

MINUTES OF THE HOUSE FEDERAL AND STATE AFFAIRS COMMITTEE

The meeting was called to order by Chairman William Mason at 2:00 p.m. on January 22, 2004 in Room 313-S of the Capitol.

All members were present except:

Representative Joann Freeborn- excused
Representative John Edmonds- excused

Committee staff present:

Russell Mills Legislative Research Department
Mary Torrence, Revisor of Statutes Office
Dennis Hodgins, Legislative Research Department
Rose Marie Glatt, Secretary

Conferees appearing before the committee:

Senator James Barnett, Kansas Senate
Tuck Duncan, Kansas Wine and Spirit Wholesalers Association
Phil Bradley, Kansas License Beverage Association
Rose Roxmiarek, Fire Marshal's Office
Sandy Jacquot, The League of Kansas Municipalities
Ron Hein, Kansas Restaurant & Hospitality Association
Tom Groneman, Executive Director, Alcoholic Beverage Control

Others attending:

See Attached List.

SB 254 - Use of pyrotechnics, pyrotechnic devices and pyrotechnic materials in places of public assembly, penalties for unlawful use; duties of state fire marshal.

Mary Torrence, Revisor of Statutes Office, briefed the Committee on the balloons on **SB 254** (Attachment 1).

PROPONENTS:

Senator Jim Barnett, introduced a short video taken at the recent Rhode Island fire that claimed the lives of ninety-seven people. He stated that **SB 254** is introduced to prohibit the use of pyrotechnic material or devices in buildings that do not have sprinkler systems installed or buildings that are not built with fire retardant materials (Attachment 2). He urged the Committee to consider the bill carefully in order to provide a safe environment for Kansans.

Tuck Duncan, Kansas Wine and Spirit Wholesalers Association, stated that the Association supports **SB 254** as amended by the Senate, however they would oppose any substantive amendments to the bill regarding any other subject matter than the primary subject of the use of pyrotechnics (Attachment 3).

Phil Bradley, Kansas License Beverage Association, spoke in support of the bill's intent to protect the public and prevent any tragedy such as that in Rhode Island (Attachment 4). As amended this bill is an unencumbered change that will provide another tool to ensure safe entertainment venues.

Rose Roxmiarek, Fire Marshall's Office, stated that **SB 254** provides 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 (Attachment 5). The bill would allow the Department to gain corrective measures with facility owners/managers who choose to ignore the safety of the occupants of their buildings.

Sandy Jacquot, The League of Kansas Municipalities, stated that the bill would add violation of the criminal nuisance statutes as another reason for which the state could revoke or suspend any liquor license and city and counties could revoke or suspend cereal malt beverage licenses (Attachment 6). She urged the

CONTINUATION SHEET

MINUTES OF THE HOUSE FEDERAL AND STATE AFFAIRS COMMITTEE at 1:30 p.m. on January 22, 2004 in Room 313-S of the Capitol.

committee to report **SB 254** favorably for passage as amended.

Ron Hein, Kansas Restaurant & Hospitality Assn. stated that as **SB 254** currently stands, the Association had no objection to the bill, and would support the legislation (Attachment 7). He stated that there was considerable compromise in the bill and expressed concern over its passage if substantive changes occurred.

Tom Groneman, Executive Director, Alcoholic Beverage Control, appeared in support of the **SB 254** (no written testimony).

The Chairman closed the hearing on **SB 254**.

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The meeting adjourned at 2:35 p.m. The next scheduled meeting is January 29, 2004.

HOUSE FEDERAL & STATE AFFAIRS COMMITTEE GUEST LIST

DATE Jan 22, 2004

NAME	REPRESENTING
R-E. TUCKER DUNCAN	KS, wine/spirits wholesaler
Kathy Decker	Beverage News
Ron Herin	KS Restaurant & Hospitality Assn
Keith Haxton	SEAK
Rudy Shea	Kearney & Associates Inc
Ann Campbell	KABR
Jeff Bottelone	KS Police Officer
Chris Odler	KSFM
Dan McLaughlin	KSFM
Lore Remick	KSFM
Debbie	KCAA
Tom Groneman	ABC
Sandy Jacquot	LKM
Philip BRADLEY	KLBA
Pat Lehman	KS Fire Service Alliance

KS
Assn.

