factors for alcohol and other drug use, in that the more risk factors are present, the greater the likelihood that an adolescent will become involved in alcohol, drug abuse, and other problem behaviors (i.e., violence, delinquency, school drop out, and teen pregnancy). ***Currently, three risk factors strongly associated with underage alcohol use face adolescents and youth throughout Kansas. These are 1) availability of alcohol and drugs, 2) early age of first alcohol use, and 3) community laws and norms favorable toward alcohol use.*** Legislation mandating keg registration is one strategy capable of mitigating the effects of all three of these targeted risk factors.

Easy availability can make all the difference between drinking and not drinking for the young person who has not quite decided whether he or she is going to experiment with alcohol use. ***Research conclusively shows that if alcohol is easy to obtain, or is simply perceived as being easy to obtain, youth will be significantly more likely to seek it out and experiment with drinking.*** Simply by requiring the registration of kegs of beer, we

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would be making headway toward the reduction of this risk factor for our children and youth.

Another risk factor that places children at risk for later alcohol and drug problems is early age of first use of alcohol. We now know that the earlier a young person begins to drink alcohol, the greater the likelihood of developing an alcohol or drug problem in the future, because the process of addiction occurs much quicker in youth than it does for older adults. The majority of our alcohol and drug treatment centers are filled with patients under the age of 25 who began drinking before they turned 21. The minimum legal drinking age of 21 was established with sound underlying physiological reasons. The last part of the brain to mature is the prefrontal area, the section that controls decision-making, critical-thinking, and problem solving. This is an area of the brain that is not fully developed until a young person is well into their 20's, and is an area that is susceptible to the effects of early alcohol use. ***The pattern of binge drinking adolescents are notorious for, in conjunction with the availability of large quantities of alcohol at "keggers" and "field parties" are a recipe for disaster, physically, socially, and developmentally.***

***No health problem in this country has ever been solved by treating individual cases.***

While it is both necessary and appropriate to hold youth accountable when they are caught illegally consuming alcohol, ***it is equally necessary and appropriate to have environmental barriers in place that reduces their access to alcohol in the first place.*** Simply fining the few individuals who get caught is not enough to reduce a community-wide issue; that requires intervention at a broader level beyond the individual. Addressing public laws, policies, and norms in order to make sure that they send a "no tolerance" message concerning underage drinking is critical. Communities which send mixed messages concerning the availability of alcohol run the risk of directly conflicting with the "just say no" message our children our hearing in school and at home. Such conflicting messages make it difficult for youth to decide which norm to follow, particularly when faced with significant peer pressure.

In my capacity as a prevention consultant serving eleven counties throughout the Flint Hills, I am fortunate to have had an opportunity to learn about research-based prevention strategies – those things that truly work to protect kids from becoming involved from alcohol and other drug use. It is readily evident that the only effective prevention approaches are those that include multiple strategies in multiple areas of a child's life. Prevention strategies must go beyond the individual and extend to the environment. This means making certain that strategies are in place in our schools, our homes, and our community as a whole to reduce the factors that place kids at risk for underage alcohol use. Only by involving the entire community can we expect a reduction in the abuse of alcohol among our children and youth. We need to continue implementing a comprehensive K-12 prevention curriculum. We need to continue educating our parents

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about what it takes to raise healthy children in a risk-filled world. We need to continue providing healthy alternative activities and opportunities for positive contributions by our children and young adults. But we must not overlook the need to continue examining our community laws and policies to ensure that they too support the prevention effort. We ask for your support today toward that goal by strongly considering the adoption of Senate Bill 328 requiring the registration of kegs or other large containers of alcohol at the point of purchase.

Respectfully,



Hope Sullivan  
Regional Prevention Center of the Flint Hills

February 20, 2001

Dear Honorable Nancey Harrington:

*I am writing to the Federal and State Affairs Committee to discuss the issue of keg registration. My name is Jeffrey M. Lees and I am the Program Coordinator for the Regional Prevention Center of Northeast Kansas. We represent eight different counties in the Northeast region. We have worked hard and diligently to try and pass a keg registration through each of these counties.*

*The Regional Prevention Center of Northeast Kansas strongly supports the re-introduction of keg registration at the state level to benefit the counties that have the dire need and desire, but not the support for keg registration. I have heard people say, "the kids will just travel ten miles to the next county to get it" or "... at least I know where my kid is getting it and doesn't have to drive two or three counties away to get it". As you can see, these statements hold no validity for the concern of underage drinking.*

*The issue of underage drinking in the state of Kansas is a deep concern for many citizens who want to see a change. We do not want underage drinking to appear to be so much of a rite of passage but rather an experience that is unbecoming. I hope you can appreciate the magnitude of this letter and take heed to a state level keg registration versus a local one.*

*Thank you for your time and consideration, if you have any questions or comments please do not hesitate to contact me at 785-587-4372.*

Regards,

Jeffrey M. Lees  
Program Coordinator

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To The Honorable Senator Nancy Harrington  
Chair for Federal & State Affairs  
245 North State Capital  
Topeka KS, 66617

I am writing to inform you of the support from the Allen County Coalition for the KEG Registration Program. We see this program as a step in the right direction for our county. We fully support and are trying to implement this program in Allen County. If there is anything that we can do or support that we can give, please do not hesitate to let me know. Thanks again for your support for this program.

Sincerely

*Lisa Smith, Allen County Coalition Chair person*  
Lisa Smith  
Allen County Chair person

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February 21, 2001  
Special Committee on Federal and State Affairs  
RE: Underage Drinking in Kansas

Senator Herrington and members of the Special Committee on Federal and State Affairs, my name is Michelle Voth, Executive Director of the Kansas Family Partnership. Today I am speaking as a member of the Kansas Leadership To Keep Children Alcohol Free Statewide Committee and as a member of the State Incentive Cooperative Agreement Executive Advisory Committee.

Primary goals of these two groups are to assist the state in realizing three state outcomes that have been adopted by the state of Kansas. These major outcomes are to:

- 1) Reduce alcohol, tobacco and other drug use among youth;
- 2) Delay the first use of alcohol, tobacco and other drug use among youth;
- 3) Increase attitudes opposed to alcohol, tobacco and other drug use by youth, especially availability and accessibility.

Our primary focus today is underage drinking. To put this issue in perspective consider the following:

- Alcohol is the most widely used and abused drug. It kills more teenagers than all other drugs combined and is a factor in the three leading causes of death among 15-24 year olds; accidents, homicides and suicides.
- Alcohol is the most important "gateway drug". More than 67% of individuals who start drinking before the age of fifteen end up using an illicit drug.
- 80% of high school seniors and dropouts report getting drunk, binge drinking, or drinking and driving within the preceding year.
- Drinking at an early age has different health consequences than drinking later on. The earlier one drinks, the more likely one is to end up using other drugs and the more likely one is to have serious brain damage in the form of impaired memory and learning ability.

Kansas youth on average begin to drink by the age of 12.6. That is sixth grade. Kansas youth who report drinking alcohol within the last 30 days include 12.7% of sixth graders, 31.2% of 8<sup>th</sup> graders, 49.6% of 10<sup>th</sup> graders, and 61.1% of 12<sup>th</sup> graders. These statistics illustrate that Kansas communities have a serious problem with underage drinking.

