

MINUTES OF THE SENATE FEDERAL AND STATE AFFAIRS COMMITTEE.

The meeting was called to order by Chairperson Senator Nancey Harrington at 10:30 a.m. on March 26, 2002 in Room 245-N of the Capitol.

All members were present except: Senator Bob Lyon, excused

Committee staff present: Russell Mills, Legislative Research Department
Dennis Hodgins, Legislative Research Department
Theresa Kiernan, Office of the Revisor
Nikki Kraus, Committee Secretary

Conferees appearing before the committee:
Bob Alderson, Casey's General Stores, Inc.
Mike Thornbrugh, and Tim Heuback, Quik Trip
Brenda Ellsworth, Pete's Corp.
Frances Kastner, Kansas Food Dealers
Kim Gulley, League of Kansas Municipalities

Others attending: Please see attached

Chairperson Harrington opened the hearing on:

SB 636—Alcoholic beverages; one-strength beer

Theresa Kiernan presented an explanation of the bill. (Attachment 1)

Bob Longino, Alcoholic Beverage Control, presented written testimony neutral to the bill. (Attachment 2)

Bob Alderson, Casey's General Stores, Inc., presented testimony in favor of the bill. (Attachment 3)

Mr. Alderson then presented a chart entitled, "Alcoholic content-selected beers." (Attachment 4)

Tim Heuback, Quik Trip Corporation, presented testimony in favor of the bill with the assistance of Mike Thornbrugh. (Attachment 5)

Brenda Ellsworth, Pete's Corporation, presented testimony in favor of the bill. (Attachment 6)

Frances Kastner, Kansas Food Dealers, presented testimony in favor of the bill. (Attachment 7)

Kim Gulley, League of Kansas Municipalities, presented testimony in favor of the bill. (Attachment 8)

The committee clarified the difference between percentage alcohol by volume and by weight.

Mr. Alderson stated that the term "one-strength beer" is a misnomer because it is really about the singular classification of cereal malt beverage products.

Mr. Alderson stated that following the increase in the age limit of those allowed to purchase alcoholic beverages, grocery stores lost the business of 18-20 year olds, and 21 year olds bought stronger alcohol at liquor stores.

In response to a question from Senator Barnett, Mr. Heuback stated that there was a 95% compliance rate with internal checks of sales, and sales people are given training in the subject.

Following further discussion, Chairperson Harrington stated that the committee would hear from opponents next Tuesday.

CONTINUATION SHEET

MINUTES OF THE SENATE FEDERAL AND STATE AFFAIRS COMMITTEE at on March 26, 2002 in Room 245-N of the Capitol.

The meeting was adjourned at 11:25 a.m. The next meeting will be held at 10:30 a.m. on April 2, 2002 in Room 245-N.

SENATE FEDERAL AND STATE AFFAIRS COMMITTEE GUEST LIST

DATE: March 26, 2002

NAME	REPRESENTING
Frances Kastner	Ks Food & Dealers Assn
Kelly Finney	Ks Public Health Assn.
Tim Heuback	Quick Trip Corporation
Brenda Elsworth	Pete's Corporation
Amy Campbell	KABC
Tom Palace	PMCA
C. Michael Thornbrugh	Quick Trip
Michael White	PMCA
Kate Hays	Intern Sen Gilstrap
Jeffery Gougeon	Intern Sen Brungardt
Rebecca Ride	KBWA
Nal Whitaker	KBWA
JOHN C. BOTTENBERG	PHILIP MORRIS
BOB ALDERSON	Casper's GENERAL STORES

Senate Bill No. 636
"One-Strength Beer"

Very similar to 2001 HB No. 2330, which was introduced by House Fed and State; hearing held on Feb. 15, 2001, but no further action since the hearing.

Amends the Liquor Control Act, the Club and Drinking Establishment Act and the Laws concerning cereal malt beverages.

The liquor control act regulates the sale, distribution and consumption of alcoholic liquor which includes beer (strong beer) which is a beverage having more than 3.2% alcohol by weight. Beer does not include cereal malt beverage a beverage having no more than 3.2% alcohol by weight.

Raises the alcohol limit in CMB to 5%.

