

MINUTES OF THE SENATE FEDERAL AND STATE AFFAIRS COMMITTEE

The meeting was called to order by Chairperson Nancey Harrington at 10:45 a.m. on February 18, 2003 in Room 245-N of the Capitol.

All members were present except: Senator O'Connor, 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 Longino, Director, Alcoholic Beverage Control

Others attending: Please see attached.

Chairperson Harrington opened the meeting by asking committee members for bill introductions.

Senator Gilstrap made a motion to introduce a bill from the State Fire Marshal's Office regarding hazardous material assessment and response. Senator Brungardt seconded the motion. The bill was introduced.

Chairperson Harrington stated that the committee would be continuing its assessment of the Liquor Control Act today.

Mr. Longino presented the committee with a packet of information entitled, "Review of the Kansas Liquor Laws." (Attachment 1)

Following a detailed description of the materials within that packet, Mr. Longino referred the committee to a booklet entitled "Liquor Control Act" published by the Division of Alcoholic Beverage Control.

Mr. Longino also presented a sheet entitled "Additional Information." (Attachment 2)

The committee discussed the Liquor Control Act and the implications of recodification. Mr. Longino explained that there were two issues, the first being recodification which affects one third of the statutes, and the second was the Uniform Act which depended on what the courts wanted to do.

The committee thanked Mr. Longino for his explanations and information.

The committee meeting adjourned at 11:47 a.m.



K A N S A S

JOAN WAGNON, ACTING SECRETARY

DEPARTMENT OF REVENUE
ALCOHOLIC BEVERAGE CONTROL

KATHLEEN SEBELIUS, GOVERNOR

To: Senator Nancey Harrington, Chairperson, Senate Federal and State Affairs Committee

From: Robert Longino, Director, Alcoholic Beverage Control Division

Date: February 18, 2003

Subj: Review of the Kansas Liquor Laws

Madam Chairperson and Distinguished Committee Members, it is my pleasure to appear before you today facilitating a review of the Kansas Liquor Laws. My plan is to discuss the foundation of our liquor laws, what the laws are and how they have changed over the years. If at any time during this discussion you have questions, please feel free to ask them.

Early Kansas Actions

1880 Voters approved an amendment to the Kansas Constitution prohibiting the manufacture and sale of intoxicating liquors.

1917 The Legislature passed the "Bone Dry Bill" prohibiting the possession and consumption of liquor and ending direct shipments to consumers from out of state suppliers.

National Prohibition and its Impact

Preliminary efforts

The 18th Amendment to the U.S. Constitution (1919)

Volstead Act – or National Prohibition Act (1920)

Repealing Prohibition – the 21st Amendment (1933)

Passage of the Federal Alcohol Administration Act (1935)

Kansas' Response

Kansas was not quick to embrace its new authority.

1934 Voters rejected a proposed constitutional amendment to authorize the Legislature to regulate and tax liquor.

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.

1948 Voters approved an amendment to the Kansas Constitution authorizing the Legislature to "...regulate, license and tax the manufacture and sale of intoxicating liquor."

1949 The Legislature enacted the Liquor Control Act. This Act authorized the package sale of liquor in cities in which the 1948 amendment had been approved. The Act also created a system of regulating, licensing and taxing those package sales. The Division of ABC was created to enforce the Act.

Determination of Regulatory Approach

Since Kansas was one of the last states to legalize alcoholic liquors, there was a federal regulatory system in place and two primary models of state regulation to consider. A major issue was deciding on whether to be a control or open state. With the control state system, the state is the monopoly wholesaler of spirits and/or wine. Some states also operate "state stores" at the retail level. Currently there are 18 control states. The other model was an open or license state. Private sector businesses controlled the wholesale and retail tiers, subject to licensing and taxation by the state. The legislature chose the open state option and Kansas is one of 32 open states.

Three Tier Distribution System

1st Tier – domestic producers and importers

2nd Tier – wholesalers

3rd Tier – retailers – on and off-premise

1965 The Legislature enacted laws providing for licensure and regulation of liquor sales in private clubs. Such clubs were allowed under the constitutional prohibition because they were not open to the public. This legislation was known as the Private Club Act. Several changes occurred to this Act over the years.