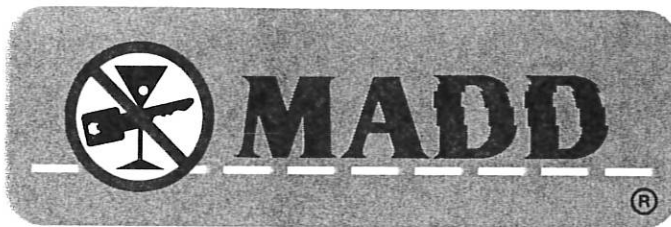
Communities all over Kansas, community leaders, law enforcement and parents report that keg parties, whether they are in fields or in homes, are a major problem. Eight Kansas counties have enacted keg registration and at least 14 states have adopted this legislative option to help their communities reduce the number of keg parties, reduce underage drinking, and reduce alcohol poisonings. Some of these states made this bold move nearly twenty years ago. This was before the Office of Juvenile Justice and Delinquency Prevention listed keg registration as a promising approach. States that enacted this legislation have found this to be an effective tool in reducing access to alcohol.

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## Mothers Against Drunk Driving

3601 SW 29th Street • Topeka, KS 66614 • (785) 271-7525 • Fax (785) 271-0797 • 1 (800) 228-6233

KANSAS STATE OFFICE

January 21, 2001

Senator Nancy Harrington, Chairperson  
Senate Federal and State Affairs Committee  
Room 143 - N, State Capital  
Topeka, Kansas 66612

Dear Senator Harrington and Committee Members;

MADD supports the requirement that all kegs and other large containers of alcoholic beverages be registered at point of purchase in order to facilitate identification of those who purchase illegally or to provide to youth under the age of twenty-one. MADD supports Senate Bill 328.

Keg beer is a prevalent source of alcohol for minors, and keg parties expose large numbers of minors to the availability of alcohol at any one given time. This was substantiated in a survey conducted by Kansas MADD of Kansas law enforcement agencies.

During November 1998, Kansas MADD conducted a Keg Registration survey of all Kansas law enforcement agencies. Four hundred and eighteen law enforcement agencies received the questionnaire. Ninety-eight responded, which represent twenty-three percent of all Kansas law enforcement agencies. More than thirty-six percent of Kansas Sheriff's Departments responded in comparison to the nineteen percent of the Police Departments. The lower response rate from Police Departments may be attributed to the perception that keg parties are generally held outside of their jurisdiction in the counties.

A summary of the questionnaire reveals the following:

- \* Seventy percent of all law enforcement agencies responding to the survey identified beer keg parties as a problem in their jurisdiction.
  
- \* Seventy-eight law enforcement agencies indicated responding to 624 to 701 keg parties involving minors during 1998. Twenty agencies could not provide estimates.

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\* Sixty-five agencies reported estimates of kegs observed or confiscated at all keg parties involving minors during 1998 between 295 and 334. Thirty-three agencies could not provide estimates.

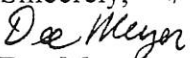
\* Sixty-nine agencies reported estimates of the number of minors present at all keg parties during 1998 between 9,213 and 10,260. (Figures do not represent unduplicated participants).

\* Twenty-one agencies estimated a total of 7 deaths and between 79 and 86 injuries of individuals under the age of twenty-one as a result of their participation at a keg party.

It is imperative to provide a means of identifying or "tracking" those irresponsible adults who are purchasing alcohol for underage drinkers as well as those purchasers, still under the age of majority themselves, who are purchasing alcohol with the use of fake ID's.

MADD has been a proponent of keg registration legislation for the last several years. It is MADD's belief that such legislation would reinforce the efforts of Kansas Alcohol Beverage Control in their endeavor to deter illegal sales, purchases, and consumption of keg beer by minors. Our goal as an organization is to promote laws which increase safety on our streets and highways, support legislation that affects the health and well-being of our youth and provide programs that will deter driving after drinking and develop skills for their adult years.

Kansas MADD supports Senate Bill 328, and would appreciate your support of this legislation.

Sincerely,  
  
Dee Meyer  
State Chairperson  
Kansas MADD

KANSAS - 1999 ALCOHOL-RELATED MOTOR VEHICLE CRASH INVOLVEMENT PERSONS AGE 10 - 20

3/19/2001  
05/12/01

ALL ALCOHOL-RELATED CRASHES	3,273	TOTAL NUMBER OF PERSONS INVOLVED IN ALL ALCOHOL-RELATED CRASHES	6,890	100%
		TOTAL NUMBER OF PERSONS AGE 10-20 INVOLVED IN ALL ALCOHOL-RELATED CRASHES	1,635	24%
		*Drinking Drivers	611	37%
		*Passengers of Drinking Drivers	496	30%
		*Others	528	33%
		Total	1,635	100%
ALL ALCOHOL-RELATED INJURY CRASHES	1,585	TOTAL NUMBER OF PERSON INJURED IN ALL ALCOHOL-RELATED CRASHES	2,437	100%
		TOTAL NUMBER OF PERSONS AGE 10-20 INJURED IN ALL ALCOHOL-RELATED CRASHES	608	25%
		*Drinking Drivers	249	41%
		*Passengers of Drinking Drivers	198	33%
		*Others	161	26%
		Total	608	100%
ALL ALCOHOL-RELATED FATALITY CRASHES	72	TOTAL NUMBER OF PERSONS KILLED IN ALL ALCOHOL-RELATED CRASHES	83	100%
		TOTAL NUMBER OF PERSONS AGE 10-20 KILLED IN ALL ALCOHOL-RELATED CRASHES	18	22%
		*Drinking Drivers	8	44%
		*Passengers of Drinking Drivers	7	39%
		*Others	3	17%
		Total	18	100%

Source: Kansas Department of Transportation-"State of Kansas Alcohol Involvement in Motor Vehicle Accidents 1990-1999"

Kansas MADD 2/7/01

Percentages are rounded off.

February 21, 2001

**Senate Federal and State Affairs Committee**

Hello,

My name is Liz Shuman. I am a senior at Colby High School in Colby Kansas and a member of our Community Awareness Team. This fall I represented young people across the Sunflower State as a delegate at the Mothers Against Drunk Driving National Youth Summit in Washington D.C. As a student, a voter, and a young person concerned for my friends, I ask for your support on the keg registration bill, Senate Bill # 328.

Drinking has become a serious problem among young people in our state, and we can no longer neglect to take responsibility. Many people would be shocked to find out just how easy it is for minors to obtain alcohol. Unfortunately, few are aware of the availability of alcohol, and of these few, most are concerned solely about the profits. I ask you to be concerned about the young people in each of your hometowns. Their health, their future, and their lives depend on it. I assure you that honest retailers would not mind the additional paperwork.

By implementing keg registration, you would be sending a positive message to me and my peers. A message that we desperately need to hear: Kansans will take responsibility.

Thank you for your time and support.

Sincerely,

Liz Shuman

elizabeth\_ann@hotmail.com

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Topeka-Shawnee County  
Alcohol-Drug Abuse  
Advisory Council

1000 South Kansas Avenue, Suite 103  
Topeka, KS 66612-1359  
(913) 233-1365



**Testimony In Support of Keg Registration  
Senate Bill 328**

Date: February 21, 2001

To: Senate Committee on Federal & State Affairs --  
Senator Nancey Harrington, Chairperson

From: Ron Eisenbarth, Topeka Shawnee County Alcohol-Drug  
Abuse Advisory Council

Good morning Chairperson and Committee Members,  
My name is Ron Eisenbarth. I represent the Topeka Shawnee County Alcohol/Drug Abuse Advisory Council whose primary purpose is to reduce the incidence and social cost of alcohol/drug abuse in Shawnee County. This council has approximately 35 members and for the past 25 years has been recognized by both Shawnee County and the City of Topeka as the planning group for alcohol/drug services and recommendation to both units of government regarding the expenditure of Special Alcohol-Drug Program (SADP) funds. I want to thank you for providing me the opportunity to express our support of passage of Keg Registration legislation.

During the past several years the council has become increasingly aware of incidents of teenage drinking resulting in traffic accidents, school suspensions, family discord, and other issues. Due to this awareness, the council in recent years has assisted local youth agencies in providing Alcohol free holiday parties, dances and other events.