1 [As Amended by Senate Committee of the Whole]

2
3 As Amended by Senate Committee

4 Session of 2003

5
6 **SENATE BILL No. 254**

7
8 By Committee on Federal and State Affairs

9
10 3-6

11
12 AN ACT concerning alcoholic beverages, relating to the revocation or
13 suspension of licenses of certain licensees *the use of pyrotechnics,*
14 *pyrotechnic devices and pyrotechnic materials; concerning pen-*
15 *alties for the unlawful use thereof; concerning the powers and*
16 *duties of the state fire marshal; amending K.S.A. 22-3902, 22-*
17 *3904, 31-133 and 41-2611 and K.S.A. 2002 Supp. 22-3901 and 41-*
18 *2708 and repealing the existing sections.*

19
20 *Be it enacted by the Legislature of the State of Kansas:*

21 Section 1. K.S.A. 41-2611 is hereby amended to read as follows: 41-
22 2611. The director may revoke or suspend any license issued pursuant to
23 the club and drinking establishment act for any one or more of the fol-
24 lowing reasons:

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

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

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

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

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

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

40 (g) The licensee, or its managing officers or any employee, has pur-
41 chased and displayed, on premises where alcoholic liquor is sold by such
42 licensee, a federal wagering occupational stamp issued by the United
43 States treasury department.

Title needs to be amended; subject is broader than pyrotechnics

Sec. 1.

Authorizes revocation or suspension of the license of any club or drinking establishment where there has been a violation of K.S.A. 21-4106 (maintaining a public nuisance) or 21-4107 (permitting a public nuisance) at the licensee's place of business; section 8 provides for notice to the licensing authority of convictions of those violations

(d) The licensee, or its managing officers or any employee, has purchased and displayed, on premises where alcoholic liquor is sold by such licensee, a federal coin operated gambling device stamp for the premises issued by the United States treasury department.

(e) The licensee holds a license as a class B club, drinking establishment or caterer and has been found guilty of a violation of article 10 of chapter 44 of the Kansas Statutes Annotated under a decision or order 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.

~~(f) 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 K.S.A. 21-4106 or 21-4107, and amendments thereto, on premises where alcoholic liquor is sold by such licensee.~~

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

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

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

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

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

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

(6) the nonpayment of any license fees;

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

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

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

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

(11) the sale or possession of, or permitting any person to use or

Sec. 2.

Authorizes revocation or suspension of the license of any CMB establishment where there has been a violation of K.S.A. 21-4106 (maintaining a public nuisance) or 21-4107 (permitting a public nuisance) at the licensee's place of business; section 8 provides for notice to the licensing authority of convictions of those violations

1 consume on the licensed premises, any alcoholic liquor as defined by
2 K.S.A. 41-102, and amendments thereto; ~~or~~

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

5 (13) ~~there has been a violation of any state, city or county building,~~
6 ~~fire safety, fire prevention or occupancy code or standards or rules and~~
7 ~~regulations adopted pursuant to such codes~~ **K.S.A. 21-4106 or 21-4107,**
8 **and amendments thereto, in or upon the licensee's place of business.**

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

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

22 ~~Sec. 3—K.S.A. 41-2611 and K.S.A. 2002 Supp. 41-2708 are hereby~~
23 ~~repealed.~~

24 **New Sec. 3. (a) As used in this section:**

25 (1) **"Place of public assembly" means a building or structure**
26 **with an occupancy capacity of 50 or more.**

27 (2) **"Pyrotechnics" mean any controlled exothermic chemical**
28 **reactions that are timed to create the effects of heat, gas, sound,**
29 **dispersion of aerosols, emission of visible electromagnetic radiation**
30 **or a combination of these effects to provide the maximum effect from**
31 **the least volume for entertainment purposes.**