Allows retailers (liquor stores) under the liquor control act to sell cmb; makes numerous conforming amendments to the liquor control act to accomplish that proposed change. Also allows retailers to sell soft drinks, mix and certain beverage related, nonfood items. (Pg. 9 Sec. 9).

Except as specifically delegated by the act, provides that all phases of the control of the manufacture, distribution, sale etc. of alcoholic liquor and cmb is vested with the state. (Pg. 5 Sec. 4).

Exempts the sale of domestic cmb by microbreweries to consumers from the gallonage tax. (Pg. 12).

Amends the Club and Drinking Establishment Act to prohibit the employment of any person under 18 in connection with the serving of cmb. (Pg. 29 Sec. 38).

Also provides that cmb may be sold and consumed on premise only at the same time at which alcoholic liquor may be sold. (Pg, 30 Sec. 40).

A caterer or temporary permittee would continue to be authorized to sell and serve cmb.

Names the provisions in article 27 of chapter 41 as the cereal malt beverage retailers' act. (Pg. 24 Sec. 56).

Defines a cmb retailer as any person who sells or offers for sale cmb, but excludes any retailer licensed under the lca or any person licensed under the cdea. (Pg. 37 Sec. 47).

Defines a licensee as any cmb retailer, any retailer licensed under the lca or any person licensed under the cdea. (Pg. 37 Sec.47).

Cities and counties would maintain the power to license cmb retailers. (Sec. 48).

Changes the hours for the sale of cmb for off-premise consumption to the same hours a liquor store may sell cmb. (Pg. 41 Sec.50).

All sales of cmb by cmb retailers and would be subject to the enforcement tax. (Pg. 45 Sec. 57)

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Attach #1

STATE OF KANSAS

Bill Graves, Governor

Robert Longino, Acting Director
Division of Alcoholic Beverage Control
Kansas Department of Revenue
915 SW Harrison
Topeka, KS 66625-3512



DEPARTMENT OF REVENUE

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Division of Alcoholic Beverage Control

To: Senator Nancy Harrington, Chairperson of Fed and State Affairs Committee
From: Robert Longino
Date: March 26, 2002
Subj: Senate Bill 636

The Division of Alcoholic Beverage Control is neither a proponent nor opponent of this bill. We are here only to provide information concerning issues that may surface in this hearing and subsequent debate.

First of all I would like to point out a bit of liquor history in Kansas as I feel it is important to note from where we have come as we explore options such as that proposed by this bill.

In 1933 the 21st Amendment to the U.S. Constitution was approved and national prohibition was overturned. Each state then had the opportunity to present the issue to its citizens through the ballot. On November 6th 1934, Kansas's voters rejected a proposed constitutional amendment authorizing the Legislature to regulate and tax liquor. Although still illegal, alcoholic beverages were produced, transported into and used throughout the state. In 1937 the Legislature enacted the law that categorizes beer with an alcoholic content of 3.2% or less alcohol by weight as cereal malt beverage (CMB) which was excluded from the definition of intoxicating liquor. The law authorized the sale of CMB for both on- and off-premise consumption throughout the state and set the drinking age of CMB at 18. This now legal product was regulated by cities and counties.

Prohibition on alcoholic liquors continued into the 1940s with essentially lip service being played to enforcement. In 1946 the state's Attorney General decided that if laws were on the books, they were going to be enforced. Citizens who purchased, sold or possessed alcoholic liquor were breaking the law and would be arrested and charged. Several distinguished Kansans subsequently undertook an effort to end state prohibition. This campaign led to a proposal to end prohibition being placed on the General Election ballot in November of 1948 that passed by a vote of 422,294 to 358,310. This amendment of the Constitution authorized the legislature to "...regulate, license and tax the manufacture and sale of intoxicating liquor and may regulate the possession and transportation of intoxicating liquor. This amendment also "forever prohibited" the open saloon which meant that packaged liquor could be

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Attach #2

authorized and regulated, but that the sale of liquor by the drink in public places was prohibited.

The following year, 1949, the Legislature enacted the Liquor Control Act. This Act authorized the sale of liquor in counties in which the 1948 amendment had been approved. The Act created a system of regulating, licensing and taxing those package sales as well as creating the Division of Alcoholic Beverage Control to enforce the act. This was a difficult challenge for the legislature since Kansas was one of the last of the contiguous 48 states to legalize alcoholic liquor. The drinking age for alcoholic liquor was set at 21 in the Act, while the drinking age for cereal malt beverage remained at 18. Additionally, the cities and counties maintained their licensing and regulatory authority over cereal malt beverage establishments.

