

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 March 19, 2003 in Room 245-N of the Capitol.

All members were present.

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
Sandy Jacquot, Legal Counsel, League of Kansas Municipalities
Karl McNorton, Kansas Fire Marshal's Office
Ron Hein, Kansas Restaurant and Hospitality Association
Tuck Duncan, Kansas Wine and Spirits Wholesalers Association
Philip Bradley, Kansas Licensed Beverage Association

Others attending: Please see attached.

Chairperson Harrington invited Mr. Longino to come before the committee to brief them on the recent court case regarding Home Rule.

Mr. Longino explained the court case briefly to the committee. The committee discussed the situation with the Attorney General's office and whether or not the decision would be appealed.

Senator Vratil stated that he thought the decision is beyond Sunday sales, and that the integrity of the whole act was at stake because the ability to charter out left open the question of what they might do; this decision affects the entire act.

Ms. Kiernan stated that they might be able to Home Rule out of criminals acts because it would affect every nonuniform in any stature.

After comments from Sandy Jacquot, League of Kansas Municipalities, Chairperson Harrington stated that she was in the process of setting up a meeting with Representative Mason and the Attorney General's office.

Chairperson Harrington opened the public hearing on:

SB 254—An act concerning alcoholic beverages; relating to the revocation or suspension of licenses of certain licensees

Senator Barnett presented testimony in favor of the bill. (Attachment 1) He warned the committee that the tragedy in Rhode Island, referring to the club fire, could happen in Kansas. He stated that the three main concerns he wanted to address in the bill were paying attention to the issue and putting some teeth in it, laying down rules for pyrotechnic displays, and addressing why this would pick out only clubs and drinking establishments.

Ms. Kiernan explained the bill amendments, including a balloon amendment (Attachment 2) and another amendment (Attachment 3), explaining that this would serve to expand coverage to any building using pyrotechnics under the definition of common nuisance.

CONTINUATION SHEET

MINUTES OF THE SENATE FEDERAL AND STATE AFFAIRS COMMITTEE at 10:45 a.m. on March 19, 2003 in Room 245-N of the Capitol.

Senator Brungardt asked if the circus that was recently in town would be covered in the amendment.

Tuck Duncan replied that the Kansas ExpoCenter was under Provision II because it is a steel structure and concrete building so it would be accepted.

Mr. Longino presented testimony in favor of the bill. (Attachment 4)

Following further discussion of candles and incense, Mr. McNorton replied that these would not be covered under the bill because they were not pyrotechnic and did not contain explosive black powder.

Mr. McNorton presented testimony in favor of the bill. (Attachment 5)

Senator Vratil expressed concern over the exact definition of pyrotechnics in the bill, referencing section three in the uniform building codes as a "controlled exothermic reaction."

Ms. Jacquot presented testimony in favor of the bill. (Attachment 6) She stated that her organization were in support of the bill in its original form because it had more teeth. She stated that the issue is if we want to effect change and address public change, then they needed to create legislation. She addressed the issue of clubs versus taverns and emphasized the need for local governmental control.

Ms. Jacquot submitted an amendment to the bill to emphasize the aspect of local control. (Attachment 7)

Mr. Hein presented testimony in favor of the bill, and emphasized that his written testimony was no longer valid because in discussions, they had been able to come up with a good definition of pyrotechnics to distinguish them from candles etc. (Attachment 8)

Mr. Duncan presented testimony in opposition to the bill, stating that cities do not have the right to regulate the Club and Drinking Establishment Act. (Attachment 9) He stated that this issue has nothing to do with liquor; he did not want the committee to think that he was coming before them as a shylock liquor lobbyist, and that although he appreciated the direction the committee was going, the bill was not quite there yet. He stated that life safety is an ongoing issue, but that the date on this bill would not work.. He emphasized the importance of prevention and the need to create an expedited civil process and a temporary restraining order on violators, making an analogy to eviction notices and their expedited process. He explained that the authority to punish or close violators' properties were already in place but un-enforced. He expressed concern with giving local authorities power over things like fire codes because they were not properly upholding these codes, and the need for the bill to more clearly define pyrotechnics.

Senator O'Connor replied that it seemed that a public safety threat should be justification for pulling a license.

Mr. Duncan replied that it did not matter about the owner's license because he should be shut down totally for no business; the issue is not the liquor license but the area people are occupying which would be as much at risk at places without liquor licenses.

Chairperson Harrington expressed a shared concern with Mr. Duncan's comments, commenting that she wanted her own college age sons to be safe at concerts and events.

Mr. Bradley presented testimony in opposition to the bill. (Attachment 10) He stated that he represented small business owners who were concerned with public safety at their own and others facilities. He emphasized that the Legislature is after stopping business, not the liquor license, and that the building was the problem and local authorities should be given rights to enforce codes that were already in existence. He stated that in the cases of both Chicago and Rhode Island, laws were already in existence but not properly enforced. He stated that if a real estate business did not meet its requirements, the state would not take away the real estate license. He concluded by stating that he appreciated Senator Barnett and the committee addressing this issue because it was better to do things in advance instead of after the fact.

Chairperson Harrington stated that they would not work the bill today.

CONTINUATION SHEET

MINUTES OF THE SENATE FEDERAL AND STATE AFFAIRS COMMITTEE at 10:45 a.m. on March 19, 2003 in Room 245-N of the Capitol.

Senator Barnett stated that he appreciated the chance to have an open dialogue and receive some direction from the committee.

Senator Vratil asked Mr. McNorton if pyrotechnics were currently prohibited.

Mr. McNorton replied that there are building codes for 75% of fire safety features, and that they issue permits for that use. He stated that buildings were restricted at a 300 person occupancy for sprinklers.

Senator Vratil asked him if he thought the current codes were adequate, and Mr. McNorton replied that in some municipalities, yes

Senator Barnett stated that under 300 people required sprinklers; the language of the bill restricts use of pyrotechnics until there is change on the Federal level.

Chairperson Harrington stated that she was willing to work the bill and amendment next week.

The meeting adjourned at 11:50 a.m.

SENATE FEDERAL AND STATE AFFAIRS COMMITTEE GUEST LIST

DATE: March 19, 2003

NAME	REPRESENTING
Philip Bradley	Ks. Licensed Beverage Assn.
Ron Hein	Ks. Restaurant and Hospitality Ass'n
Dennis Carpenter	KS Rest. & Hosp. Assn.
Scott Veneff	Federico Consulting
Judy Green	American Inst of Architects
Karl M. Norton	Ks Fire Marshal Doff
Sean Hardy	4-H
Bryan Hardy	"
Katie Link	4-H
Erin Wainwright	4-H
Brandon Herman	page
Mike DeLeon	Page
Pete Bodyk	KDOR/ABC
Dean Reynoldson	KDOR/ABC
Neal Whitaker	Ks Beer Wholesalers
TUCK DUNCAN	KWSWA

JIM BARNETT
SENATOR, 17TH DISTRICT
CHASE, COFFEY, GEARY, GREENWOOD
LYON, MARION, MORRIS, OSAGE, AND
WABAUNSEE COUNTIES



TOPEKA

SENATE CHAMBER

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

Testimony for Senate Bill 254

Madam Chair and members of the Senate Federal and State Affairs Committee, thank you for allowing me to speak in support of SB 254.

The extremely unfortunate incident that occurred in Rhode Island could occur in our state, as well. The intent of SB 254 is to send a message from the state that we are concerned about that possibility and would like to be proactive in preventing such an event in Kansas.

Club and drinking establishment owners represent our friends and neighbors. They operate a legal business, carefully check IDs and want to maintain a safe environment for their customers. However, recent events across the United State demonstrate that occupants at an increased risk. Local and state involvement in the process of maintaining adequate building, fire safety, fire prevention and occupancy codes is an important part of prevention in our state. Many productive lives were lost in Rhode Island and yet, many more will have life-long disabilities and medical needs because of an unnecessary fire.