32 (3) **"Pyrotechnic device" means any device which contains py-**
33 **rotechnic material and which is capable of producing a visual or**
34 **audible effect for entertainment purposes.**

35 (4) **"Pyrotechnic material" means a chemical mixture used to**
36 **produce visible or audible effects by combustion for entertainment**
37 **purposes.**

38 (b) (1) **Except as provided by this section, the use of any py-**
39 **rotechnics, pyrotechnic device or pyrotechnic material is prohib-**
40 **ited in any building which is a place of public assembly.**

41 (2) **The use of pyrotechnics, pyrotechnic devices or pyrotechnic**
42 **materials in violation of this section or any rules and regulations**
43 **adopted pursuant to this section or any ordinance or resolution**

Sec. 3

Prohibits the use of any pyrotechnics, pyrotechnic devices or materials in any building or structure with an occupancy capacity of 50 or more

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1 *prohibiting or restricting such use shall constitute a common*
2 *nuisance.*

3 *(c) The provisions of subsection (b) shall not apply to:*

4 *(1) Any building in which there has been installed an automatic*
5 *sprinkler system which is adequate for suppression of a fire in the*
6 *building or structure and such system is functioning properly;*

7 *(2) any building in which the interior and exterior walls and*
8 *ceilings are constructed with or consist of fire-restrictive materials;*

9 *(3) religious ceremonies;*

10 *(4) candles that are securely supported on noncombustible ba-*
11 *ses and if the candle flame is protected;*

12 *(5) any other building, structure or use exempted by rules and*
13 *regulations adopted by the state fire marshal.*

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

16 *[(e) Nothing in this section shall be construed as limiting the*
17 *powers of cities and counties to regulate or restrict the use of py-*
18 *rotechnics, pyrotechnic devices or pyrotechnic materials.]*

19 *Sec. 4. K.S.A. 2002 Supp. 22-3901 is hereby amended to read*
20 *as follows: 22-3901. The following unlawful activities and the use*
21 *of real ~~and~~ or personal property in maintaining and carrying on such*
22 *activities are hereby declared to be common nuisances:*

23 *(a) Commercial gambling;*

24 *(b) dealing in gambling devices;*

25 *(c) possession of gambling devices;*

26 *(d) promoting obscenity;*

27 *(e) promoting prostitution;*

28 *(f) habitually promoting prostitution;*

29 *(g) violations of any law regulating controlled substances;*

30 *(h) habitual violations of any law regulating the sale or*
31 *exchange of alcoholic liquor or cereal malt beverages, by any per-*
32 *son not licensed pursuant to chapter 41 of the Kansas Statutes*
33 *Annotated;*

34 *(i) habitual violations of any law regulating the sale or exchange*
35 *of cigarettes or tobacco products, by any person not licensed pur-*
36 *suant to article 33 of chapter 79 of the Kansas Statutes Annotated;*

37 *††*

38 *(j) any felony committed for the benefit of, at the direction of,*
39 *or in association with any criminal street gang, with the specific*
40 *intent to promote, further or assist in any criminal conduct by gang*
41 *members. As used in this subsection, "criminal street gang" means*
42 *any organization, association or group of three or more persons,*
43 *whether formal or informal, having as one of its primary activities*

Exempts

- buildings with automatic sprinkler systems
- buildings constructed of fire restrictive materials
- religious ceremonies
- certain candles
- buildings or structure exempted by the fire marshal's rules and regulations

Provides that bill should not be construed as limiting powers of cities and counties to regulate or restrict

Sec. 4.