1986 Voters approved a constitutional amendment permitting the sale of liquor by the drink in establishments open to the public.

1987 The Club and Drinking Establishment Act was passed. Drinking establishments were created as a category of license and permitted the sale of liquor by the drink.

The Liquor Laws – General

Chapter 41 – Kansas Statutes Annotated - Intoxicating Liquors and Beverages

1 – Non-Alcoholic Beverage Act (K.S.A. 41-342 – 41-345)

2 – Liquor Control Act (K.S.A 41-101 et seq.)

3 – Club and Drinking Establishment Act (K.S.A. 41-2601 et seq.)

4 – Cereal Malt Beverage Act (K.S.A. 41-2701 et seq.)

5 - Beer and Cereal Malt Beverage Keg Registration Act (K.S.A. 41-2901 et seq.)

Definitions

Alcoholic Liquor – means alcohol spirits, wine, beer and every liquor or solid, patented or not, containing alcohol, spirits, wine or beer and capable of being consumed as a beverage by a human being, but shall not include cereal malt beverage.

Cereal Malt Beverage – means any fermented but undistilled liquor brewed or made from malt or from a mixture of malt or malt substitute, but does not include any such liquor which is more than 3.2% alcohol by weight.

Nonalcoholic Malt Beverage – means a beverage containing less than .5% alcohol by volume obtained by alcohol fermentation or an infusion of or coction of barley, or other grain malt and hops in water and includes beer, ale, stout, lager beer, porter and similar beverages having such alcoholic content.

Spirits – means any beverage which contains alcohol obtained by distillation, mixed with water or other substance in solution, and includes brandy, rum, whiskey, gin or other spirituous liquors, and such liquors when rectified, blended or otherwise mixed with alcohol or other substances.

Wine – means any alcoholic beverage obtained by the normal alcoholic fermentation of juice of sound, ripe grapes, fruits, berries or other agricultural products, including such beverages containing added alcohol or spirits or containing sugar added for the purpose of correcting natural deficiencies.

Beer – means a beverage, containing more than 3.2% alcohol by weight, obtained by alcoholic fermentation of an infusion or concoction of barley, or other grain, malt and hops in water and includes beer, ale, stout, lager beer, porter and similar beverages have such alcoholic content.

The Liquor Laws – Specific

1 – Nonalcoholic Malt Beverage Act

- very short and straightforward
- defines nonalcoholic malt beverages as those with less than .5% alcohol by volume
- provides for their sale by retailers under the Liquor Control Act, Club and Drinking Establishment Act and CMB Act
- products are distributed by distributors
- products are taxed at the various levels per the route they are distributed and sold

2 – Liquor Control Act

- original Act regulating alcoholic liquor
- significant number of changes and modifications over the years
- numerous articles
- Article 1 – General Provisions
 - Definitions
 - Declares three statements on the public policy of the state.
 - Declares acts with regard to alcoholic liquor are prohibited unless allowed by statutes – and provides for several exceptions
 - Requires licensees be notified of citations
 - Requires written notice of compliance be provided to licensees
- Article 2 – Division of Alcoholic Beverage Control
 - Law enforcement powers
 - Qualifications of the Director and employees
 - Power to regulate alcoholic liquors vested exclusively with the state
 - Powers and duties of the Director
 - Rule and regulation procedures
- Article 3 – Licensing and Related Provisions; City Option
 - Sale of packaged liquor – city options
 - Classes of licenses and rights of licensees
 - Manufacturer
 - Sprints, wine and beer distributor
 - Retailer – (off premise)
 - Farm winery
 - Microbrewery
 - Non-beverage user
 - Establishment of fees and bond requirements
 - Qualifications for licensure
 - Administrative issues associated with issuing licenses
 - Suspension and revocation procedures and rights of appeal
 - Civil penalties for violating the Act
 - Supplier permits and annual brand registration
 - Salesperson permit requirements
 - Nonalcoholic Malt Beverage Act – included within this article

- Administrative action for offenses involving minors
- Charitable auction or limited decanter sale temporary permits