I ask that the Senate Federal and State Affairs Committee consider joining with others as we attempt to provide a safe entertainment environment for our fellow Kansans.

Signed:

A handwritten signature in black ink, appearing to read "Jim Barnett". The signature is fluid and cursive, written over a faint, illegible background.

Senator Jim Barnett

JAB/gkp

SENATE BILL No. 254

By Committee on Federal and State Affairs

3-6

9 AN ACT concerning alcoholic beverages; relating to the revocation or
10 suspension of licenses of certain licensees; amending K.S.A. 41-2611
11 and K.S.A. 2002 Supp. 41-2708 and repealing the existing sections.
12

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

14 Section 1. K.S.A. 41-2611 is hereby amended to read as follows: 41-
15 2611. The director may revoke or suspend any license issued pursuant to
16 the club and drinking establishment act for any one or more of the fol-
17 lowing reasons:

18 (a) The licensee has fraudulently obtained the license by giving false
19 information in the application therefor or any hearing thereon.

20 (b) The licensee has violated any of the provisions of this act or any
21 rules or regulations adopted hereunder.

22 (c) The licensee has become ineligible to obtain a license or permit
23 under this act.

24 (d) The licensee's manager or employee has been intoxicated while
25 on duty.

26 (e) The licensee, or its manager or employee, has permitted any dis-
27 orderly person to remain on premises where alcoholic liquor is sold by
28 such licensee.

29 (f) There has been a violation of a provision of the laws of this state,
30 or of the United States, pertaining to the sale of intoxicating or alcoholic
31 liquors or cereal malt beverages, or any crime involving a morals charge,
32 on premises where alcoholic liquor is sold by such licensee.

the licensee, or its managing officers or any employee, has pur-
l displayed, on premises where alcoholic liquor is sold by such
federal wagering occupational stamp issued by the United
sury department.

the licensee, or its managing officers or any employee, has pur-
l displayed, on premises where alcoholic liquor is sold by such
federal coin operated gambling device stamp for the premises
he United States treasury department.

licensee holds a license as a class B club, drinking establish-
terer and has been found guilty of a violation of article 10 of
of the Kansas Statutes Annotated under a decision or order

Senate Fed & State
Date: 03 / 19 / 2003
Attachment # 2

Attachment # 2

Date: 03 / 19 / 2003

Senate Fed & State

1 of the Kansas human rights commission which has become final or such
licensee has been found guilty of a violation of K.S.A. 21-4003, and
amendments thereto.

4 ~~(j) There has been a violation of any state, city or county building;~~
5 ~~fire safety, fire prevention or occupancy code or standards or rules and~~
6 ~~regulations adopted pursuant to such codes on premises where alcoholic~~
7 ~~liquor is sold by such licensee.~~

8 Sec. 2. K.S.A. 2002 Supp. 41-2708 is hereby amended to read as
9 follows: 41-2708. (a) The board of county commissioners or the governing
10 body of any city, upon five days' notice to the persons holding a license,
11 shall revoke or suspend the license for any one of the following reasons:

12 (1) The licensee has fraudulently obtained the license by giving false
13 information in the application therefor;

14 (2) the licensee has violated any of the provisions of K.S.A. 41-2701
15 et seq., and amendments thereto, or any rules or regulations made by the
16 board or the city, as the case may be;

17 (3) the licensee has become ineligible to obtain a license under this
18 act;

19 (4) drunkenness of the licensee or permitting any intoxicated person
20 to remain in or upon the licensee's place of business;

21 (5) the sale of cereal malt beverages to any person under the legal
22 age for consumption of cereal malt beverage;

23 (6) the nonpayment of any license fees;

24 (7) permitting any gambling in or upon the licensee's place of
25 business;

26 (8) permitting any person to mix drinks with materials purchased in
27 or upon the place of business or brought in for that purpose;

28 (9) the employment of persons under 18 years of age in dispensing
29 or selling cereal malt beverages;

30 (10) the employment or continuation in employment of a person in
31 connection with the sale, serving or dispensing of cereal malt beverages
32 if the licensee knows such person has been, within the preceding two
33 years, adjudged guilty of a felony or of any violation of the intoxicating
34 liquor laws of this state, another state or the United States;

35 (11) the sale or possession of, or permitting any person to use or
36 consume on the licensed premises, any alcoholic liquor as defined by
37 K.S.A. 41-102, and amendments thereto; or

38 (12) the licensee has been convicted of a violation of the beer and
39 cereal malt beverage keg registration act; or

40 ~~(13) there has been a violation of any state, city or county building;~~
41 ~~fire safety, fire prevention or occupancy code or standards or rules and~~
42 ~~regulations adopted pursuant to such codes in or upon the licensee's place~~
43 ~~inss.~~

section 3, and amendments thereto, or any standards, rules and
regulations adopted pursuant thereto or any ordinance or resolution
prohibiting or restricting the use of pyrotechnics or pyrotechnic
devices, mixtures or materials

section 3, and amendments thereto, or any standards, rules and
regulations adopted pursuant thereto or any ordinance or resolution
prohibiting or restricting the use of pyrotechnics or pyrotechnic
devices, mixtures or materials

22

1 (b) The provisions of subsections (a)(8) and (11) shall not apply if the
2 place of business or premises ~~are~~ also *are* currently licensed as a club or
3 drinking establishment pursuant to the club and drinking establishment
4 act.

5 (c) Within 20 days after the order of the board revoking or suspending
6 any license, the licensee may appeal to the district court and the district
7 court shall proceed to hear such appeal as though such court had original
8 jurisdiction of the matter. Any appeal taken from an order revoking or
9 suspending the license shall not suspend the order of revocation or sus-
10 pension during the pendency of any such appeal. In case of the revocation
11 of the license of any licensee, no new license shall be issued to the former
12 licensee, or to any person acting for or on the former licensee's behalf,
13 for a period of six months thereafter.

14 ~~Sec. 3. K.S.A. 41-2611 and K.S.A. 2002 Supp. 41-2708 are hereby~~
15 ~~repealed.~~

Insert attached

16 Sec. 4. This act shall take effect and be in force from and after its
17 publication in the Kansas register.

23

New Sec. 3. (a) Except as provided by this section, the use of pyrotechnics or pyrotechnic devices, mixtures or materials is prohibited in any building.

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

(1) Any building in which there has been installed an automatic sprinkler system and such system is functioning properly; or

(2) any fire-resistive building if the interior walls and ceiling finish of such building comply with chapter 8 of the uniform building code in effect on July 1, 2003, or such later edition as adopted by rules and regulations of the state fire marshal or any other building code which establishes standards which meet or exceed the requirements of such uniform building code or later edition as adopted by rules and regulations of the state fire marshal.

(c) The state fire marshal shall adopt any rules and regulations necessary to implement the provisions of this section.

(d) The use of pyrotechnics or pyrotechnic devices, mixtures or materials in violation of this section or any ordinance or resolution prohibiting or restricting such use shall constitute a common nuisance.