Our youth are able to obtain alcoholic beverages from many sources, but somehow, adults are always involved. Our youth drink many forms of alcoholic beverages, but due to the many areas of availability of beer and the incorrect public perception that beer is not as dangerous as distilled spirits, youth often tend to drink mostly beer.

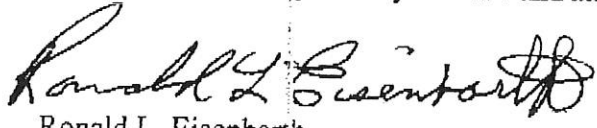
There are certainly several areas of concern regarding underage drinking. However, we do know from local information and data from other areas of Kansas as well as national statistics that keg parties are a popular means of consumption of beer by teens. The City of Emporia & Lyon County passed keg registration ordinances in 1999 followed by 8 other Kansas counties, most of them close to Emporia. Fourteen states have passed keg registration in recent years. The Topeka Shawnee County Alcohol/Drug Abuse Advisory

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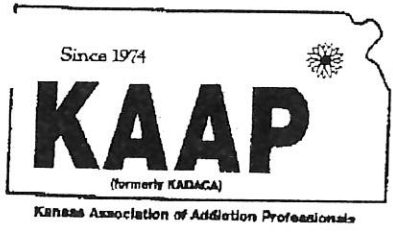
Council voted this past summer to coordinate efforts locally to pass keg registration in Topeka and Shawnee County.

I have intentionally kept this testimony brief as other groups and individuals in support of keg registration have provided detailed information and data about the need for keg registration. Due to the national trend as well as the several counties in Kansas that have passed keg registration, it seems obvious that the time is now for Kansas to have keg registration statewide. We urge the passage of such by the 2001 session of the Kansas Legislature. Thank you for your time and attention.



Ronald L. Eisenbarth  
Topeka Shawnee County Alcohol/Drug Abuse Advisory Council

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TESTIMONY REGARDING SB 328  
COMMITTEE ON FEDERAL & STATE AFFAIRS  
Submitted by Craig Collins, J.D.  
KAAP Executive Director  
Wednesday, February 21, 2001

TO: Chairperson Harrington and Committee Members

Thank you for the opportunity to appear and present testimony regarding our concern over the issue of underage drinking and allowing us to state our support for passage of SB 328, keg registration legislation. My name is Craig Collins and I am the Executive Director of the Kansas Association of Addiction Professionals (formerly Kansas Alcoholism and Drug Addiction Counselors Association). KAAP is an umbrella association that has an addiction counselor section comprised of nearly 500 certified alcohol and drug counselors and now includes a compulsive gambling section that contains the Kansas Coalition on Problem Gambling.

Underage drinking has been and continues to be a major concern due to its linkage with the progressive disease of alcoholism. This testimony will focus on the single issue of keg registration that can be a tool to curb beer consumption by people under 21 years of age. We support legislation requiring retail dealers to maintain records of sales of beer in which the product is contained in kegs showing the name of the purchaser and other such information required to track such sales if initiated by a suspected violation of laws prohibiting the consumption of alcoholic beverages by minors.

Quite simply, keg registration is legislation we feel is needed to curtail or sharply limit purchases of kegs of beer by minors or by adults purchasing the kegs for consumption by minors. By registering the kegs, a paper trail is established that leads directly back to individuals buying the kegs. Kegs sales of beer for "pasture parties" to celebrate high school graduation or in conjunction with other adolescent activities have been tolerated by much of the state's population, its lawmakers and law enforcers. But the tragic accidents and other events that have injured and claimed the lives of many of our teenage children requires us to ask our state legislators to take action in the forthcoming session.

What is being asked? Not a lot, actually. We support SB 328 that will provide a tool to help law enforcement agencies identify individuals who by their actions help teenagers violate Kansas laws

P.O. BOX 1732  
TOPEKA, KS 66601  
(785) 235-2400

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Proposed keg registration bills has been brought before the legislature in past years but has failed to become law. Supporters of the legislation say a primary reason for the failure of the legislation to move forward is that it is strongly opposed by the state's liquor interests. It is difficult to see how the keg law could seriously jeopardize revenues brought about by keg sales under a registration law - since presumably legal sales would continue to occur. I would imagine dealers routinely get purchaser information for the purpose of tracking the equipment that accompanies kegs sold so they know where the equipment can be located if not returned or for the purpose of returning deposits taken on kegs and/or equipment.

In the absence of a state law, local units of government have this past year enacted their own ordinances under the Home Rule authority. Other cities and counties are looking into the adoption of keg registration ordinances. Where those ordinances have been in effect for several months, supports report no violations. They are convinced the threat of prosecution under the ordinance has had the desired effect. The passage of SB 328 would provide uniform statewide coverage and adds a layer of accountability to individuals purchasing keg beer.

Again, thank you for the opportunity to appear before you. I stand for any questions.

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State of Kansas

## Office of the Attorney General

120 S.W. 10th Avenue, 2ND FLOOR, TOPEKA, KANSAS 66612-1597

CARLA J. STOVALL  
ATTORNEY GENERAL

MAIN PHONE: (785) 296-2215  
FAX: 296-6296

February 21, 2001

Senator Nancey Harrington, Chair  
Senate Federal & State Affairs Committee  
143-N, State Capitol  
Topeka, KS 66612

RE: Support of Senate Bill 328 - Keg Registration

Dear Senator Harrington and Members of the Senate Federal and State Affairs Committee:

Senate Bill 328 requires retailers to affix an identification number to beer kegs, obtain purchaser information and record each sale in order to identify purchasers who illegally provide alcohol to underage persons. While we are not the principal sponsor of this bill, we support the proposed bill.

In 1999 my office introduced and testified on a similar bill relating to keg registration which was proposed by the Far-Reaching Alteration of Traffic and Alcohol Laws (FATAL) Task Force created in June 1998. The goal of this Task Force was to conduct a comprehensive examination of current traffic and alcohol laws and provide recommendations to change these laws. Members of the Task Force included representatives from the legislature, judiciary, law enforcement, prosecution, defense bar, victim rights, alcohol treatment providers, insurance industry as well as officials from the Kansas Department of Health and Environment, Kansas Department of Transportation/Bureau of Traffic Safety and the Kansas Department of Revenue. (See attached list) The Task Force was divided into three subcommittees to concentrate on areas of prevention, administrative hearings and criminal penalties.

The prevention subcommittee focused on finding measures which would prevent persons from drinking and driving while under the influence of alcohol or drugs. One recommendation from this subcommittee proposed keg registration as a deterrent measure to help reduce the number of individuals purchasing alcohol or cereal malt beverages for illegal use.

Since the FATAL Task Force recommended keg registration in 1997, several counties including Lyon, Coffey, Marion, Morris and Chase counties have all adopted county resolutions mandating keg registration. At this time, several other counties are closely looking at adopting similar resolutions. We believe that state legislation is needed to ensure uniformity in the registration process

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as well as to prevent purchasers from traveling to other jurisdictions to obtain kegs in an attempt to circumvent county resolutions.

Law enforcement officers throughout the state continue to have difficulties anytime keg parties occur where underage individuals are allowed access to large quantities of beer. Officers are often called to keg parties when fights, vandalism, sexual crimes are committed or traffic accidents occur due to underage individuals driving under the influence of alcohol. Keg registration would provide law enforcement officials a valuable investigative tool in which to determine who purchased and provided the keg to underage individuals when crimes occur.

Keg registration holds purchasers of kegs accountable for providing alcohol to underage individuals. This legislation sends a strong deterrent message, causing persons over 21 years of age to think twice before providing kegs for illegal consumption. This is an important preventive step which we believe will help save lives in the future.