- Article 4 – Bonded Warehouses and Related Provisions
 - Bonded warehouse requirements
 - Withdrawal from warehouse
 - Detention power of liquor by the Director
 - Evasion of liquor tax penalties
 - Transportation of liquor
 - Franchise agreements

- Article 5 – Gallonage Tax; Collection and Disposition
 - Tax rates
 - Collection and disposition of tax
 - Tax on liquor delivered to federal areas
 - Alcoholic liquor tax refund fund
 - Possession of untaxed liquor by retailers
 - Credit for spirits sold to federal military reservations

- Article 6 – Manufacturer’s and Wholesaler’s Records and Reports
 - Monthly reports
 - Records of sales

- Article 7 – Certain Prohibited Acts and Penalties
 - Prohibited sales by distributors and manufactures
 - Gifts and credits from manufacturer or distributor
 - Interest in businesses
 - Requirements for revenue stamps, labels and seals
 - Retailer requirements to obtain liquor from licensed distributors
 - Location of retail stores, microbreweries or farm wineries
 - Retail store requirements
 - Sale forbidden on certain days and hours
 - Advertising and display of liquor restrictions
 - Penalties for sale of liquor to incapacitated or intoxicated persons
 - Prohibition of sales on credit
 - Sale only in original package, refilling prohibited
 - Prohibition on consumption in certain places
 - Miscellaneous issues on unlawful acts
 - Purchase or consumption of alcoholic beverages by minors
 - Use of minors to determine compliance with the law
 - Prohibited acts on sales of liquor by distributors
 - Retail sales at less than costs requirement for permit

- Article 8 – Misdemeanors and Nuisances
 - Prohibition of open saloons
 - Nuisances and miscellaneous issues

- Article 9 – General Penalty Provisions
 - Penalties for violations of the act by persons required to be licensed
 - Knowingly permitting licensee to unlawfully use premises

- Violations by agent of employee of licensee deemed act of licensee
- False branding
- Article 10 - Prosecution and Enforcement
 - Criminal provisions on violations of the Act
- Article 11 – Miscellaneous Provisions
 - Discrimination in sales provisions
 - Disposal or sale of liquor when termination business
 - Retail mark-up provisions – need to be repealed
 - Sale or destruction of liquors by Director
 - Sheriff sales
 - Guidance on other state agency use and expenditure of funds

3 – Club and Drinking Establishment Act

- Article 26 – Licensure and Regulation of Sale of Liquor by the Drink
 - Definitions
 - Criminal provisions for allowing consumption in violation of the Act
 - Licenses and application fees
 - Zoning requirements
 - Suspension and revocation procedures
 - Unlawful acts of licensees
 - Display of licenses
 - Immediate entry to and inspection of premises by law enforcement
 - Hours of operation
 - Possession and consumption by minor prohibited
 - Types of licenses & rights of licensees
 - Class A Club
 - Class B Club
 - Drinking Establishment (Hotel also)
 - Caterer
 - Qualifications for license
 - City ordinances conflicting with act void, ordinance limitations
 - Influencing purchases by licensees prohibited
 - Prohibition of certain sales practices
 - Temporary permits
 - Sale of liquor by the drink in public places, election to permit or prohibit
 - Possession of liquor or CMB on licensed premises
 - Notice to city or county on application or renewal
 - Use of minors to determine compliance with the law

4 – Cereal Malt Beverage Act

- Article 27 – Cereal Malt Beverages
 - Retailer licensing requirements for governing bodies of cities and boards of county commissioners
 - Standardize form prepared by Attorney General for application
 - Qualifications for licensure and term of license
 - Hours and days of sale

- Prohibition of loans or gifts from manufacturers or distributors
- Prohibition on certain sales on credit or trade
- Revocation and suspension of license
- Injunction proceedings for Attorney General, County Attorneys or City Attorneys
- Penalties for violation of the Act
- Prohibition of certain sales practices
- Prohibition against possession and consumption of CMB at the State Capitol
- Prohibition against sales below costs
- Use of minors to determine compliance with the law

5- Beer and Cereal Malt Beverage Keg Registration Act

- Article 29 – Beer and Cereal Malt Beverages Keg Registration Act
 - Enacted in 2002
 - Requires tagging of kegs sold to individuals and to temporary permit holders

Other Related Topics

Liquor Enforcement Tax – Chapter 79, Article 41 et seq. (8% tax)

Liquor Drink Tax – Chapter 79, Article 41a et seq. (10% tax)

Current Issue

One act, the Liquor Control Act, is currently being challenged by the Unified Government of Wyandotte County and KCK along with the City of Edwardsville. These local governments have enacted charter ordinances to opt out of the Sunday sales prohibition of K.S.A. 41-712. These charter ordinances are based on the cities interpretation that they have home rule powers under the constitution to charter out.