This new act, "the Liquor Control Act", established a scheme for the licensing and regulating the liquor industry in the state. This new public policy maintained a separation between alcoholic liquor and cereal malt beverage. Retail liquor stores sold beer, or product over 3.2% alcohol by volume, and cereal malt beverage establishments sold only product 3.2% or less alcoholic content by weight. Separate regulatory and taxing schemes were established. The bill before you changes parts of those schemes.

Obviously many changes have occurred over the intervening years, but the basic premise of cereal malt beverage has not changed much in the last 64 years. This bill makes a relatively significant change in how cereal malt beverage is classified and sold. The following chart has been provided to lay out the basic differences and similarities between the two classifications of product as they are currently offered for off-premise sale.

	Cereal Malt Beverage (CMB) Retailer	Retail Liquor Store
Product	Malt based beverage with no more than 3.2% alcohol by weight	Beverage with more than 3.2% alcohol by weight
Age	Legal age for consumption (currently 21yoa).	21 yoa
Fee	\$25-\$200 plus \$25 state stamp	\$250 license fee \$10-\$50 registration fee local occupational tax
Qualifications	Citizen Resident No felony convictions (prev. 2 yrs) No liquor law violations (prev. 2 yrs) No moral turpitude violations (prev. 2 yrs) Corporation – all managers, officers, directors and any stockholder with more than 25% meets previously listed qualifications, plus has not had a retailer's license revoked under K.S.A. 41-2708 or been convicted of a violation of the	Citizen Resident No felony convictions No revocations of a liquor license No conviction for being a keeper of a house of prostitution No conviction for being the proprietor of a gambling house, pandering or any other crime opposed to decency or morality Must be 21 yoa Cannot be LEO

	drinking establishment act or the cereal malt beverage laws of this state.	No corporate ownership Spouse must meet eligibility requirements for a new app. (not on renewals) No beneficial interest in another liquor license
Days and hours of sale	No Sunday sales Cannot sell between midnight and 6am	No Sunday sales No sales on Memorial Day No sales on Independence Day No sales on Labor Day No sales on Thanksgiving Day No sales on Christmas Day No sales before 9am or after 11pm
Employee Restrictions	18 yoa to sell, no restriction on age to work on premises	No employees under 21 yoa
Other products licensee may sell	CMB retailer may sell just about any other product except alcoholic liquor	Can only sell alcoholic liquor, non-alcoholic liquor and lottery tickets
Taxes charged	Sales tax rate	8% liquor enforcement tax
Restrictions on sales	Cannot sell CMB below cost	May sell alcoholic liquor below cost under certain conditions. The director may issue a permit to sell below cost if: The retailer is actually closing out the retailer's stock for the purpose of completely discontinuing sale of the item of alcoholic liquor for a period of not less than 12 months; The item of alcoholic liquor is damaged or deteriorated in quality and notice is given to the public thereof; or The sale of the item of alcoholic liquor is by an officer acting under the order of a court.

The following information consists of the changes reflected in the bill.

Changes:

- Both cereal malt beverage (CMB) retailers and retail liquor stores can sell CMB. The definition of beer is changed from a beverage containing more than 3.2% alcohol by weight to more than 5% alcohol by weight.
- Changes the definition of legal age of consumption to 21 yoa and deletes the language concerning P.L. 98-363
- Fees are not changed
- Qualifications for licensure are not changed
- Adds restrictions on when cereal malt beverages may be sold in the original and unopened container by a cereal malt beverage retailer to conform with the restrictions

on liquor stores; not before 9:00 am or after 11:00 pm, not on Sunday, and not on the following holidays, Decoration or Memorial Day, Independence Day, Labor Day, Thanksgiving Day or Christmas Day