On behalf of the FATAL Task Force, I would urge your favorable consideration of Senate Bill 328.

Very truly yours,



Carla J. Stovall  
Attorney General

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ELKHART POLICE DEPARTMENT  
316-697-2151

# Sheriff Loren W. Youngers

ADMINISTRATOR  
MORTON COUNTY  
LAW ENFORCEMENT CENTER  
P.O. BOX 1115  
ELKHART, KANSAS 67950

FAX 316-697-2832



MORTON COUNTY SHERIFF DEPT.  
316-697-4313

Senator Jim Barnett  
and other Kansas Senators

March 8, 2001

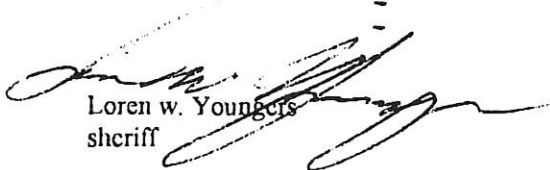
Ref: SB-328 Kcg Registration

Dear Senator Barnett,

As I see this bill coming up I can only think of the many young people killed or seriously injured due to alcohol. Some of these I have been involved with personally as a Law Enforcement Officer. How sad it is remove a dead young person from a vehicle, who died because a friend or themselves chose to drink and drive. Although this bill will not put a stop to the drinking and driving, it will help Law Enforcement track down those who are buying the alcohol for these kids. As a father of teenagers I can only hope and pray that mine do not get mixed up in drinking but more so that they not fall victim to a classmate or another young person who has chosen to get behind the wheel drunk. I have seen Kansas attempt to put a curb on the alcohol consumption through stiffer drinking laws. This bill will only enhance these laws by bring to light those who supply the alcohol to high school kids as well as early college age kids.

I think it would be extremely valuable for Law Enforcement to complete an investigation swiftly in to the buying of alcohol for minors by passing this bill. I'm sure I speak for Law Enforcement all across the state in saying we strongly support this bill, feeling only that it will be a good thing.

Respectfully I remain,

  
Loren W. Youngers  
sheriff

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TRACY L. PLOUTZ  
Sheriff



BILL SALYERS  
Undersheriff

785 785  
Ellsworth County Sheriffs Dept. 212 North Kansas Ellsworth, Kansas 67439 Telephone (913)472-4416 FAX (913)472-5687

Jeff Bottenberg  
03082001

The Ellsworth County Sheriff's Department strongly supports SB 328 Keg Registration that requires retailers to affix keg identification numbers to kegs of beer and the recording of the keg numbers, date of sale, purchasers name, address and signature. Underage drinking is a huge problem in our area and we are sure we are not alone. This bill is long over due.

We have one recent keg party related death of a 16 year old. We were able to identify the individuals who purchased the keg beer and convict them. The registration of kegs would have spend up the process if it had been in place in 1998.

Sincerely,

A handwritten signature in cursive script that reads "Tracy L. Ploutz".

Tracy L. Ploutz  
Ellsworth County Sheriff

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# Barton County Sheriff's Office



## MEMORANDUM

Date: 03-10-2001

To: Senator Jim Barnett

From: Sheriff Causey

Senator, I am very much in support of SB 328/ Keg Registration. Barton County, the county I represent as sheriff, like all other counties, has a tremendous juvenile drinking problem. This legislation would be a great help in the investigations of under age consumption of alcoholic beverages. With the present laws, law enforcement has very little to help us prove who is furnishing the beverages to the minors. With the Keg Registration minors would be discouraged from purchasing the beverage in keg form and the adults who are furnishing kegs to the minors for parties would be easier to identify and prosecute. I know that there is a lot of opposition from the distributors and retail liquor businesses but I don't think they are truly thinking about the future of our teenagers.

It is probably to late for this session but if this bill does not pass this year I would be glad to have the opportunity to testify for a Keg Registration Bill in 2002.

From:  
The Desk of  
Sheriff Causey

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Pottawatomie County Clerk's Office  
207 N. 15th St.  
Westmoreland, KS 66549  
785-457-3740

From:  
July 31, 2000  
Commission Minutes

Commission was going to reduce one budget, they should all be reduced. Mrs. Blume stated that she was tired of the little man getting cut. Barbara Depew stated that the extension council gets grants for a lot of their programs and wondered if others shouldn't check on grant monies for their programs. She felt they were being penalized for using grants. Commissioner Kolde stated she felt grants were Socialism.

Richard Carlson moved to accept the extension council's lower request of \$150,000 for their 2001 budget. John Lichtenhan said he would not second that motion. The motion died for lack of a second.

John Lichtenhan moved that the amount for the extension budget be set at \$115,000. Richard Carlson would not second the motion, which died for lack of second.

Barbara Kolde moved that the amount for the 2001 extension council budget be set at \$125,000. John Lichtenhan seconded the motion. Chairman asked for further discussion before voting. Sharon Blume asked that the Commission keep in mind how small a portion of the total budget the extension budget is. She also asked that if Jeffrey Energy Center value is down, would other monies make up the difference. Robert Reece, county administrator, informed her that the difference in the tax dollars would come from the taxpayers. The Chairman asked for a vote on the motion. The motion carried 2 to 1 with Commissioners Kolde and Lichtenhan voting in favor and Commissioner Carlson opposing the motion.

Robert Reece, county administrator, informed the Board of a meeting with Wamego City is scheduled for Thursday, August 10 at 6:00 P.M. in Wamego.

Rebecca Rice, representing the Kansas Beer Wholesalers Association, and Amy Campbell, executive director of the Kansas Retail Liquor Dealers Association, Inc., met with the Commissioners to discuss keg registration. Ms. Rice stated that the resolution that has been requested to be adopted is more of a feel good benefit than an actual solution for an underage drinking problem in the county. She suggested they not adopt something that will have no effect, and that the Commission may have authority over rural cereal malt beverage dealers, but not over dealers in the cities. She feels the keg registration issue is a political issue in the Senatorial race in the Emporia area. It would also be very important to have immunity for retailers from

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liability for consumption. She also stated that it would be important to limit record access to law enforcement and not the public. Liquor retailers are statutorily required to be located within the city limits unless they are in a township with a population exceeding 5000. The Commission would not have jurisdiction over the city dealers. Amy Campbell informed the Board of some of the requirements to become a liquor retailer. The individual must pass a test to receive certification.

Jud Jones, Blue Township resident, stated that he felt there were already laws relating to contributing to the delinquency of minors. He feels the more you regulate, the more you make government big, and the more restrictions a citizen has.

Leu Lowrey, public works director, met with the Commissioners to discuss bids for the Say Road Project that were opened on July 27. After reviewing the bids, he recommended the concrete option bid be awarded to EBI Construction, Inc of Wamego. Richard Carlson moved and John Lichtenhan seconded to accept the low bid for the concrete pavement alternate submitted by EBI Construction, Inc of Wamego in the amount of \$509,927.78. Motion carried 3 to 0.

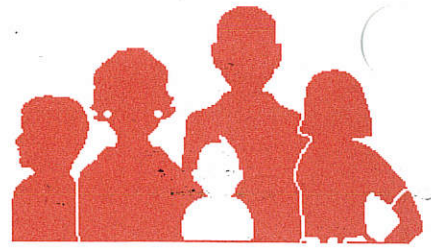
Jud Jones, Blue Township resident, met with the Commissioners to discuss concerns about the dust on the road by his residence and the dangerous condition of the corner in front of his house. He lives at the intersection of Green Valley and Junietta roads. There is very heavy traffic on the road during the summer due to people going to Pottawatomie Lake #2. He feels that as a public road it is used beyond its capabilities. Commissioner Kolde advised Leu Lowrey to do a traffic count on a regular workday and on a busy time, perhaps Labor Day weekend. Mr. Jones asked the county to review the situation and come to a solution. Commissioner Kolde asked Mr. Jones if the road is any different today than the day he bought his house. He said it was not, but feels the road is too busy for a gravel road. There are accidents due to the dust and the blind corner. His wife has a lung problem and the dust bothers her. Leu informed him that the county is addressing alignment of the road. Mr. Jones stated that with the increasing number of residences in the area, the traffic problem will get worse.