1 *the commission of one or more person felonies or felony violations*
 2 *of the uniform controlled substances act, K.S.A. 65-4101 et seq., and*
 3 *amendments thereto, which has a common name or common iden-*
 4 *tifying sign or symbol, whose members, individually or collectively*
 5 *engage in or have engaged in the commission, attempted commis-*
 6 *sion, conspiracy to commit or solicitation of two or more person*
 7 *felonies or felony violations of the uniform controlled substances*
 8 *act, K.S.A. 65-4101 et seq., and amendments thereto, or any sub-*
 9 *stantially similar offense from another jurisdiction; or*

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

12 *Any real property used as a place where any such activities are*
 13 *carried on or permitted to be carried on and any effects, equipment,*
 14 *paraphernalia, fixtures, appliances, musical instruments or other*
 15 *personal property designed for and used on such premises in con-*
 16 *nection with such unlawful activities are subject to the provisions*
 17 *of K.S.A. 22-3902, 22-3903 and 22-3904, and amendments thereto.*

18 *Sec. 5. K.S.A. 22-3902 is hereby amended to read as follows:*
 19 *22-3902. (1) Unless otherwise provided by law, proceedings under*
 20 *K.S.A. 22-3901 through 22-3904, and amendments thereto, shall be*
 21 *governed by the provisions of the Kansas code of civil procedure*
 22 *relating to the abatement of common nuisances.*

23 *(2) (A) In addition to the procedure established by this section,*
 24 *if a person is arrested for an unlawful act listed in K.S.A. 22-3901,*
 25 *and amendments thereto, the attorney general, city, county or dis-*
 26 *trict attorney may petition the court for a hearing to determine*
 27 *whether an unlawful activity is or has been occurring on such*
 28 *owner's property. The owner of the property on which such person*
 29 *is or was committing an unlawful activity may be given notice of*
 30 *such hearing. Except as provided by paragraph (B), a hearing shall be*
 31 *held before the court within 30 days of the notification. If the court*
 32 *determines by a preponderance of the evidence that an unlawful act*
 33 *occurred, such act shall render void any lease under which a tenant*
 34 *holds possession, and shall cause the right of possession to revert to*
 35 *the owner who may evict the tenant. If the owner does not com-*
 36 *mence eviction proceedings against the tenant within 30 days of the*
 37 *court determination, the attorney general or the city, county or dis-*
 38 *trict attorney may proceed to file a petition pursuant to subsection*
 39 *(3). The provisions of this subsection are in addition to any remedy*
 40 *provided pursuant to the residential landlord and tenant act.*

41 *(B) In the case of a violation of subsection (k) of K.S.A. 22-3901, and*
 42 *amendments thereto, a hearing shall be held before the court within five*
 43 *days of the notification.*

Amends the common nuisance statutes to include the use of pyrotechnics in violation of the provisions of the bill

Sec. 5.

Provides an expedited court hearing for common nuisance violations relating to the use of pyrotechnics; hearing must be held within five days (instead of 30 days) of notification of the owner of property where the nuisance is occurring

1 (3) *Proceedings under K.S.A. 22-3901 through 22-3904, and*
2 *amendments thereto, shall be instituted only in the name of the state*
3 *of Kansas upon the petition of the attorney general or the city,*
4 *county or district attorney to enjoin a nuisance within the city,*
5 *county or district.*

6 (4) *The petition shall describe any real estate alleged to be used*
7 *or to have been used as a place where such common nuisance is or*
8 *was maintained or permitted and shall identify the owner or person*
9 *in charge of such real estate. It shall describe any effects, equip-*
10 *ment, paraphernalia, fixtures, appliances, musical instruments or*
11 *other personal property designed for and used in such unlawful*
12 *activity. It shall pray for the particular relief sought with respect*
13 *to such property.*

14 (5) *The petition for injunction may include or be accompanied*
15 *by an application for an order for the seizure of the effects, equip-*
16 *ment, paraphernalia, fixtures, appliances, musical instruments or*
17 *other personal property described in the petition. If the court finds*
18 *that there is probable cause to believe that the personal property*
19 *described is or has been used for any of the unlawful purposes set*
20 *forth in K.S.A. 22-3901 and amendments thereto, the court may*
21 *order the sheriff or other law enforcement officer to seize such per-*
22 *sonalty and to hold it in custody pending further order of the court.*
23 *An order for seizure shall particularly describe the personal prop-*
24 *erty to be seized.*