- Employee restrictions do not change
- Would allow a retailer (licensed liquor store) to sell soft drinks, mix, disposable cups, bottle and can openers, corkscrews, and ice
- Amends K.S.A. 79-4101 concerning the 8% enforcement tax. Language has been changed to reflect certain sales of cereal malt beverage. The bill adds to the collection of the 8% tax the gross receipts received from **(3) the sale of cereal malt beverage retailers (an obvious error that needs to be deleted or language added to clarify)**; and (4) the sale of cereal malt beverage by cereal malt beverage retailers in the original and unopened container for consumption off the premises.
- It also appears that cereal malt beverage retailers who sell cereal malt beverages in the original and unopened container for consumption off the premises would be required to continue to charge the sales tax along with the 8% enforcement tax
- Adds language concerning selling CMB below cost which mirrors current language of selling liquor below cost

Some additional changes:

- Prohibits the holder of a cereal malt beverage retailers license from obtaining any manufacturer's or distributor's license.
- Adds cereal malt beverage to what a club, drinking establishment or caterer cannot allow on its premises during certain times of day, and exempts licensed hotels when it concerns guests in their hotel room.
- Allows caterers to sell cereal malt beverage.
- Allows temporary permit holders to sell cereal malt beverage.

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TESTIMONY OF BOB ALDERSON
ON BEHALF OF
CASEY'S GENERAL STORES, INC.
BEFORE THE SENATE COMMITTEE ON
FEDERAL AND STATE AFFAIRS
March 26, 2002

Senator Harrington and Members of the Committee:

My name is Bob Alderson, and I am appearing on behalf of Casey's General Stores, Inc. (Casey's) in support of Senate Bill No. 636. I also am authorized to present testimony in support of this bill on behalf of the Petroleum Marketers and Convenience Store Association of Kansas, Inc., the Kansas Food Dealers Association, Albertson's, Inc., Hy-Vee, Inc., Dillon's Stores and Kwik Shop. These organizations and businesses, along with QuikTrip, have formed a coalition for the purpose of supporting legislation which will enable coalition members to regain an appropriate share of the market for cereal malt products.

Collectively, the coalition of retail grocers and convenience stores has thousands of locations throughout Kansas; employs thousands of Kansans, with an annual payroll in the hundreds of millions of dollars; pays millions of dollars in Kansas property taxes; and also collects and remits millions of tax dollars to the State of Kansas.

BACKGROUND

Currently, grocery stores and convenience stores are licensed to sell cereal malt beverage (CMB) in the original and unopened containers. CMB is statutorily defined as a cereal malt product containing not more than 3.2% alcohol by weight. CMB is commonly referred to as "3.2 beer."

Substantially all other cereal malt products are defined as "beer" and may be sold by the package only in retail liquor stores.

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Attach #3

The law establishing the drinking age for all alcoholic beverages at 21 was passed in 1985. While the sale of beer by retail liquor stores has increased significantly since that time, there has been a corresponding decline in the sale of CMB by grocery stores and convenience stores. These trends in the sales of cereal malt products are primarily the result of a public misperception that CMB products are of a lesser quality than the cereal malt products sold in liquor stores.

This misconception originated during the time when there was a difference in the legal drinking age. Persons between the ages of 18 and 21 were allowed to purchase CMB, but were not allowed to purchase beer or alcoholic liquor. Presumably, the original distinction in creating the separate classifications of cereal malt products was to make available only to "adults" the "strong beer," based on a belief that there was a significant difference in alcoholic content of these classes of cereal malt products. As will be discussed subsequently, the truth of the matter is that there is not an appreciable difference in alcoholic content between these classes of cereal malt products. Notwithstanding, this distinction became translated into a perception that CMB was not of the same quality as beer.

Thus, when the drinking age for all alcoholic beverages was established at 21, not only did retailers of CMB lose a significant number of potential purchasers (i.e., persons who were 18, 19 and 20 years of age), persons who were 21 years of age and older began purchasing "beer" from retail liquor stores, rather than purchasing CMB from licensed CMB retailers, because of the misconception that CMB is of lesser quality than beer.

Because of these factors and the rather artificial distinction between CMB and beer, CMB retailers have lost a significant share of the market for cereal malt products. The purpose of SB 636 is to provide the opportunity for CMB retailers to regain some of that lost market share.

SENATE BILL NO. 636

The coalition sponsoring SB 636 proposes to resolve some of the confusion attending the sale of cereal malt products by the enactment of this legislation. SB 636 recognizes that there is not an appreciable difference in alcohol content between most "beers" and CMB, by redefining these statutory terms. As redefined in SB 636, CMB is defined to include all cereal malt products containing not more than 5% alcohol by weight, and "beer" will include cereal malt products having an alcohol content greater than 5% by weight.