Richard Carlson moved and John Lichtenhan seconded to go into executive session with Scott Schwinn, John Lang, and Robert Reece at 11:30 A.M. for 10 minutes to discuss possible litigation. Motion carried 3 to 0. Regular

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FROM COUNTY BUSINESS SYSTEMS

# Emporians for DRUG AWARENESS



*Working for a Safer Community*

March 19, 2001

House Federal and State Affairs Committee  
Representative Doug Mays, Chair  
State Capital, Room 313-S  
Topeka, Kansas 66612

Honorable Representative Mays and Committee Members:

- ✓ Adolescence is a period of experimentation with substance use, and alcohol remains the number one drug of choice among adolescents.
- ✓ In Kansas, the average age youth begin using alcohol is 12.
- ✓ Alcohol is the most widely available drug.
- ✓ Rates of dependence associated with alcohol use are higher than are those for illicit drugs.
- ✓ The economic cost of alcohol abuse exceed that of either tobacco or illicit drugs.

I offer the information above to substantiate the fact that beer in kegs provide large amounts of alcohol for our youth and, in looking for ways to deal with the problem of underage drinking and youth access to alcohol, the availability that kegs provide needs to be addressed. Specifically, we need to be able to identify those adults who are purchasing kegs and providing them to our youth and make those adults responsible for their actions.

Historically, education has been promoted as the way to bring about a reduction in substance abuse, including underage drinking. This has been done through the use of prevention curriculums, videos, speakers, etc. Education does have its place in prevention, but environmental strategies which are changes in laws and policies are far more effective because they reach a broader audience and actually impact the norms of the communities where are children are being raised.

Keg registration has had a long history of debate at the state level. Law enforcement has long recognized keg registration as a tool to be able to track the provider of alcohol to our youth because youth are reluctant to disclose their source. With keg registration, if a keg is found where minors have been consuming alcohol, the tag can be used to identify the purchaser of that keg and that individual can be held

Responsible &  
State Affairs  
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This is an opportunity to prevent *unlicensed* adults from providing alcohol to minors. It is unfortunate that some retailers view it as intrusive and an inconvenience. Many have already been gathering most of the information required for keg registration to insure proper return of their equipment. The only difference with this legislation is taking the time to record the number on the tag that would be affixed to the keg at the time of purchase. I would hope that a child's life would be worth a few seconds. A consumer purchasing a keg for a legitimate purpose will not feel offended or inconvenienced; keg registration represents a perceived risk to those adults who up to this point, whether through willful disobedience to the law or ignorance, have provided alcohol to our youth without fear of retribution.

It's important that **adults** drink responsibly, but certainly they need to be responsible with other actions involving alcohol, namely that they must not be able to provide alcohol to minors. Currently, it is virtually impossible to identify the parent or the older sibling or friend who provided a keg or kegs for the party, but the opportunity exists to change that with this legislation. We can not continue to have our heads in the sand, hoping the problem of underage drinking will go away on its own. I urge you to consider keg registration - not as government regulation or intrusion, but rather government support and concern for our future generation.

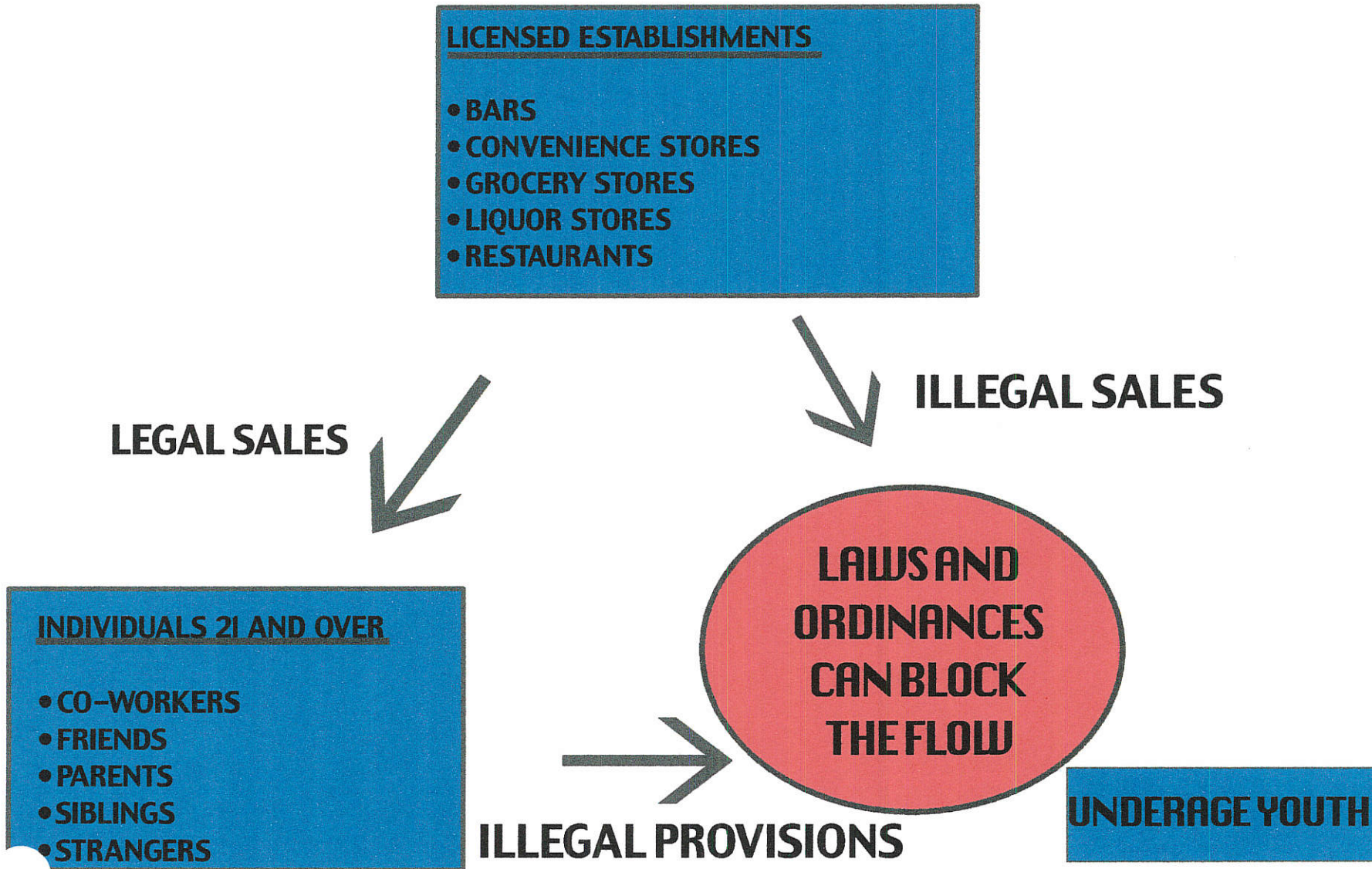
Sincerely,



Teresa Walters  
Executive Director  
Emporians for Drug Awareness, Inc.