25 (6) *An order for seizure of materials alleged to be obscene shall*
26 *not be issued until after a hearing at which evidence in support of*
27 *the application for such order has been heard. At least three days*
28 *notice of such hearing shall be given to the owner or person in pos-*
29 *session of such material. Pending such hearing, the court may make*
30 *an order prohibiting the owner or person in possession from re-*
31 *moving such material from the jurisdiction of the court.*

32 (7) *No bond or other security shall be required for any restrain-*
33 *ing order, order for seizure or injunction issued under K.S.A. 22-*
34 *3901 through 22-3904, and amendments thereto, in an action*
35 *brought by the attorney general or city, county or district attorney.*

36 (8) *The provisions of K.S.A. 22-3901 through 22-3904, and*
37 *amendments thereto, shall not limit nor otherwise affect proceed-*
38 *ings under K.S.A. 60-908 and amendments thereto, but shall be sup-*
39 *plemental and in addition to, and not in lieu of, the remedy provided*
40 *by that statute.*

41 (9) *The attorney general or the city, county or district attorney*
42 *shall give notice of proceedings under K.S.A. 22-3901 through 22-*
43 *3904 and amendments thereto by sending a copy of the petition to*

1 *enjoin a nuisance by certified mail, return receipt requested, to*
 2 *each person having ownership of or a security interest in the prop-*
 3 *erty if: (a) The property is of a type for which title, registration or*
 4 *deed is required by law; (b) the owner of the property is known in*
 5 *fact at the time of seizure; or (c) the property is subject to a security*
 6 *interest perfected in accordance with the uniform commercial code.*
 7 *The attorney general or the city, county or district attorney shall*
 8 *be obligated only to make diligent search and inquiry as to the*
 9 *owner of the property and if, after diligent search and inquiry, the*
 10 *attorney general or city, county or district attorney is unable to*
 11 *ascertain the owner, the requirement of actual notice by mail with*
 12 *respect to persons having perfected security interest in the property*
 13 *shall not be applicable.*

14 *Sec. 6. K.S.A. 22-3904 is hereby amended to read as follows:*
 15 *22-3904. (1) Upon final judgment that any real property is being*
 16 *or has been used as a place where any of the unlawful activities set*
 17 *forth in K.S.A. 22-3901 and amendments thereto are carried on or*
 18 *permitted to be carried on, the court may order that any ~~house-~~*
 19 *building ~~or~~ or other structure located on such real estate be*
 20 *closed and padlocked for a period of not more than two years, sub-*
 21 *ject to modification in the manner provided by K.S.A. 60-910 and*
 22 *amendments thereto, if the court finds that the owner of the prop-*
 23 *erty knew or should have known under the circumstances of the*
 24 *maintenance of a common nuisance on the property and did not*
 25 *make a bona fide attempt to abate such nuisance under the circum-*
 26 *stances. The court may require, as part of the judgment, that the*
 27 *owner, lessee, tenant or occupant enter into a bond to the state of*
 28 *Kansas, in such amount and with security as the court may require,*
 29 *conditioned that such owner, lessee, tenant or occupant will not*
 30 *within a period of two years use or permit the use of such real estate*
 31 *in violation of law. If any condition of such bond is violated, the*
 32 *whole amount may be recovered as a penalty. In addition, the court*
 33 *may assess a civil penalty not to exceed \$25,000 against any or all*
 34 *defendants, based upon the severity of the nuisance and its dura-*
 35 *tion. Such penalty shall be paid into the county treasury, if recov-*
 36 *ered by a county or district attorney, and into the city treasury, if*
 37 *recovered by a city attorney.*

38 *(2) Upon final judgment that any effects, equipment, parapher-*
 39 *malia, fixtures, appliances, musical instruments or other personal*
 40 *property are designed for and have been used in carrying on any*
 41 *of the unlawful activities set forth in K.S.A. 22-3901 and amend-*
 42 *ments thereto, the court may order that such effects, equipment,*
 43 *paraphernalia, fixtures, appliances, musical instruments and other*

Sec. 6.