Sec. 4. K.S.A. 22-3901. (1) The following unlawful activities and the use of real and personal property in maintaining and carrying on such activities are hereby declared to be common nuisances:

(a) Commercial gambling;

(b) dealing in gambling devices;

(c) possession of gambling devices;

(d) promoting obscenity;

(e) promoting prostitution;

(f) habitually promoting prostitution;

(g) violations of any law regulating controlled substances;

(h) habitual violations of any law regulating the sale or exchange of alcoholic liquor or cereal malt beverages, by any person not licensed pursuant to chapter 41 of the Kansas Statutes Annotated;

(i) habitual violations of any law regulating the sale or exchange of cigarettes or tobacco products, by any person not licensed pursuant to article 33 of chapter 79 of the Kansas Statutes Annotated; [or]

(j) any felony committed for the benefit of, at the direction of, or in association with any criminal street gang, with the specific intent to promote, further or assist in any criminal conduct by gang members. As used in this subsection, "criminal street gang" means any organization, association or group of three or more persons, whether formal or informal, having as one of its primary activities the commission of one or more person felonies or felony violations of the uniform controlled substances act, K.S.A. 65-4101 et seq., and amendments thereto, which has a common name or common identifying sign or symbol, whose members, individually or collectively engage in or have engaged in the commission, attempted commission, conspiracy to commit or solicitation of two or more person felonies or felony violations of the uniform controlled substances act, K.S.A. 65-4101 et seq., and amendments thereto, or any substantially similar offense from another jurisdiction[.] ; or

(k) *use of pyrotechnics or pyrotechnic devices, mixtures or materials in violation of section 3, and amendments thereto.*

(2) Any real property used as a place where any such activities are carried on or permitted to be carried on and any effects, equipment, paraphernalia, fixtures, appliances, musical instruments or other personal property designed for and used on such premises in connection with such unlawful activities are subject to the provisions of K.S.A. 22-3902, 22-3903 and 22-3904, and amendments thereto.

904.2.1.7

be made through 2½-inch (63.5 mm) hose valves with easily removable 2½-inch by 1½-inch (63.5 mm by 38.1 mm) reducers.

TENABLE ENVIRONMENT is an environment in which the quantity and location of smoke is limited or otherwise restricted to allow for ready evacuation through the space.

ZONED SMOKE CONTROL is a smoke-control system utilizing pressure differences between adjacent smoke-control zones.

SECTION 904 — FIRE-EXTINGUISHING SYSTEMS

904.1 Installation Requirements.

904.1.1 General. Fire-extinguishing systems required in this code shall be installed in accordance with the requirements of this section.

Fire hose threads used in connection with fire-extinguishing systems shall be national standard hose thread or as approved by the fire department.

The location of fire department hose connections shall be approved by the fire department.

In buildings used for high-piled combustible storage, fire protection shall be in accordance with the Fire Code.

904.1.2 Standards. Fire-extinguishing systems shall comply with UBC Standards 9-1 and 9-2.

EXCEPTIONS: 1. Automatic fire-extinguishing systems not covered by UBC Standard 9-1 or 9-2 shall be approved and installed in accordance with approved standards.

2. Automatic sprinkler systems may be connected to the domestic water-supply main when approved by the building official, provided the domestic water supply is of adequate pressure, capacity and sizing for the combined domestic and sprinkler requirements. In such case, the sprinkler system connection shall be made between the public water main or meter and the building shutoff valve, and there shall not be intervening valves or connections. The fire department connection may be omitted when approved by the fire department.

3. Automatic sprinkler systems in Group R Occupancies four stories or less may be in accordance with UBC Standard 9-3.

904.1.3 Modifications. When residential sprinkler systems as set forth in UBC Standard 9-3 are provided, exceptions to, or reductions in, code requirements based on the installation of an automatic fire-extinguishing system are not allowed.

904.2 Automatic Fire-extinguishing Systems.

904.2.1 Where required. An automatic fire-extinguishing system shall be installed in the occupancies and locations as set forth in this section.

For provisions on special hazards and hazardous materials, see the Fire Code.

904.2.2 All occupancies except Group R, Division 3 and Group U Occupancies. Except for Group R, Division 3 and Group U Occupancies, an automatic sprinkler system shall be installed:

1. In every story or basement of all buildings when the floor area exceeds 1,500 square feet (139.4 m²) and there is not provided at least 20 square feet (1.86 m²) of opening entirely above the adjoining ground level in each 50 lineal feet (15 240 mm) or fraction thereof of exterior wall in the story or basement on at least one side of the building. Openings shall have a minimum dimension of not less than 30 inches (762 mm). Such openings shall be accessible to the fire department from the exterior and shall not be

obstructed in a manner that firefighting or rescue cannot be accomplished from the exterior.

When openings in a story are provided on only one side and the opposite wall of such story is more than 75 feet (22 860 mm) from such openings, the story shall be provided with an approved automatic sprinkler system, or openings as specified above shall be provided on at least two sides of an exterior wall of the story.

If any portion of a basement is located more than 75 feet (22 860 mm) from openings required in this section, the basement shall be provided with an approved automatic sprinkler system.

2. At the top of rubbish and linen chutes and in their terminal rooms. Chutes extending through three or more floors shall have additional sprinkler heads installed within such chutes at alternate floors. Sprinkler heads shall be accessible for servicing.

3. In rooms where nitrate film is stored or handled.

4. In protected combustible fiber storage vaults as defined in the Fire Code.

5. Throughout all buildings with a floor level with an occupant load of 30 or more that is located 55 feet (16 764 mm) or more above the lowest level of fire department vehicle access.

EXCEPTIONS: 1. Airport control towers.

2. Open parking structures.

3. Group F, Division 2 Occupancies.

904.2.3 Group A Occupancies.

904.2.3.1 Drinking establishments. An automatic sprinkler system shall be installed in rooms used by the occupants for the consumption of alcoholic beverages and unseparated accessory uses where the total area of such unseparated rooms and assembly uses exceeds 5,000 square feet (465 m²). For uses to be considered as separated, the separation shall not be less than as required for a one-hour occupancy separation. The area of other uses shall be included unless separated by at least a one-hour occupancy separation.

904.2.3.2 Basements. An automatic sprinkler system shall be installed in basements classified as a Group A Occupancy when the basement is larger than 1,500 square feet (139.4 m²) in floor area.

904.2.3.3 Exhibition and display rooms. An automatic sprinkler system shall be installed in Group A Occupancies that have more than 12,000 square feet (1115 m²) of floor area that can be used for exhibition or display purposes.

904.2.3.4 Stairs. An automatic sprinkler system shall be installed in enclosed usable space below or over a stairway in Group A, Divisions 2, 2.1, 3 and 4 Occupancies. See Section 1005.3.3.6.

904.2.3.5 Multitheater complexes. An automatic sprinkler system shall be installed in every building containing a multitheater complex.

904.2.3.6 Amusement buildings. An automatic sprinkler system shall be installed in all amusement buildings. The main water-flow switch shall be electrically supervised. The sprinkler main cutoff valve shall be supervised. When the amusement building is temporary, the sprinkler water-supply system may be of an approved temporary type.

EXCEPTION: An automatic sprinkler system need not be provided when the floor area of a temporary amusement building is less than 1,000 square feet (92.9 m²) and the exit travel distance from any point is less than 50 feet (15 240 mm).

904.2.3.7 Stages. All stages shall be provided with an automatic sprinkler system. Such sprinklers shall be provided throughout the stage and in dressing room and other necessary spaces contiguous

Senate Fed & State
Date: 03 / 19 / 2003
Attachment # 3

1. Noncombustible materials.
2. Fire-retardant-treated wood.
3. One-hour fire-resistive construction.
4. Wood panels or similar light construction up to three fourths the height of the room in which placed; when more than three fourths the height of the room, such partitions shall not have less than the upper one fourth of the partition constructed of glass.

601.5.2.2 Hotels and apartments. Interior nonload-bearing partitions within individual dwelling units in apartment houses and guest rooms or suites in hotels when such dwelling units, guest rooms or suites are separated from each other and from corridors by not less than one-hour fire-resistive construction may be constructed of:

1. Noncombustible materials or fire-retardant-treated wood in buildings of any type of construction; or
2. Combustible framing with noncombustible materials applied to the framing in buildings of Type III or V construction.

Openings to such corridors shall be equipped with doors conforming to Section 1004.3.4.3.2 regardless of the occupant load served.

For use of plastics in partitions, see Section 2603.10.