# HOW LAWS AND ORDINANCES AFFECT FLOW OF ALCOHOL TO UNDERAGE DRINKERS



COFFEY COUNTY SHERIFF'S OFFICE  
105 NEOSHO ST., PO BOX 226  
BURLINGTON, KANSAS 66839  
PHONE (316) 364-2123  
FAX (316) 364-5758  
IN KANSAS TOLL FREE (800) 362-0638



LAW ENFORCEMENT BEYOND 2000

RANDY L. ROGERS  
SHERIFF  
KENNETH RONEY, UNDERSHERIFF  
JOHN LIDDELL, CHIEF DEPUTY

March 19, 2001

Distinguished Representatives,

I am testifying in support of Keg Registration. I am the Sheriff in Coffey County. My county enacted a County Resolution for Keg Registration in January 2000. Prior to enacting the Keg Registration Resolution my agency routinely dealt with underage drinking parties which are commonly know as "Pasture Parties", these pasture parties normally involved the presence of numerous kegs of beer. When my agency would encounter such a party and we would attempt to determine the party responsible for providing the keg we would get the cold shoulder, run around , eventually and routinely we would be unable to determine who the responsible party was . Since enacting a Keg Registration Resolution we have noticed a significant decrease in "Pasture Parties", we have not encountered a violation of the Resolution. I believe that the resolution has played a major role in the reduction of underage drinking. Prior to the Keg Registration Resolution Individuals were willing to purchase kegs for minors knowing that the odds of being held accountable were minimal at best. Since the Resolution I believe there mind frame is that there are measures that will track the keg to them, therefore they are unwilling to take the risk.

I will state that the Keg Registration Resolution has not stopped underage drinking, but that the Resolution has reduced the amount of alcohol available. There is however, a flaw with our Resolution, that flaw being that if an Individual wanted to find a way to get around our resolution they could simply go to an adjoining county and purchase a keg at a retailer in that county. Therefore, I feel that the only way to have a total impact statewide would be to pass into law a Keg Registration law that would be applicable statewide and therefore, would make it unlawful to possess an unregistered keg in the State of Kansas.

I truly believe that this legislation would have a significant impact and an overall reduction in underage drinking.

I can truly come forward and state that I have personally witnessed the Impact of Keg Registration and an overall reduction of crime, accidents and other related Incidents that come with underage drinking.

I ask that You as Representatives of the Great State of Kansas give your support for Keg Registration and let's all work to protect the youth in our great State.

Sincerely,

A handwritten signature in cursive script that reads "Randy L. Rogers".

Sheriff Randy L. Rogers

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**Chairman Mays and Representatives:**

**I am currently a freshman at Butler County Community College in El Dorado. I sincerely thank you for your labor to help this state of Kansas. I am here today because I have a passion for zero tolerance of underage drinking. My brother, my parents' first child, was killed by an eighteen-year-old drunk driver when he was only three-and-a-half-months-old. I have seen first-hand the effects of drinking irresponsibly. I have felt the pain and anguish and seen the destruction, and I now see too many peers traveling down that same destructive path. I have had to *soberly* accept the reality that my positive peer pressure is far outweighed by negative peer pressure and the pull of our society to drink alcohol. Therefore, I need your help.**

**Alcohol is the number one drug of choice for youth under 21. Moreover, it is a gateway drug. Underage drinkers primarily rely on those over 21 to provide them with the alcohol. It contributes to crime, sex, and poor school performance as alcohol becomes their number one priority. And it causes just an overall lawless attitude. I live engrossed in a deteriorating generation that illegally consumes too much alcohol. I can tell you how popular kegs are. I see them; I hear about them: "Is it a three-kegger, a five-kegger? Oh, we could only get one. Let's just not invite many people – we can still get pretty drunk." I can tell you that as an eighteen-year-old. However, in a society such as ours, we can also look to advertising to tell us what is popular. My first prop demonstrates our society's attitude toward alcohol: Corona candy. We have taken something as dangerous as alcohol (illegal until 21) and turned it into candy (harmless at any age). My next prop shows the popularity of kegs. Even the tobacco industry has picked up on kegs' popularity and utilized that for their own, unrelated product: the Camel Keg.**

**I hear that keg registration is just regulation of a legal product and that it will not stop underage drinking. I see it as simple: A legal product is being abused. People are breaking the law. Should we turn our heads and let them continue to break the law and make Kansas a more dangerous place to live?**

**Too many adults over 21 are deceitfully providing alcohol for youth under 21. Too many underage drinkers are purchasing kegs with the use of fake ID's. Keg registration will provide a means of tracking and preventing those who blatantly disregard the law. Please implement keg registration. Thank you.**

**Sincerely,**



**Spencer Stewart  
810 Troon  
El Dorado, KS 67042  
(316)321-6576  
spencerstewart13@hotmail.com**

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# The Kansas Association of Beverage Retailers

P.O. Box 3842  
Topeka, KS 66604-6842

Phone 785-266-3963  
Fax 785-234-9718  
kabr@amycampbell.com

*Jim Scott, President*

*Amy A. Campbell, Executive Director*

Testimony to House Fed & State Affairs Committee  
March 19, 2001  
Marjorie L. Roberson  
Roberson's Retail Liquor, Newton, Kansas

I would like to thank the Chairman and the Committee for allowing me to testify today, against the keg registration bill, Sub. SB 328. As past president of our state liquor retailers association, I have testified against keg registration bills several times. Today I am here as an owner of a liquor store, who does sell keg beer, and I am asking you to oppose this bill.

In the past, proponents of keg registration have stated that beer consumption does not decrease in those states that have keg registration, but it only changes packages. I have heard it said that it would make it more difficult for young people to obtain, if they have to have someone buy several cases, instead of a keg of beer. I use the same dolly to wheel out 8 cases of beer, as I do to wheel out a keg. It all takes up a lot of space.

Currently at the store I have a keg sheet I have customers fill out, which lists all the information necessary for me to insure that the customer is of age, and that I will get all my equipment back. I have had contact from our local sheriff's department, and police department, if there have been any problems with kegs. I appreciate our local law enforcement's efforts at working with retailers. Given that information, you might ask why I would still oppose keg registration. It's because it violates customer privacy, and does nothing to protect me from civil litigation, when I make available that information to law enforcement, if there is a problem. I could possibly lose my liquor license if one of my clerks misplaces a registration form.

This particular keg registration bill would not pre-empt local ordinances, which are more restrictive. What's the point of a keg registration bill if local governments could re-write it at their level? Our state association spends a great deal of time and money keeping our retailers current with the state liquor laws. I know, because I teach the Techniques of Alcohol Management classes for our association. It becomes very difficult to help retailers stay in compliance with liquor laws, if they change from community to community.

I have asked myself, if this keg registration bill would pass, which does not protect me from civil prosecution when I obey the law, would I quit selling kegs? To help me make this decision, I looked in our past history, and counted all the kegs I have sold since last year. I calculated the sales for those kegs, and it was \$22,360.00 before tax. I am not a big keg store, and most of the kegs I sell are for weddings and special parties. That figure represents about one week of sales in my store! I really don't want to quit selling something that would be the equivalent of shutting my doors for one full week.

I am asking that you vote no to keg registration Sub. Senate Bill 328.

Thank you,

Marjorie L. Roberson

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# The Kansas Association of Beverage Retailers

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Jim Scott, President

Amy A. Campbell, Executive Director

## TESTIMONY TO HOUSE FEDERAL AND STATE AFFAIRS COMMITTEE SUBSTITUTE SENATE BILL 328

Submitted by  
JIM SCOTT, PRESIDENT

Thank you, Mr. Chairman and committee members, for hearing me again today. I'm Jim Scott, president of the Kansas Association of Beverage Retailers, KABR, and I'm here on behalf of the 700 Mom and Pop Retailers throughout Kansas. I always feel I have a lot to say and very little time to say it. Today is no exception. I come before you with no gimmicks, no props, no coffins for display, nothing but straightforward truthful comments.