By this reclassification of cereal malt products, retailers currently licensed to sell CMB will be authorized to sell some

retailers of CMB sold in the original and unopened containers. By way of summary, SB 636 would accomplish the following:

1. As is now the case with "beer" sold by retail liquor stores, all package sales of CMB, regardless of where sold, will be subject to the 8% liquor enforcement tax.
2. Currently, sales of CMB are subject to state and local sales taxes, and SB 636 will preserve the application of state and local sales taxes to CMB sales, regardless of where sold.
3. As a result of these tax features of SB 636, not only will there not be a revenue loss by either the state or local units of government, SB 636 will result in an increase in tax revenues to both the state and local units of government.
4. Establishments which currently sell CMB will continue to be licensed by local units of government. Retail liquor stores, clubs, drinking establishments and caterers, however, will be authorized to sell CMB, without having to obtain a separate CMB license.
5. The days and hours during which grocery stores and convenience stores may sell CMB have been made identical to those applicable to retail liquor stores.
6. Restrictions are imposed on below-cost selling of CMB comparable to those imposed on retail liquor dealers.
7. Retail liquor stores will be authorized to sell soft drinks, mix and various beverage-related, nonfood items.

PUBLIC POLICY CONSIDERATIONS

Throughout the Committee's deliberations regarding this legislation, it is likely that a variety of public policy considerations will be at issue. Based upon information gathered in connection with prior legislative proposals of similar import, as well as concerns we have heard expressed in visiting with legislators and others regarding this proposal, we have attempted to identify as many public policy considerations as possible, and the following represents a summary of these various issues and our responses to them.

Issue: Will redefining CMB to include cereal malt products which currently are sold only in retail liquor stores increase the availability or consumption of alcohol?

Response: While the proposal is expected to effect a shift in the sales of the various cereal malt products, it will not encourage an increase in the consumption of these products. Cereal malt products will continue to be available from the same retail outlets as they are at present.

As noted previously, contrary to popular perception, there is currently very little difference in alcohol content between the so-called "strong beer," now sold by the package only in retail liquor stores, and CMB. Laboratory comparisons of these two cereal malt products disclose very little difference in their alcoholic content, less than 1% when comparing most domestic products.

To illustrate, I have attached to my testimony the results of an analysis made of random samples of CMB and beer by the Kansas Bureau of Investigation in 1993. Most manufacturers of beer show on the containers of their products the alcohol content of these products, expressed as a volumetric percentage. These percentages are typically much higher than 3.2%, thereby giving the impression that beer is much stronger than CMB. However, when beer and CMB are compared for alcohol content on the same basis, as is done on the attachment, it is apparent that there is not a substantial difference in alcohol content.

Thus, the redefinition of CMB should not result in an appreciable increase in the availability of alcohol. Moreover, the proposal will not make alcoholic beverages available to any class of persons who cannot now buy these products. It must be remembered that the current system, which distinguishes between "strong beer" and cereal malt beverage originally was created for the purpose of allowing persons at least 18 years of age to purchase cereal malt beverage, but not permit them to purchase "strong beer." That is no longer true, as the drinking age for all products is 21.

Issue: Since the cereal malt products now sold only in retail liquor stores constitute a significant percentage of all sales by these outlets, will the authorization to sell these products at locations currently licensed as CMB retailers result in retail liquor store closings because of the lost revenue?

Response: Obviously, the coalition sponsoring this legislation is hoping it will result in CMB retailers recapturing some of the market they lost when the drinking age was changed to 21. However, there is no way to accurately predict the impact of this bill on any particular retail liquor store or the impact collectively on all retail liquor stores. It should be remembered, though, that retail liquor stores will not lose the right to sell any product they are currently selling, and they will continue as the only retail source of wine and other alcoholic liquor in the original and unopened containers. CMB retailers cannot sell these products, at present, and that will not change by the passage of SB 636.

Issue: Is it equitable to continue the statutory authority for persons 18 years of age and over to sell CMB,

while salespersons in retail liquor stores must be at least 21?