601.5.3 Folding, portable or movable partitions. Approved folding, portable or movable partitions need not have a fire-resistive rating, provided:

1. They do not block required exits or exit-access doors (without providing alternative conforming exits or exit-access doors) and they do not establish a corridor.
2. Their location is restricted by means of permanent tracks, guides or other approved methods.
3. Flammability shall be limited to materials having a flame-spread classification as set forth in Table 8-B for rooms or areas.

601.5.4 Walls fronting on streets or yards. Regardless of fire-resistive requirements for exterior walls, certain elements of the walls fronting on streets or yards having a width of 40 feet (12 192 mm) may be constructed as follows:

1. Bulkheads below show windows, show-window frames, aprons and showcases may be of combustible materials, provided the height of such construction does not exceed 15 feet (4572 mm) above grade.
2. Wood veneer of boards not less than 1-inch (25 mm) nominal thickness or exterior-type panels not less than $\frac{3}{8}$ -inch (9.5 mm) nominal thickness may be applied to walls, provided the veneer does not exceed 15 feet (4572 mm) above grade, and further provided such veneer shall be placed either directly against noncombustible surfaces or furred out from such surfaces not to exceed $1\frac{3}{8}$ inches (41 mm) with all concealed spaces fire-blocked as provided in Section 708. Where boards, panels and furring as described above comply with Section 207 as fire-retardant-treated wood suitable for exterior exposure, the height above grade may be increased to 35 feet (10 668 mm).

601.5.5 Trim. Trim, picture molds, chair rails, baseboards, handrails and show-window backing may be of wood. Unprotected wood doors and windows may be used except where openings are required to be fire protected.

Foam plastic trim covering not more than 10 percent of the wall or ceiling area may be used, provided such trim (1) has a density of no less than 20 pounds per cubic foot (320.4 kg/m³), (2) has a maximum thickness of $\frac{1}{2}$ inch (12.7 mm) and a maximum width of

4 inches (102 mm), and (3) has a flame-spread rating no greater than 75.

Materials used for interior finish of walls and ceilings, including wainscoting, shall be as specified in Chapter 8.

601.5.6 Loading platforms. Exterior loading platforms may be of noncombustible construction or heavy-timber construction with wood floors not less than 2-inch (51 mm) nominal thickness. Such wood construction shall not be carried through the exterior walls.

601.5.7 Insulating boards. Combustible insulating boards may be used under finished flooring.

601.5.8 Walls within health-care suites. In health-care suites that comply with Section 1007.5, interior nonload-bearing partitions of noncombustible construction need not be of fire-resistive construction. In buildings of combustible construction, interior nonload-bearing partitions within suites may be of combustible framing covered with noncombustible materials having an approved thermal barrier with an index of 15 in accordance with UBC Standard 26-2.

SECTION 602 — TYPE I FIRE-RESISTIVE BUILDINGS

602.1 Definition. The structural elements in Type I fire-resistive buildings shall be of steel, iron, concrete or masonry.

Walls and permanent partitions shall be of noncombustible fire-resistive construction except that permanent nonbearing partitions of one-hour or two-hour fire-resistive construction, which are not part of a shaft enclosure, may have fire-retardant-treated wood (see Section 207) within the assembly.

Materials of construction and fire-resistive requirements shall be as specified in Section 601 and Chapter 7.

602.2 Structural Framework. Structural framework shall be of structural steel or iron as specified in Chapter 22, reinforced concrete as specified in Chapter 19, or reinforced masonry as specified in Chapter 21.

For additional requirements for Group H Occupancies, see Section 307.2.

602.3 Exterior Walls and Openings.

602.3.1 Exterior walls. Exterior walls and all structural members shall comply with the requirements specified in Section 503 and Table 5-A and the fire-resistive provisions set forth in Table 6-A.

602.3.2 Openings in walls. All openings in exterior walls shall conform to the requirements of Section 503.2 and Table 5-A.

602.4 Stairway Construction. Stairways shall be constructed of reinforced concrete, iron or steel with treads and risers of concrete, iron or steel. Brick, marble, tile or other hard noncombustible materials may be used for the finish of such treads and risers.

EXCEPTION: On stairs not required to be enclosed by Section 1005.3.3, the finish material of treads and risers may be of any material permitted by the code.

Stairways shall comply with the requirements of Chapter 10.

602.5 Roofs. Except in retail sales and storage areas classified as Groups M and S, Division 1 Occupancies and in Group H Occupancies, roofs and their members, other than the structural frame, may be of unprotected noncombustible materials when every part of the roof framing, including the structural frame, is 25 feet (7620 mm) or more above the floor, balcony or gallery immediately below. Heavy-timber members in accordance with Section 605.6 may be used for such unprotected members in one-story buildings.

When every part of the structural framework of the roof of a Group A or E Occupancy or of an atrium is not less than 25 feet (7620 mm) above any floor, balcony or gallery, fire protection of all members of the roof construction, including those of the structural frame, may be omitted. Heavy-timber members in accordance with Section 605.6 may be used for such unprotected members in one-story buildings.

Roofs of unprotected noncombustible or heavy-timber construction conforming to Section 605.6.4 may be less than 25 feet (7620 mm) above any floor, balcony or gallery of a Group A, Division 2.1 Occupancy having an occupant load of 10,000 or more when all of the following conditions are met:

1. The building is not more than one story in height, except for multilevel areas located under the roof and used for locker rooms, exiting, concession stands, mechanical rooms and others accessory to the assembly room.

2. The area in which the roof clearance is less than 25 feet (7620 mm) does not exceed 35 percent of the area encompassed by the exterior walls.

3. An approved supervised automatic sprinkler system shall be installed throughout.

Where every part of the structural steel framework of the roof of a Group A or E Occupancy is more than 18 feet (5486 mm) and less than 25 feet (7620 mm) above any floor, balcony or gallery, the roof construction shall be protected by a ceiling of not less than one-hour fire-resistive construction.

Roof coverings shall be as specified in Chapter 15.

SECTION 603 — TYPE II BUILDINGS

603.1 Definition. The structural elements in Type II-F.R. buildings shall be of steel, iron, concrete or masonry.

The structural elements of Type II One-hour or Type II-N buildings shall be of noncombustible materials.

Floor construction of Type II One-hour and Type II-N buildings shall be of noncombustible material, provided, however, that a wood surface or finish may be applied over such noncombustible material.

Walls and permanent partitions of Type II-F.R. buildings shall be of noncombustible fire-resistive construction, except that permanent nonbearing partitions of one-hour or two-hour fire-resistive construction, which are not part of a shaft enclosure, may have fire-retardant-treated wood (see Section 207) within the assembly.

Type II One-hour buildings shall be of noncombustible construction and one-hour fire resistive throughout, except that permanent nonbearing partitions may use fire-retardant-treated wood (see Section 207) within the assembly, provided fire-resistive requirements are maintained.

Walls and permanent partitions of Type II-N buildings shall be of noncombustible materials.

Materials of construction and fire-resistive requirements shall be as specified in Section 601.

For requirements due to occupancy, see Chapter 3.

603.2 Structural Framework. Structural framework shall be as specified in Chapter 22 for iron and steel, Chapter 19 for concrete and Chapter 21 for masonry.

603.3 Exterior Walls and Openings.

603.3.1 Exterior walls. Exterior walls and all structural members shall comply with the requirements specified in Section 503 and Table 5-A and the fire-resistive provisions set forth in Table 6-A.

603.3.2 Openings in walls. All openings in exterior walls shall conform to the requirements of Section 503.2 and Table 5-A.

603.4 Stairway Construction. Stairways of Type II-F.R. buildings shall be constructed of reinforced concrete, iron or steel with treads and risers of concrete, iron or steel. Brick, marble, tile or other hard noncombustible materials may be used for the finish of such treads and risers. Stairways of Type II, One-hour and Type II-N buildings shall be of noncombustible construction.