Five times in the past few years legislative committees have chosen to not pass keg registration. That's 5 out of 5. Too bad there is no "3 strikes and you're out" law on the books for introducing bills. You decided it was inappropriate -- the crazy thing is that your body can agree with us 9 out of 10 times and we still lose. I wonder what a baseball player could get for batting .900?

Last year, we were pleased to be able to visit with keg registration proponents to talk about our concerns with their bill. Unfortunately, our two biggest concerns were disregarded in this year's bill. We did our part. We were looking for fairness, no more, no less. If state laws provide liability protection to physicians, engineers, architects, and hospitals, among others, then why is our request so unreasonable? We can go broke in court proving that we didn't do anything wrong. We're told to relax, there is no dram shop law in Kansas. You know what -- Missouri retailers said the same thing and a dram shop bill has made it halfway through their legislature as we speak. (See amendments attached.)

And if we're going to do this thing, why wouldn't everyone want consistent state laws that preempt local ordinances that, by the way, always include fees to retailers. We are the most regulated business in Kansas. We can live with that and do. But we have to have consistency in regulations, and that means laws at the state level -- anyone fighting that must be driven by ego or the need for control. (See amendments attached.)

Is the intent of this bill to target retailers? It allows us to lose our license because one of our minimum wage employees didn't sell a keg properly. Is the intent to copy Emporia's law that has nabbed customers because they kept the keg over 10 days or because the keg they possessed had no tag?

Is the intent to somehow provide safer highways to drive on? I'm a board member on the National Association of Beverage Retailers, representing Kansas. I have hit all the other states up trying to find solid evidence that keg registration works. My intent was to back off this issue if there was any. I could find nothing, no where. I did find national statistics regarding alcohol. These statistics cut through much of the rhetoric that seems to be emanating from Emporia.

1. Rates of alcohol-involved fatalities among drivers 16 to 20 have decreased 33 percent since 1988, the largest decrease for any age group (*National Highway Traffic Safety Administration 1999*).
2. Since 1982, drinking among teens (12 - 17 years old) is down 45%

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3. Since 1982, beer drinking among college freshman down 32%
4. Since 1982, drunk driving fatalities down 41%
5. Since 1982, drunk teenage driving fatalities down 65%

Is the intent to limit sales of beer in Kansas? In the Fort Scott Tribune's March 12 edition, Don Adams of Nevada, Missouri, owner of two Mr. D's Smoke Shops, a liquor store and Echoes Restaurant and Lounge (all 4 selling alcohol) was asked about the Kansas Keg Registration proposal, and said, *"That's great. People will be coming over here and buying kegs of beer. Kansas needs another stupid liquor law. Kansas has some pretty stupid laws on the books already -- wish they'd pass more of them."*

Is the intent to prevent underage drinkers from alcohol access? Perhaps we should register ALL customers. Or perhaps those only buying over 3 cases of beer. And how about anyone wanting a case of wine -- or everyone who purchases a bottle that's over 80 proof? How about if we just register everyone who looks suspicious?

We encourage cooperative community efforts which result in positive statistics over time and participate whenever invited. For instance, we participated in KDOT's conference: Safe, Sound, and Legal: The Kansas Enforcing the Underage Drinking Laws Project. KABR supports the program, which created specific strategies to prevent underage drinking. (See attachment.)

What happened to personal responsibility? I thought it was already illegal to furnish to a minor. Do we just keep passing laws until somehow enforcement starts working? By the way, this bill says no one under 21 can sell a keg. I guess that's no big deal -- after all, the 18 year old clerk will still be able to sell a customer 10 or 20 cases of cereal malt beverage, instead of that measly keg.

We retailers are all Kansans. We have families. We're involved in our communities. We want what's right and safe. But we see something developing. It's more than a keg bill. It's more than a fetal alcohol syndrome bill. It's more than a bill that increases tax on beer by 500%. Take them all together along with gimmick theatrics aimed at one particular industry and you'll see a danger to Kansans -- a loss of choices, a loss of rights. I submit to you that Prohibition by any other name smells the same. It didn't work before and it won't work again. I ask that you stop this infringement of privacy before the foot gets in the door.



**PROPOSED AMENDMENTS TO SUB SB 328**

1. Off-premise retailers have a legitimate and real need to prohibit local government duplication of any statewide system which requires maintaining a list of their customers. The Senate chose to remove language which prohibited local government from using their home rule power to supplement Kansas law and create non-uniform systems. Because the cities and counties are determined to continue with their current practice of creating their own system of registration, the following amendment is offered:

**Insert on page 1, at line 24 following the word "void":** *No local government ordinance or resolution may levy a fee under this act.*

2. The legislation does not allow alternative methods for identifying beer or cmb containers other than through tagging. The beer containers are owned by the breweries and they do not allow the containers to be marred or damaged. The identification method is specific in New Section 2 and New Section 3 but is confused by the words "marking" and "labels" which imply an alternative method is available

**At page 2, line 23, by striking the word "marking" and inserting the word "tagging".**

**At page 2, line 26, by striking the words "or labels".**

**At page 2, line 27, by striking the words "or labels".**

**At page 3, line 40, by striking the word "marking" and inserting the word "tagging".**

**At page 3, line 43, by striking the words "or labels".**

**At page 4, line 1, by striking the words "or labels".**

3. The need to protect retailers from potential liability is obvious. The State is requiring retailers to retain records to assist the State in it's law enforcement efforts. Maintaining records about Kansas citizens for the State's desire to determine citizen's buying habits would be problematic for any business. Any alleged damages from incidents arising from a keg purchase will include the keeper of the records: the Kansas retailer.

Although the argument that a retailer won't be found liable sounds nice, most retailers do not have the financial resources to remain in litigation long enough to prove that the plaintiff has no cause of action. Although the proponents continue to argue that no "dram shop" law exists in Kansas and promise that it won't in the near future, a cause of action for false light and/or invasion of privacy and other innovative litigation theories will arise, especially if a retailer does not realize the obligation to determine whether a law enforcement officer's request to view the records meets the statutory requirements.

Claims have been made that barring private rights of action when providing a service mandated by the government is unprecedented in state law. Why such claims are made is unclear and inaccurate. Similar protections are provided to:

Mental health professionals shall not be liable in an emergency for treatment of someone determined to likely cause harm to "self or others". (K.S.A. 59-2946)

Health care professionals who provide emergency care or assistance including treatment of a minor without obtaining consent shall not be liable for any civil damages unless the care constituted gross negligence. (K.S.A. 65-2891)

Physicians who provide a written report to D.M.V. that an individual who suffers seizures has such seizures under control as defined by statute shall not be liable for any damages...attributable to the issuance...and operation of a motor vehicle by the licensee. (K.S.A. 8-247)

Medical care facilities and health care professionals who withdraw blood pursuant to a written statement provided by a law enforcement officer that the individual has given consent to have such blood withdrawn shall not be liable in any action alleging lack of consent or informed lack of

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consent. (K.S.A. 8-1001)

Veterinarians, who are prohibited from disclosing any information concerning the care of any animal, shall not be liable for releasing information pursuant to client waiver or court order. (K.S.A. 47-839)

Veterinarians who render emergency care or treatment to human or animal victims shall not be liable in a suit for damages for any acts or omissions in providing such emergency treatment as a volunteer and without fee. (K.S.A. 47-841)

Athletic officials shall not be liable for ordinary negligence while officiating at an athletic contest being conducted by a nonprofit organization, educational institution, or governmental entity. (K.S.A. 60-3607)

Architects or engineers who volunteers, without compensation to provide structural inspection services at a declared natural disaster emergency by request of a variety of listed public officials, shall not be liable for any personal injury or property damage caused by good faith but negligent inspection. (K.S.A. 60-4201)