Response: This is not really an issue of equity, and the different statutory circumstances attending the business of the various establishments preclude an accurate comparison. Alcoholic beverages are the only products sold by retail liquor stores, while CMB retailers who sell CMB only in the original and unopened containers (i.e., package sales) include grocery stores and convenience stores which sell a wide variety of other products. Not only will retail liquor stores be able to sell CMB, but they will continue to be authorized to sell alcoholic beverages containing much higher alcoholic content than CMB or beer. CMB retailers will not be authorized to sell liquor.

Thus, the disparity in these age levels does not create any inequity or inconsistency. Moreover, if the age level were established at 21 in all instances, it would have a significant, adverse impact on many young people who are employed by convenience stores and grocery stores, not to mention the impact on these employers.

Finally, as previously noted, the change in the nature of the product being sold does not dictate any increase in the age level. For all practical purposes, CMB retailers will be authorized by SB 636 to sell essentially the same products as they are at present. The redefined product is not liquor, and even though there will be some increase in the maximum alcoholic content of CMB, the increase is very slight, thereby negating any concern as to the welfare of the young people selling and handling these products.

Issue: Is it constitutionally permissible to redefine CMB?

Response: Attorney General Opinion No. 87-48 concluded that the Kansas Legislature has the power to define all beer containing less than 5% alcohol by weight as a cereal malt beverage (CMB), and the sponsors of this proposal are unaware of any change in the opinion of that office. Since there are no opinions of any Kansas appellate courts on this specific issue, there can be no guarantee as to this proposal's constitutionality, which is the case with most proposed legislation. However, in the absence of such definitive case law, the above-referenced Attorney General Opinion provides credible authority.

We believe that the foregoing issues represent the primary public policy considerations attending the passage of SB 636. If the Committee identifies additional policy questions, we will be pleased to respond and provide whatever information the Committee deems pertinent to its consideration. We also trust that the Committee will sift out the "red herrings" from the real issues. For example, the suggestion that allowing

CMB sales by a retailer which also sells gasoline increases the potential for drinking and driving is clearly a non-issue. We would respectfully submit that substantially all package sales of beer and CMB, whether made by a liquor store, grocery store or convenience store, are made to persons who travel to and from the point of sale in a motor vehicle. That fact is unaffected by whether the retailer also sells gasoline.

CONCLUSION

In conclusion, we want to emphasize that the real issue involved in SB 636 is not a liquor issue. It is an economic issue. Raising the drinking age to 21, authorizing liquor by the drink and the persistent misconception by consumers that CMB is of a lesser quality than beer have all combined to produce a dramatic reduction in the sales of CMB by retail grocers and convenience stores. By allowing us to compete with retail liquor dealers on the proverbial "level playing field," SB 636 will provide CMB retailers the opportunity to regain the share of the cereal malt product market they lost over the past several years.

We appreciate the opportunity to appear before the Committee in support of SB 636 and I will attempt to answer any questions the Committee may have.

ALCOHOLIC CONTENT - SELECTED BEERS

PRODUCT	ALCOHOL% BY WEIGHT	
	CMB	STRONG
BUDWEISER	3.22	3.96
COORS	3.15	3.56
MILLER	3.01	3.6
BUD LIGHT	3.13	3.33
COORS LIGHT	3.14	3.29
MILLER LITE	3.05	3.22
COLT 45 MALT LIQUOR	N/A	4.58
KING COBRA MALT LIQUOR	N/A	4.81
SCHLITZ MALT LIQUOR	N/A	4.87
CORONA EXTRA BEER	N/A	3.58
FOSTERS LAGER	N/A	4.22
HEINEKEN LAGER	2.97	4.09
MOLSON CANADIAN BEER	N/A	3.87

ANALYSIS ACCURACY ± .05%

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Attach # 4



Senate Testimony before the
House Federal and State Affairs Committee
March 26, 2002

Members of the Committee; my name is Tim Heuback and I represent 56 QuikTrip convenience stores in Wichita and the Kansas City area. QuikTrip supports one-strength beer for the following reasons:

One-Strength Beer

Facts about one-strength beer:

- There is only a small degree of difference between so-called "strong beer" and cereal malt beverage. Cereal Malt Beverage is 3.2% alcohol by weight; strong beer is 3.8% alcohol by weight.
- Around 1981, the legal age for purchasing Cereal Malt Beverage was changed from 18 years of age to 21. Prior to this change, non-liquor stores were the only vehicle for those 18-21 years of age to purchase beer. The age limit change inadvertently caused a greater disparity with beer sales in convenience/grocery stores vs. liquor stores.