EXCEPTION: On stairs not required to be enclosed by Section 1005.3.3, the finish material of treads and risers may be of any material permitted by the code.

Stairways shall comply with the requirements of Chapter 10.

603.5 Roofs. Roofs shall be of noncombustible construction, except that in Type II-F.R. and Type II One-hour buildings, roofs may be as specified in Section 602.5.

Roof coverings shall be as specified in Chapter 15.

SECTION 604 — TYPE III BUILDINGS

604.1 Definition. Structural elements in Type III buildings may be of any materials permitted by this code.

Type III One-hour buildings shall be of one-hour fire-resistive construction throughout.

604.2 Structural Framework. Structural framework shall be of steel or iron as specified in Chapter 22, concrete as specified in Chapter 19, masonry as specified in Chapter 21, or wood as specified in Chapter 23 and this chapter.

604.3 Exterior Walls, Openings and Partitions.

604.3.1 Exterior walls. Exterior walls shall be constructed of noncombustible materials and shall comply with the fire-resistive requirements set forth in Section 503 and Tables 5-A and 6-A.

604.3.2 Openings in walls. Openings in exterior walls shall conform to the requirements of Section 503.2 and Table 5-A.

604.3.3 Partitions. Bearing partitions, when constructed of wood, shall comply with Section 2308.

604.4 Stairway Construction.

604.4.1 General. Stairways shall comply with the requirements of Chapter 10.

604.4.2 Interior. Interior stairways serving buildings not exceeding three stories in height may be constructed of any material permitted by this code.

In buildings more than three stories in height, interior stairways shall be constructed as required for Type I buildings.

604.4.3 Exterior. Exterior stairways shall be of noncombustible material except that on buildings not exceeding two stories in height, they may be of wood not less than 2 inches (51 mm) in nominal thickness.

604.5 Roofs. Roof coverings shall be as specified in Chapter 15.

Except in retail sales and storage areas classified as Group M or S, Division 1 Occupancies and in Group H Occupancies, roofs and their members other than the structural frame may be of unprotected noncombustible materials when every part of the roof fram-

- (b) *Minor repairs or modification of consumer fireworks not involving exposed pyrotechnic material*
- (c) *Packing of finished consumer fireworks into consumer fireworks assortments*
- (d) *The attachment of electric matches and minor repairs to display fireworks and pyrotechnic articles*

Mechanical Building. A building that contains mechanical, electrical, air conditioning, or other equipment and that usually is connected to a process or nonprocess building. A mechanical building is intended to be an unoccupied building.

Mixing Building. Any building used primarily for mixing and blending of pyrotechnic compositions.

Exception: This definition does not apply to wet sparkler mix preparation.

Motor Vehicle. Any self-propelled vehicle, truck, tractor, semitrailer, or truck-trailer combination used for the transportation of freight over public highways.

Nonprocess Building.* Any office building, warehouse, or other building or area located in a manufacturing facility, where no fireworks, pyrotechnic or explosive composition, pyrotechnic articles, or any component(s) containing pyrotechnic or explosive materials are processed or stored.

Novelties and Trick Noisemakers. Small devices containing limited amounts of pyrotechnic explosive or composition that produce a visible or audible effect. (See Appendix C.)

Oxidizer.* Usually an oxygen-rich, ionically bonded chemical that decomposes at moderate to high temperatures.

Person. Any individual, firm, copartnership, corporation, company, association, or joint-stock association, including any trustee, receiver, assignee, or personal representative thereof.

Process Area. An outside area complying with the applicable provisions of this code for a process building that is used for the manufacture of fireworks and pyrotechnic articles.

Process Building.* Any building or any room at a manufacturing facility where fireworks, pyrotechnic articles, or component(s) containing explosive or pyrotechnic compositions are manufactured or assembled. A process building is also any building at a manufacturing facility where consumer fireworks are prepared for shipment.

Public Conveyance. Any railroad car, street car, ferry, cab, bus, airplane, or other vehicle that carries passengers for hire.

Pyrotechnic Articles. Pyrotechnic devices, other than devices classed as fireworks, for use in the entertainment industry.

Pyrotechnic Composition. A chemical mixture that, upon burning, produces visible, brilliant displays, bright lights, or sounds.

Pyrotechnic Laboratory.* A building or room used for research, development, or testing of chemicals, fireworks, pyrotechnic articles, or component(s) containing explosive or pyrotechnic compositions.

Pyrotechnic Material (Pyrotechnic Special Effects Material). A chemical mixture used in the entertainment industry to produce visible or audible effects by combustion, deflagration, or detonation. Such a chemical mixture consists predominantly of solids capable of producing a controlled, self-sustaining, and self-contained exothermic chemical reaction that results in heat, gas, sound, light, or a combination of these effects. The chemical reaction functions without external oxygen.

Pyrotechnic Special Effect. A special effect created through the use of pyrotechnic materials and devices. (See also *Special Effect in Appendix D.*)

Pyrotechnics. Controlled exothermic chemical reactions that are timed to create the effects of heat, gas, sound, dispersion of aerosols, emission of visible electromagnetic radiation, or a combination of these effects to provide the maximum effect from the least volume.

Railway. Any steam, electric, diesel-electric, or other railroad or railway that carries passengers for hire on the particular line or branch in the vicinity of a pyrotechnics manufacturing or storage facility.

Rocket. A pyrotechnic device that moves by the ejection of matter produced by the internal combustion of propellants.

Salute. A display firework that is designed to produce a loud report.

Salute Powder. An explosive composition that makes a loud report when ignited and constitutes the sole pyrotechnic mixture in a salute.

Screen Barricade. Any barrier that contains the embers and debris from a fire or deflagration in a process building, thus preventing propagation of fire to other buildings or areas. Such barriers shall be permitted to be constructed of metal roofing, $\frac{1}{4}$ -in. to $\frac{1}{2}$ -in. (6-mm to 13-mm) mesh screen, or equivalent material. The barrier extends from floor level to a height such that a straight line from the top of any sidewall of the donor building to the eave line of any exposed building intercepts the screen at a point not less than 5 ft (1.5 m) from the top of the screen. The top 5 ft (1.5 m) of the screen are inclined toward the donor building at an angle of 90 degrees to 45 degrees.

Shipping Building. A building used for the packing of assorted display fireworks into shipping cartons or for the loading of the cartons onto vehicles for shipment to purchasers.

Should. Indicates a recommendation or that which is advised but not required.

Stars.* Small masses of pyrotechnic compounds that are projected from aerial shells, mines, or roman candles.

Storage Building. Any building, structure, or facility in which consumer fireworks (formerly Common Fireworks) in any state of processing are stored, but in which no processing or manufacturing is actually performed.

Unoccupied Building. Any building that is normally unoccupied during the entire daily period of operations of the facility. An unoccupied building can be used for long-term storage of materials acceptable to the authority having jurisdiction, provided that no fireworks or pyrotechnic composition is stored within the building.

Chapter 2 Manufacturing Operations

2-1 Applicability. All manufacturing facilities shall comply with the requirements of this chapter.

Exception: Manufacturing facilities shall not be required to comply with Sections 2-5, 2-8, 2-10, and 2-11, provided they meet all of the following conditions.

- (a) *Only custom fireworks, pyrotechnic articles, and any component(s) containing pyrotechnic or explosive materials, not for general sale, are manufactured.*

Chapter 8 INTERIOR FINISHES

SECTION 801 — GENERAL

801.1 Scope. Interior wall and ceiling finish shall mean the exposed interior surfaces of buildings including, but not limited to, fixed or movable walls and partitions, interior wainscoting, paneling or other finish applied structurally or for decoration, acoustical correction, surface insulation, sanitation, structural fire resistance or similar purposes. Requirements for finishes in this chapter shall not apply to trim defined as picture molds, chair rails, baseboards and handrails; or to doors and windows or their frames; or to materials that are less than $\frac{1}{28}$ inch (0.9 mm) in thickness applied directly to the surface of walls or ceilings.