Medical care facilities shall not be liable for compliance with or failure to comply with the statutory requirement to maintain a risk management program and any reports or records reviewed or obtained by KDHE shall be confidential and privileged and not subject to discovery, subpoena or legal compulsion for their release and they shall not be admissible in any proceeding. (K.S.A. 65-4922)

Health care provider professional societies shall not be liable to any person while undertaking functions and responsibilities regarding an impaired provider pursuant to request by a state licensing agency. (K.S.A. 65-4924) All reports and records made shall be confidential and privileged. (K.S.A. 65-4925) Any person providing information or investigating any provider shall not be liable. (K.S.A. 65-4926) No person or medical facility shall be held liable for failure to report or investigate. (K.S.A. 65-4927)

Highway contractors shall not be liable for personal injury or property damages arising out of design defects after completion of the contract and acceptance by the public officer. Any cause of action accruing to the government shall remain unaffected by this statute. (K.S.A. 68-419a)

**At page 2, line 31, and at page 4, line 5, after the word "thereto", by inserting "In any criminal action or proceeding brought against a retailer or its agent or employee under this section, attorney's fees and all reasonable costs may be awarded when the defendant was found to be in substantial compliance with this section. Nothing in this act shall give rise to a private cause of action against a retailer or its agent or employee."**



**Kansas Safe, Sound, and Legal: The Kansas Enforcing the Underage Drinking Laws Project - Needs Assessment and Conference Report, June 2000 "A Strategic Plan for Combating and Preventing Underage Drinking: The Results of the Safe, Sound, and Legal: Combating Underage Drinking Leadership Conference." (pp.87-88)**

**THEME 4: HAVE SUFFICIENT LAWS IN PLACE TO COMBAT/PREVENT UNDERAGE DRINKING AND ENSURE THEY ARE EFFECTIVELY ENFORCED.**

**Goal 1:** Examine existing laws in place to combat/prevent underage drinking.

**Recommendation 1:** Modify existing laws as necessary to enhance efforts to combat underage drinking.

**Strategy 1:** Review all issues related to alcohol sales, distribution, consumption, furnishing, enforcement, and prosecution by convening a commission appointed by the Governor.

**Strategy 2:** Make liquor license laws comparable for 3.2 beer so that all beer sales are covered under a single set of regulations.

**Strategy 3:** Amend state statutes to require mandatory prosecution for selling or furnishing alcohol to minors.

**Strategy 4:** Change state law to allow police to issue an underage drinking citation to youth age 16 and 17 instead of being required to arrest, process, and transport them to juvenile detention facilities.

**Strategy 5:** Utilize the driver's license as a sanction for underage drinking offenses, imposing a six month to one year license suspension.

**Strategy 6:** Work cooperatively with law enforcement, cities, and counties to develop policy regarding underage drinking.

**Strategy 7:** Increase the consistency in sentencing for offenses related to underage drinking and prosecute adults who provide alcohol.

**Strategy 8:** Citizens and others advocate for effective policies to decrease underage drinking by:

- 1) submitting recommendations to legislators for progressive fines to parents, providers, and youth for underage drinking offenses.
- 2) examining other states' driver education policies.
- 2) having the media publicize underage drinking violations.
- 3) developing parent coalitions, recruiting commitment letters to take action against underage drinking.
- 4) proposing questions related to underage drinking to candidates running for office.

03-18-2001

Dear Rep. Powell;

We have previously mailed information concerning this subject, however we wanted to be sure that you were aware that in our opinion, this is just another attempt to implement another cumbersome law that would not be enforced and could potentially be intrusive on law abiding citizens.

Thank you for allowing us to voice our thoughts and considering us when you cast your vote on this issue.

Sincerely;

Martin and Dona Platt  
316-838-8880

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3-9-01

Editor  
The Hays Daily News

The following editorials appeared in the Thursday, March 8, 2001 "The Wichita Eagle" on the editorial page under the heading "Other Views"

Keg battle--- Opponents are trying to stymie an effort in the legislature to register beer kegs aimed at discouraging adults from buying beer for underage drinkers.

True, the availability of liquor is only part of the problem of underage drinking, but it's a pretty substantial one. If there's no liquor available, there's no drinking.

And if the alcoholic beverage industry expects to retain any credibility, it would work with lawmakers to craft an acceptable bill and end the rhetoric that registering beer kegs is a bad thing.  
The Hays Daily News

Sen. Pete Brungardt, R-Salina, worries about Big Brother showing up at your next keg party.

Brungardt and Sen. Mark Gilstrap, D-Kansas City, choose to defend the state liquor industry. Sen. Jim Barnett, R-Emporia, wants to do something to improve the health of Kansas children.

So now it's up to the legislature. They'll make it clear who's more important-liquor industry lobbyists or Kansas teenagers.  
The Hutchinson News.

Response; It is already against the law to provide alcohol to a minor. What good is another law that will not be enforced any better than the already existing laws? In 15 years in the beer wholesale business and over 4 years of owning my own store, I have yet to hear of any law enforcement person in any agency coming to any liquor store and inquiring, who bought this keg.

The Kansas Association of Beverage Retailers has offered to assist in the writing of a keg registration bill that would not violate the rights of law-abiding and tax-paying liquor store owners, owners that are already in one of the most regulated industries in the state of Kansas.

My final point is that it is real easy to target a licensee that does not intend to break the law, however less and less seems to be done to the minor that has clear intention of breaking the law. At what age does a person become old enough to be responsible for their own actions?

Martin Platt  
Platt Liquor  
Wichita  
316-838-8880

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From John Davis  
2318 Cardinal  
Wichita, Ks. 67204

March 18, 2001

**Mr. Chairman:** and members of the State and Federal Affairs Committee:

**Re: What is the intent of this legislation?**

I am **John Davis** a Liquor Retailer in Wichita. You have before you a bill, which will instigate the registration of Keg Beer in the state. This will have little or no affect on my personal business I sell few kegs and look forward to selling none. This is just **FEEL GOOD FUZZY LEGISLATION.**

The points that I would like to make are

- 1) Kegs should be registered at point of entry into the state, and tracked through all channels of distribution. The reason for this is that at least a dozen times a year I get requests to RENT TAPS, not that they need to buy a keg. That keg came from some where, bar, licensed club, stolen off of a delivery truck or from the warehouse of the distributor. Result untraceable keg.
- 2) Keg Registration will virtually kill the sale of keg beer to home parties. If this is the intent of this law, then why not just ban the size from retail sales, and only have them available from the distributor directly to the on primes licensed retailers. ( clubs, bars, caterers, Licensed on premise locations, etc.)
- 3) This legislation will not curb underage drinking! Underage drinking like tobacco use can only be curbed by controlling access, education, and Parenting.
- 4) Make the penalty for providing controlled substance ( Liquor Wine Beer and Cigarettes) more meaningful.
- 5) Separate the penalty for unknowingly providing Liquor to a minor from Knowingly providing Liquor to a minor. Examples of this are 1) the clerk in a store sells to a minor, does or does not card, MADE A MISTAKE. 2) Several 19 year old asks 24 year old uncle to buy them some misc. liquor items for the next Friday night party. This 24 year old knew he was breaking the law, he has the intent to break the law. These two examples get the same punishment by law today. Which one was guilty of the intent to break the Liquor Laws?
- 6) Registering Kegs, will only force the minors to switch to other packages, it will not curb the consumption of underage drinkers. Ask your police chief or sheriff how many keg parties he has seen in the last year?

Thank you for reading my testimony and I hope you can see clearly why this is just **FEEL GOOD FUZZY LEGISLATION**, that will not successfully reach the result which is the intent of the legislation. **JUST BAN KEGS from RETAIL.**

Thanks, John Davis

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