Benefits of one-strength beer in Kansas:

- Most beer sold in Kansas is already "strong" beer at a ration of 70% strong to 30% cereal malt beverage. The majority of beer consumers would not be affected.
- Allows a level playing field for all retailers to compete for the sales of strong beer.
- Border retailers – With 21 of our Kansas City area stores in Kansas (45 in Missouri), there is confusion in the market regarding beer laws. Missouri has single strength beer and Sunday sales; Kansas has dual strengths and no Sunday sales. Beer sales in our Missouri stores are 6 times greater than our Kansas stores; the result is fewer sales and fewer taxes for Kansas.

Opposition:

- CMB for purchase in packaged containers can be served by persons of 18 years of age or older, while liquor store beer is sold by clerks who must be at least 21 years of age. Opponent's fear that convenience store clerks are not as responsible as liquor store clerks. At QuikTrip, we take responsible retailing very seriously. In addition to our training programs, our policies dictate that we check I.D.'s on all persons that appear to be under the age of 27. We also have our own internal compliance program where all stores receive "mystery shops" to ensure all employees are following company policies regarding the sale of alcohol. We have cooperated with many state and local agencies with "Badges in Business" programs to assist with employee education and to help law enforcement with their education programs. In addition to this, we have proven ourselves in other states where we operate to be just as responsible with selling beer as liquor stores. Many other convenience and grocery chains have similar procedures in place.

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Attach #5

Testimony

Senate Bill 636

Prepared for the Senate Federal and State Affairs Committee

**By
Brenda Elsworth
Pete's Corporation
Erie, KS**

March 26, 2002

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Attach #6

TESTIMONY BEFORE: Senate Federal and State Affairs Committee

FROM: Brenda Elsworth, Director of Operations, Pete's Corporation, Erie, KS

DATE: March 26, 2002

RE: Senate Bill 636

Madam Chairperson and members of the Senate Federal and State Affairs Committee:

My name is Brenda Elsworth and I am the Director of Operations for Pete's Corporation. We operate 25 convenience stores in Missouri, Oklahoma, and Southeast Kansas. Twenty one of these locations are in Southeast Kansas. We employ 122 employees within the state of Kansas.

I appreciate the opportunity to appear before you today in favor of Senate Bill 636.

Over the past few years, the convenience store industry has suffered severe margin losses due to increased competition. We have also experienced increased taxes on fuel. Big box retailers have discounted all of their products, and to remain competitive, we must meet their pricing. Due to the losses in our margins, we now must manage each category so as to retain the consumer and have a good consistent product offered at a competitive retail price. As I look at the beer category, I realize there is a consumer that I cannot even compete for. This consumer is under a misconception about 3.2% beer. When 3.2% beer is measured by weight, there is a 3.2 % alcohol content. When 5% beer is measured by the same weight, there is a 3.9% alcohol content. The consumer doesn't realize that 5% is measured by volume, not weight. I would ask that the misconception be corrected by redefining CMB to include everything under 5%. If we could accomplish that redefinition, I as a retailer would be able to compete for the consumer that will only buy "strong" beer. Our bordering states to the east and south sell one-strength beer statewide. With our current law, we as an industry cannot compete with these states. Therefore we lose the consumer to retailers in our bordering states who sell one-strength beer. These same customers travel across state lines on Sundays to purchase beer also.

Since 38% of the Kansas population lives in the first county in from our bordering states which sell single-strength beer and allow Sunday sales, it would really help ease our financial burden if we could regain that customer and get his or her purchasing dollar back in Kansas.

As legislators propose tobacco tax and fuel tax increases, I hope, as a retailer, I have an avenue to suggest ways of helping our industry to survive. If we redefined CMB to include everything under 5%, we would be able to collect the 8% liquor enforcement tax as well as sales tax for local use. This may help the state with their revenue issues. When I think of Kansas increasing tobacco or fuel taxes, I become very panicked. We already are losing customers to neighboring states because of tax differences. Increasing taxes would only widen the cost difference from state to state. I feel that single strength

beer is a solution. We are already selling basically the same beer when measured by alcohol weight, why not do away with the consumer's misconception of weak beer and strong beer.? This would allow us to compete on a level retailing field. We would then be able to market our product as single-strength beer and let the consumer choose where he/she will purchase the product.