Foam plastics shall not be used as interior finish except as provided in Section 2602. For foam plastic trim, see Section 601.5.5.

See Section 1403 for veneer.

801.2 Standards of Quality. The standards listed below labeled a "UBC standard" are also listed in Chapter 35, Part II, and are part of this code.

1. UBC Standard 8-1, Test Method for Surface-burning Characteristics of Building Materials

2. UBC Standard 8-2, Standard Test Method for Evaluating Room Fire Growth Contribution of Textile Wall Covering

801.3 Veneer. Veneers shall comply with Section 1403.

SECTION 802 — TESTING AND CLASSIFICATION OF MATERIALS

802.1 Testing. Tests shall be made by an approved testing agency to establish surface-burning characteristics and to show that materials when cemented or otherwise fastened in place will not readily become detached when subjected to room temperatures of 300°F (149°C) for 25 minutes. Surface-burning characteristics shall be determined by one of the following methods:

1. The surface-burning characteristics as set forth in UBC Standard 8-1.

2. Any other recognized method of test procedure for determining the surface-burning characteristics of finish materials that will give comparable results to those specified in method Item 1.

3. The room fire growth contribution for textile wall coverings as set forth in UBC Standard 8-2.

802.2 Classification. The classes of materials based on their flame-spread index shall be as set forth in Table 8-A. The smoke density shall be no greater than 450 when tested in accordance with UBC Standard 8-1 in the way intended for use.

SECTION 803 — APPLICATION OF CONTROLLED INTERIOR FINISH

Interior finish materials applied to walls and ceilings shall be tested as specified in Section 802 and regulated for purposes of limiting surface-burning by the following provisions:

1. When walls and ceilings are required by any provision in this code to be of fire-resistive or noncombustible construction, the finish material shall be applied directly against such fire-resistive or noncombustible construction or to furring strips not exceeding

$1\frac{3}{4}$ inches (44 mm) applied directly against such surfaces. The intervening spaces between such furring strips shall be filled with inorganic or Class I material or shall be fire blocked not to exceed 8 feet (2438 mm) in any direction. See Section 708 for fireblocking.

2. Where walls and ceilings are required to be of fire-resistive or noncombustible construction and walls are set out or ceilings are dropped distances greater than specified in paragraph 1 of this section, Class I finish materials shall be used except where the finish materials are protected on both sides by automatic sprinkler systems or are attached to a noncombustible backing or to furring strips installed as specified in paragraph 1. The hangers and assembly members of such dropped ceilings that are below the main ceiling line shall be of noncombustible materials except that in Types III and V construction, fire-retardant-treated wood may be used. The construction of each set-out wall shall be of fire-resistive construction as required elsewhere in this code. See Section 708 for fire blocks and draft stops.

3. Wall and ceiling finish materials of all classes as permitted in this chapter may be installed directly against the wood decking or planking of Type IV heavy-timber construction, or to wood furring strips applied directly to the wood decking or planking installed and fire blocked as specified in Item 1.

4. An interior wall or ceiling finish that is less than $\frac{1}{4}$ inch (6.4 mm) thick shall be applied directly against a noncombustible backing.

EXCEPTIONS: 1. Class I materials.

2. Materials where the qualifying tests were made with the material suspended or furred out from the noncombustible backing.

SECTION 804 — MAXIMUM ALLOWABLE FLAME SPREAD

804.1 General. The maximum flame-spread class of finish materials used on interior walls and ceilings shall not exceed that set forth in Table 8-B.

EXCEPTIONS: 1. Except in Group I Occupancies and in enclosed vertical exits, Class III may be used in other means of egress and rooms as wainscoting extending not more than 48 inches (1219 mm) above the floor and for tack and bulletin boards covering not more than 5 percent of the gross wall area of the room.

2. When a sprinkler system complying with UBC Standard 9-1 or 9-3 is provided, the flame-spread classification rating may be reduced one classification, but in no case shall materials having a classification greater than Class III be used.

3. The exposed faces of Type IV-H.T., structural members, and Type IV-H.T., decking and planking, where otherwise permissible under this code, are excluded from flame-spread requirements.

804.2 Carpeting on Ceilings. When used as interior ceiling finish, carpeting and similar materials having a napped, tufted, looped or similar surface shall have a Class I flame spread.

SECTION 805 — TEXTILE WALL COVERINGS

When used as interior wall finish, textile wall coverings, including materials such as those having a napped, tufted, looped, nonwoven, woven or similar surface shall comply with the following:

1. Textile wall coverings shall have a Class I flame spread and shall be protected by automatic sprinklers complying with UBC Standard 9-1 or 9-3, or



K A N S A S

JOAN WAGNON, 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: March 19, 2003

Subj: Senate Bill 254

Madam Chairperson and Distinguished Committee Members, thank you for the opportunity to appear before the committee today in support of Senate Bill 254.

SB 254 includes specific language whereby building, fire safety, fire prevention or occupancy code violations by establishments licensed for on-premise alcoholic beverage sales may result in administrative prosecution of the licensee under authority of the Club and Drinking Establishment and Cereal Malt Beverages Acts. The bill provides specific authority for the Director of ABC to suspend or revoke liquor licenses or the board of county commissioners or the governing body of any city to suspend or revoke cereal malt beverage licenses.

This bill provides specific statutory authority that assists in accomplishing the goal of enhancing public safety. Those licensees that fail to take corrective action to rectify safety discrepancies or continually ignore safety precautions and jeopardize public safety are those affected by this legislation.

Although some might argue that this bill is a quick response to recent tragedies in Illinois and Rhode Island, this is not the real issue here. The issue is can we in Kansas improve upon our regulatory system to enhance the safety of the public?

Following the recent tragedies, we reviewed safety concerns of on-premise alcoholic beverage establishments. This review included opening dialogue with the State Fire Marshal's Office and discussions with several city officials on how we can work together enhancing public safety at these establishments.

Our review led to four ways in which we can increase attention to this critical area of public safety through this bill:

- 1) increasing licensees' motivation to be especially attentive to public safety issues;
- 2) providing support to local governments on high-risk or habitual violations;
- 3) providing support to the state Fire Marshal's office on high-risk or habitual violations; and
- 4) training ABC agents to identify high-risk violations of safety and occupancy codes.

DOCKING STATE OFFICE BUILDING, 915 SW HARRISON ST., TOP
Voice 785-296-7015 Fax 785-296-7185 <http://www.ksreve>

Senate Fed & State

Date: 03 / 19 / 2003

Attachment # 4



OFFICE OF THE

Joseph P. Odle **KANSAS STATE FIRE MARSHAL** Kathleen Sebelius
Fire Marshal 700 SW JACKSON ST, SUITE 600, TOPEKA, KS 66603-3714 Governor
PHONE (785) 296-3401 / FAX (785) 296-0151

**TESTIMONY ON SB 254
CONCERNING ALCOHOLIC BEVERAGES
REVOCATION OR SUSPENSION
CERTAIN LICENSEES**

Date: March 19, 2003

By: Karl W McNorton
Chief Deputy State Fire Marshal

The Office of State Fire Marshal stands as a proponent of SB 254. Senate Bill 254 will provide a tool to suspend or revoke a license of an establishment where alcoholic beverages are served when they are not in compliance with the Kansas Fire Prevention Code or any local municipal building, fire, or occupancy code.