The state, through the Attorney General, is challenging the authority of these local governments to enact the charter ordinances. Three issues may be addressed by the court in this case:

1. whether or not the LCA is preemptive – and preempts local governments from chartering out,
2. whether or not the LCA is uniformly applicable, and
3. number 1 and 2 do not matter because the statute doesn't apply to cities and therefore is not subject to home rule.

A recent Kansas Supreme Court Decision, *Bigs v. City of Wichita* (2001), addressed many similar issues as they pertained to the Club and Drinking Establishment Act. The Supreme Court found in this case that the Act was uniform. However, there are several additional factors that must be considered in the current case.

Oral arguments in the current case are scheduled for this Friday February 21st in Wyandotte County District Court. What happens next or after a decision is rendered? Either side may appeal, the legislature could intervene or the legislature might not wait and could intervene now.

That concludes my formal comments. Thank you for your time this morning and I hope you have a better understanding of the Kansas Liquor Laws and our regulatory scheme. My staff members and I are available for any additional questions you might have.

Additional Information

U.S. Constitution - XVIII Amendment

Section 1. After one year from the ratification of this article the manufacture, sale, or transportation of intoxicating liquors within, the importation thereof into, or the exportation thereof from the United States and all territory subject to the jurisdiction thereof for beverage purposes is hereby prohibited.

Section 2. The Congress and the several states shall have concurrent power to enforce this article by appropriate legislation.

Section 3. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of the several states, as provided in the Constitution, within seven years from the date of the submission hereof to the states by the Congress.

U.S. Constitution – XXI Amendment

Section 1. The eighteenth article of amendment to the Constitution of the United States is hereby repealed.

Section 2. The transportation or importation into any state, territory, or possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited.

Section 3. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by conventions in the several states, as provided in the Constitution, within seven years from the date of the submission hereof to the states by the Congress.

Constitution of the State of Kansas Article 15--MISCELLANEOUS

§ 10: Intoxicating liquors.

(a) The legislature may provide for the prohibition of intoxicating liquors in certain areas.

(b) The legislature may regulate, license and tax the manufacture and sale of intoxicating liquors, and may regulate the possession and transportation of intoxicating liquors.

(c) The sale of intoxicating liquor by the individual drink in public places is prohibited, except that the legislature may permit, regulate, license and tax the sale of intoxicating liquor by the drink in public places in a county where the qualified electors of the county approve, by a majority vote of those voting on this proposition, to adopt this proposition, but such sales shall be limited to: (1) Public places where gross receipts from sales of food for consumption on the premises constitute not less than 30% of the gross receipts from all sales of food and beverages on such premises; or (2) public places for which a temporary permit has been issued as authorized by law. At any subsequent general election, the legislature may provide by law for the submission of propositions to qualified electors of counties for: (1) The prohibition of sales of intoxicating liquor by the individual drink in public places within the county ; (2) the regulation, licensing, taxing and sale of intoxicating liquor by the drink in public places within the county without a requirement that any portion of their gross receipts be derived from the sale of food; or (3) the regulation, licensing, taxing and sale of intoxicating liquor by the drink in public places within the county which derive not less than 30% of their gross receipts from the sale of food for consumption on the premises. Temporary permits for the sale of intoxicating liquor may be issued in any county in which the regulation, licensing, taxation and sale of intoxicating liquor by the drink in public places is approved pursuant to this section, but no temporary permit shall be issued for the sale of intoxicating liquor by the drink within any county in which the regulation, licensing, taxation and sale of intoxicating liquor by the drink in public places is prohibited.

Senate Fed & State

Date: 02 / 18 / 2003

Attachment # 2