As a fuel retailer I would love a law that protected my fuel sales. Perhaps it could read, "unleaded gasoline will only be sold at convenience stores." Would that law create fewer fuel sales? Absolutely not. But it would funnel fuel volume to our stores, which would funnel profits to our company. Currently I feel that the two-strength beer law is funneling beer sells to liquor stores. Is it decreasing beer sells? Absolutely not. It is, however, protecting the beer retail segment within the liquor stores. It is also funneling more profits to the liquor stores. I am only asking that our industry be able to compete for all consumers. Nothing more. Nothing less.

Thank you.



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JIM SHEEHAN
Shawnee Mission

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DIRECTOR OF
GOVERNMENTAL AFFAIRS

FRANCES KASTNER

SUPPORTING SB 636 ONE-STRENGTH BEER

I am Frances Kastner, Director of Governmental Affairs for the Kansas Food Dealers Association. Our members include retailers, distributors and manufacturers of food products throughout Kansas.

Merchandising has changed a great deal over the past 50 years when a distinction was made between the beer containing MORE or LESS than 5% alcohol by weight.

I have been providing legislative data to the KFDA members for 40 session, and registered as their lobbyist when that requirement went into effect.

NOT ONCE has the Executive Director or the Board of Directors asked me to speak against another business that began selling the same products sold in grocery stores.

When a new "super" store opened in the community the inevitable happened. We didn't ask the Legislature to set restrictions on what the huge store sold.

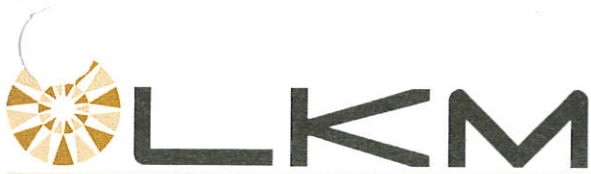
Our marketing strategy had to change to keep up with our customers' needs and requests. The grocery stores either changed with the times or closed up.

It is inconceivable, that more than 50 years after CMB and liquor became available in Kansas our Legislators are still denying a segment of retailers from selling a legal product.

Competition is the name of the game in any business. Let our members sell whatever is legal like our competitors are doing.

We ask your favorable consideration of SB 636.

Frances Kastner
Frances Kastner, Director
Governmental Affairs, KFDA



League of Kansas Municipalities

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To: House Federal & State Affairs Committee
From: Kim Gulley, Director of Policy Development & Communications
Date: March 26, 2002
Re: SB 636

Thank you for allowing me to appear today on behalf of the League of Kansas Municipalities and our member cities. Because cereal malt beverage (CMB) has traditionally been regulated at the local level, we have a keen interest in this legislation and its ultimate outcome.

Under current law, CMB is basically what we call 3.2% beer. It can be sold in grocery stores, convenience stores, taverns, and restaurants. In all of these cases, the licensing and regulation of the sale of CMB is done by the city. The State does not license or regulate this sale in any way. Package liquor stores, and clubs and drinking establishments operate under a dual licensing mechanism and are licensed and regulated by both the state and the city governments. Cities may enact ordinances and regulate these establishments so long as the local ordinances do not conflict with state law. In other words, cities may be more restrictive, not less restrictive, when regulating in this area.

As we understand it, SB 636 would redefine CMB as beer and allow it to contain 5% alcoholic content. This would allow 5% beer to be sold in grocery stores, convenience stores, taverns, and restaurants. When sold in these areas, the city would still have the authority to license and regulate such sale. As with current law, the State would not regulate these sales.

SB 636 would also allow the sale of 5% beer in package liquor stores, and clubs and drinking establishments. When sold in these areas, it would be subject to the same dual licensing mechanism that exists today for these establishments.

The League Governing Body specifically considered the concept of doing away with the distinction between 3.2% and 5% beer. They agreed that the distinction is antiquated and support the change as proposed in SB 636, so long as local licensing and regulatory authority is not altered.

Again, I appreciate the opportunity to discuss this issue. I would be happy to stand for questions at the appropriate time.