The Kansas State Fire Marshal's Office is tasked with the authority to inspect facilities of this type. The recent tragedies in Chicago and Rhode Island cause us concern with the operation, crowd management, and entertainment activities in places of assembly like these. The inspections we perform, generally, are outside of municipalities who have building and fire code officials enforcing their codes. The facilities we have inspected frequently have violations which include locked or blocked exits, no exit signage, no emergency lighting, no fire alarm system, and in larger facilities with 300 or more occupants no sprinkler system. We have had positive results and response to corrective measures with most of the facilities we have inspected. This bill will provide that additional tool to gain corrective measures with facility owners/managers who choose to ignore the safety of the occupants of their buildings. We have like enforcement, such as revocation of licensure, of facilities with other licensing agencies such as the Kansas Department of Health and Environment.

Our agency had submitted a fiscal impact statement to Division of Budget. Our initial interpretation of the bill left us with the impression this would be a required annual inspection. However, after further review and discussions with Alcohol Beverage Control we don't believe there will be an impact of any significance on the operations or activities of this agency.

We encourage passage of this bill.

"Where fire safety is a way of life."

SnFedSt
03/19/03
Attach #5



League of Kansas Municipalities

TO: Senate Federal and State Affairs Committee
FROM: Sandy Jacquot, Director of Law/Legal Counsel
DATE: March 19, 2003
RE: SB 254

This bill would add violation of fire safety, fire prevention or occupancy code violations as another reason for which the state could revoke or suspend any liquor license and cities and counties could revoke or suspend cereal malt beverage licenses. The League strongly supports this measure. In fact, the League believes that the Legislature should go further with this idea and allow more local control in the area of liquor law enforcement.

Any meaningful ability to enforce local safety codes has to come from local officials. Simply fining club and drinking establishments for occupancy violation limits is often seen as the cost of doing business by the establishments. To effect any real change, we must have the ability to act on the establishment's license to operate the business. Authority to license should also mean the authority to revoke the license. Under current case law, there is a legitimate question as to whether cities have the ability to revoke the city license of clubs and drinking establishments and thereby, take away their ability to operate the business. These businesses are in our cities and we should have the ability to regulate them for the public health safety and welfare. For example, in the City of Lawrence there are approximately 100 drinking establishments and a handful of taverns serving only cereal malt beverage. This bill, while providing the state a mechanism to regulate those 100 drinking establishments, only provides the city the ability to regulate a few establishments. The real problem is not addressed for cities.

The League and its members have long struggled with the types of issues this bill partially addresses. Attached is a proposed amendment that would take away the ambiguity local authority and clearly vest cities with the ability to control businesses in their communities. While some alcohol regulation should be left to the state, it no longer makes sense to hamstring local communities' ability to revoke a local license for violations of local regulations or serious safety regulations. If public safety is the goal, our legislation should create a mechanism to accomplish the goal.

The League urges the committee to report SB 254 favorably for passage as amended with the attached language.

Bill No.

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

Section 1.

- (a) Words and phrases used in this section shall have the same meaning ascribed thereto by the liquor control act.
- (b) For the purpose of protecting the public health, safety and welfare, the governing body of any city may regulate the sale of alcoholic liquor by the issuance of local licenses to persons selling alcoholic liquor at retail, class A or B clubs, drinking establishments, caterers and temporary permit holders. Upon adoption of an ordinance by the governing body of a city which requires the issuance of a license as authorized by this section, no person shall sell alcoholic liquor within the corporate limits of the city unless such person holds a valid license issued by such city.
- (c) For the purpose of protecting the public health, safety and welfare, the board of county commissioners of any county may regulate the sale of alcoholic liquor outside the corporate limits of cities by the issuance of local licenses to class A or B clubs, drinking establishments, caterers and temporary permit holders. Upon adoption of a resolution by the board of county commissioners of any county which requires the issuance of a license as authorized by this section, no person shall sell alcoholic liquor outside the corporate limits of cities within such county unless such person holds a valid license issued by such county.
- (d) Upon payment of the fee authorized by subsection (h), any person who is qualified to be licensed under the liquor control act shall qualify for the issuance of a license issued by a city or county under the provisions of this section. A person who does not hold a valid state license or whose state license is under suspension shall not be issued a license pursuant to this section.

Senate Fed & State
Date: 03 / 19 / 2003
Attachment # 7

(e) (1) The governing body of any city and the board of county commissioners of any county which issues a license under the provisions of this section may adopt and enforce regulations concerning such licensees.

(2) Regulations adopted pursuant to this section may include, but shall not be limited to:

- (A) Requirements of appointment of a resident agent of a licensee;
- (B) Employee requirements, including residency and training requirements;
- (C) Conduct in and around the licensed premises;
- (D) Zoning;
- (E) Security requirements;
- (F) Hours of operation;
- (G) Building code requirements;

(3) Regulations adopted pursuant to this section shall not include pricing restrictions, restrictions on advertising content, brand blocking or restrictions on trade practices.

(4) Any regulations adopted pursuant to this section shall be presumed to be valid.

(f) The governing body of any city and the board of county commissioners of any county may impose fines and suspend, restrict or revoke the license of any licensee who violates regulations adopted pursuant to this section, or any resolution or ordinance adopted pursuant to this section shall not be less than the minimum fine nor more than the maximum fine prescribed by the liquor control act for the same violation. The suspension or revocation of a license issued by the state under the liquor control act shall be deemed to be a suspension or revocation of a license issued by a city or county pursuant to this section.

(g) Within 20 days after the date of an order revoking, restricting or suspending any license, the licensee may appeal to the district court and the district court shall proceed to hear such appeal as though such court had original jurisdiction of the matter. Unless otherwise provided by law or court order, any appeal taken from an order imposing a fine

or suspending, restricting or revoking a license shall not suspend such order during the pendency of any such appeal. In case of the revocation of the license of any licensee, no new license shall be issued to the former licensee, or to any person acting for or on the former licensee's behalf, for a period of six months thereafter.

- (h) The governing body of a city and the board of county commissioners of a county may impose an annual occupation or license tax for a local license issued pursuant to this section. Such annual occupation or license tax shall be in lieu of the annual occupation or license tax established pursuant to K.S.A. 41-2622 and amendments thereto, may not exceed one thousand dollars (\$1,000.00) per year, and shall be subject to the provisions of K.S.A. 12-138a.
- (i) This section is enabling legislation for the enactment of regulations by cities and counties for the protection of the public health, safety and welfare. This section is not intended to prevent the enactment or enforcement of additional or supplemental laws and regulations which are not in conflict with the provisions of this section or other provisions of the liquor control act, such laws and regulations to be enacted pursuant to the home rule powers granted to cities by subsection (b) of section 5 of Article 12 of the Kansas Constitution and to counties pursuant to K.S.A. 19-101a, and amendments thereto.

Sec. 2. This act shall take effect and be in force from and after its publication in the statute book.

HEIN LAW FIRM, CHARTERED

5845 SW 29th Street, Topeka, KS 66614-2462

Phone: (785) 273-1441

Fax: (785) 273-9243

Ronald R. Hein

Attorney-at-Law

Email: rhein@heinlaw.com

**Testimony Re: SB 254
Senate Federal and State Affairs Committee
Presented by Ronald R. Hein
on behalf of
Kansas Restaurant and Hospitality Association
March 19, 2003**

Madam Chairman, Members of the Committee:

My name is Ron Hein, and I am legislative counsel for the Kansas Restaurant and Hospitality Association. The KRHA is the Kansas professional association for restaurant, hotel, lodging and hospitality businesses in Kansas.

In the recent past, there have been two tragic incidents which occurred regarding the issues addressed by this legislation. A review of less recent history will reveal other incidents which might have been avoided if there had been sufficient safeguards regarding fire safety and building safety.

While acknowledging the motives and intent behind the introduction of SB 254, KRHA has concerns about the scope of the language in SB 254. As written, SB 254 permits revocation of a liquor or cereal malt beverage license upon the occurrence of any violation of any state, city, or county building, fire safety, fire prevention or occupancy code or standard or rules and regulations adopted pursuant thereto when the violation occurs on the premises where alcoholic or cereal malt beverage products are sold.

In many cases, we suspect the usage of a revocation procedure would be utilized if and only if there was a danger to the patrons of the facility. However, the language of the proposed legislation is much broader than that, and it could include violations that involve a sink being too high or low, or other incidental building code provisions that may not relate to and would not impact the level of danger regarding an emergency situation, evacuation of the premises, or any other situation threatening the health of the business patrons.

If language were added to require a finding by the Director of the Alcoholic Beverage Control Division of the Kansas Department of Revenue (or by the county regarding cereal malt beverage) to the effect that there is a threat to the public safety by virtue of the violation, we would have fewer concerns about the bill, and possibly would support the legislation. With that said, if there is a physical or other situation on the premises which constitutes a threat to the public safety, whether for fire or otherwise, we believe that it

Senate Fed & State
Date: 03 / 19 / 2003
Attachment # 8

should not be necessary for another inspector to have to make a finding that a violation has occurred before the Division of ABC can attempt to address the issue. Therefore, the intent of the bill is good, but we would like to see the language changed.

Perhaps an amendment that would provide another grounds for revocation of license essentially as follows would be more appropriate:

The licensed premises contains a structural, procedural, or other defect which would constitute a violation of any state, city, or county building, fire safety, fire prevention, or occupancy code or standards or rules and regulations adopted pursuant to such codes in or upon the licensee's place of business, and the Director determines that the public safety is threatened or is at imminent risk of harm by virtue of such defect.

This wording is simply our proposal, and perhaps better wording can be utilized to achieve the goals desired by the sponsor or others. However, such language would insure that a simple ministerial or otherwise non-harmful violation of a local or state code does not jeopardize the ability of the licensee to operate his or her business.

I urge your adoption of an amendment similar to the language proposed above, and if such an amendment is adopted, we would support passage of this legislation.

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

K · A · N · S · A · S
WINE & SPIRITS
WHOLESALE ASSOCIATION.

TO: SENATE COMMITTEE ON FEDERAL & STATE AFFAIRS
FROM: R.E. "TUCK" DUNCAN
KANSAS WINE & SPIRITS WHOLESALERS ASSOCIATION
RE: SB 254
DATE: MARCH 19, 2003

THE KANSAS WINE & SPIRITS WHOLESALERS ASSOCIATION APPEARS IN OPPOSITION TO SB254, AS WRITTEN, SUPPORTING THE OPPOSITION OF KANSAS' CLUBS AND DRINKING ESTABLISHMENTS. WHILE THE INTENTION OF THIS BILL IS NOBLE, IT IS A NARROW MISGUIDED POLICY.

SENATE BILL No. 254 RELATING TO THE REVOCATION OR SUSPENSION OF LICENSES OF CERTAIN LICENSEES WHICH PROVIDES THAT THE DIRECTOR OF ALCOHOLIC BEVERAGE CONTROL MAY REVOKE OR SUSPEND ANY LICENSE ISSUED PURSUANT TO THE CLUB AND DRINKING ESTABLISHMENT WHERE "(J) THERE HAS BEEN A VIOLATION OF ANY STATE, CITY OR COUNTY BUILDING, FIRE SAFETY, FIRE PREVENTION OR OCCUPANCY CODE OR STANDARDS OR RULES AND REGULATIONS ADOPTED PURSUANT TO SUCH CODES ON PREMISES WHERE ALCOHOLIC LIQUOR IS SOLD BY SUCH LICENSEE," WILL NOT PREVENT THE SITUATIONS THAT RESULTED IN RHODE ISLAND AND ILLINOIS.

FURTHER, THE ISSUE OF ENFORCEMENT OF BUILDING AND FIRE CODES, AND OF THE LIFE SAFETY CODE, ARE MATTERS FOR LOCAL OFFICIALS. THESE ARE ALSO MATTERS THAT SHOULD BE DIRECTED TO ALL PUBLIC PLACES, NOT JUST BEVERAGE ALCOHOL LICENSEES.

WE HAVE PROPOSED TO THE SPONSOR OF SB 254 THAT THE STATE CREATE AN EXPEDITED CIVIL PROCEEDING WHEREIN AN *EX PARTE* ORDER CAN BE ISSUED BY A COURT ALLOWING LOCAL OFFICIALS TO "LOCK" A FACILITY PENDING A HEARING WITHIN SEVERAL ON THE QUESTION OF WHETHER A FACILITY SHOULD BE DENIED OCCUPANCY FOR SERIOUS CODE VIOLATIONS. FURTHER WE PROPOSE THAT IF LOCAL OFFICIALS (COUNTY, CITY OR DISTRICT ATTORNEYS) DO NOT OR WILL NOT TAKE APPROPRIATE ACTION THEN THE ASSISTANT ATTORNEY GENERAL ASSIGNED TO THE STATE FIRE MARSHALL BE SO EMPOWERED.

THIS APPROACH WILL PROVIDE A PROACTIVE REMEDY TO AVOID TRAGEDY, WHEREAS SB254 WILL ONLY BE APPLIED IN THE AFTERMATH OF AN INCIDENT AND DOES NOT ENCOMPASS MANY OTHER VENUES TO WHICH THE PUBLIC HAS ACCESS BUT ARE NOT LICENSED.

THANK YOU FOR YOUR KIND ATTENTION TO AND CONSIDERATION OF THESE MATTERS.

Sn Fed St
03/19/03
Attach #9



*Kansas
Licensed
Beverage
Association*

President
Tom Intfen

Secretary/Treasurer
Tammy Davis

Vice Presidents
Monte Shanks
Rob Farha
Glenda Dewey
Jim Fager
Curt Melzer
Kevin M. Timmons
Rich Markle
Mike Fair

Executive Director
Philip Bradley

745 New Hampshire
Suite Four
P.O. Box 442066
Lawrence, KS 66044

Voice/Fax:
785.331.4282
phil@klba.org
www.klba.org



*Testimony on SB-254 on March 19, 2003
Senate Federal and State Affairs Committee*

Madam Chair and Senators of the Committee,

I am Philip Bradley of the Kansas Licensed Beverage Assn, representing your constituents in the hospitality industry who own and manage bars, clubs, restaurants, hotels and catering services where beverage alcohol is served.

Thank you for the opportunity to speak. I recognize the value of your time and will be brief.

While we applaud the concern and intent to protect the public and prevent any tragedy such as that which recently happened in RI, it is a serious issue and deserves a clear reasoned approach. We wish to thank Sen. Barnett for his efforts and willingness to communicate. However as it stands, we strongly oppose the content of this bill for the following reasons;

- This is an issue that is thoroughly covered by the local units of government and they have 2(two) avenues to use to protect the public and close hazards. They can use zoning and local occupancy/building codes and they can use public safety concerns. We trust local government and also know that they can/have/ and will request assistance when they need it
- This is mixing 2(two) very separate functions. The liquor license is a function of serving beverage alcohol and the statutes, rules and regulations that control and guide that function. The operating of a facility is a function of the public safety, zoning and other controls. If a real estate office has a public hazard you don't revoke the realtors license you close the office and make sure they fix the problem before they reopen. The director has the ability to work with the state fire marshal now to correct any risks that are unattended by local units of government.
- If it is the desire of this body to change the way this is addressed now and you believe that it is in the best interest of the public then it must be in the best interest of all the public to be so protected. That means that if there is a violation of a theater, an office building, an expo center or even a hospital then you should revoke the state issued licenses of those operating in those facilities as well to protect the public.

We do not support SB-254 and urge it's defeat. We stand, more than willing to work with you to make sure that the safety of the public is protected.

Thank you ,

Philip Bradley
Executive Director
Kansas Licensed Beverage Association

Senate Fed & State
Date: 03 / 19 / 2003
Attachment # 10