Amends the statute authorizing property used in the unlawful activity to be seized and destroyed or sold, and the proceeds of sale to be used to pay the costs of abatement of the nuisance

Amended on p. 7, lines 18 & 19, and p. 8, lines 6 & 7 - - technical

1 *personal property be publicly destroyed by the sheriff or other law*
2 *enforcement officer or that such personal property be sold in the*
3 *manner provided for sales in execution of judgment.*

4 (3) *The proceeds of any sale of personal property pursuant to*
5 *subsection (2) shall be applied as follows:*

6 (a) *First, to the fees and costs of the abatement or removal of the*
7 *nuisance and the sale.*

8 (b) *Second, to the costs of closing the structure and keeping it*
9 *closed.*

10 (c) *Third, to payment of the costs of the action.*

11 (d) *Fourth, to payment of any civil penalty imposed pursuant*
12 *to this section or any fine imposed for contempt in the proceedings.*

13 (e) *Fifth, to the owner of the personal property.*

14 (4) *Subject to the provisions of subsection (3), upon final judg-*
15 *ment for the state the court shall adjudge that any defendant who*
16 *was maintaining the common nuisance pay all costs, including a*
17 *reasonable fee, fixed by the court, to be paid to the prosecuting*
18 *attorney. Such costs shall be a lien upon any real property against*
19 *which an order of abatement is obtained, if the court finds that the*
20 *owner of such property knew or should have known under the cir-*
21 *cumstances of the maintenance of the common nuisance on the prop-*
22 *erty and did not make a bona fide attempt to abate such nuisance*
23 *under the circumstances.*

24 (5) *For purposes of this section, evidence of a bona fide attempt*
25 *to abate such nuisance by the owner of the property shall include,*
26 *but not be limited to, the filing of a written report, by such owner*
27 *or at such owner's direction, to the local law enforcement agency*
28 *that the property is suspected by the owner of the property of being*
29 *used in maintaining and carrying on any of the unlawful activities*
30 *set forth in K.S.A. 22-3901 and amendments thereto.*

31 Sec. 7. *K.S.A. 31-133 is hereby amended to read as follows: 31-*
32 *133. (a) The state fire marshal shall adopt reasonable rules and*
33 *regulations, consistent with the provisions of this act, for the safe-*
34 *guarding of life and property from fire, explosion and hazardous*
35 *materials. Such rules and regulations shall include, but not be lim-*
36 *ited to the following:*

37 (1) *The keeping, storage, use, sale, handling, transportation or*
38 *other disposition of highly flammable materials, including crude*
39 *petroleum or any of its products, natural gas for use in motor ve-*
40 *hicles, and of explosives, including gunpowder, dynamite, fireworks*
41 *and firecrackers; and any such rules and regulations may prescribe*
42 *the materials and construction of receptacles and buildings to be*
43 *used for any of such purposes;*

Sec. 7.

1 (2) the transportation of liquid fuel over public highways in or-
2 der to provide for the public safety in connection therewith;

3 (3) the construction, maintenance and regulation of exits and
4 fire escapes from buildings and all other places in which people
5 work, live or congregate from time to time for any purpose, includ-
6 ing apartment houses, as defined by K.S.A. 31-132a, and amend-
7 ments thereto. Such rules and regulations shall not apply to build-
8 ings used wholly as dwelling houses containing no more than two
9 families;

10 (4) the installation and maintenance of equipment intended for
11 fire control, detection and extinguishment in all buildings and other
12 places in which persons work, live or congregate from time to time
13 for any purpose, including apartment houses as defined by K.S.A.
14 31-132a, and amendments thereto. Such rules and regulations shall
15 not apply to buildings used wholly as dwelling houses containing
16 no more than two families;

17 (5) requiring administrators of public and private schools and
18 educational institutions, except community colleges, colleges and
19 universities, to conduct at least one fire drill each month at some
20 time during school hours, aside from the regular dismissal at the
21 close of the day's session, and prescribing the manner in which such
22 fire drill is to be conducted;

23 (6) procedures for the reporting of fires and explosions occur-
24 ring within the state and for the investigation thereof;

25 (7) procedures for reporting by health care providers of treat-
26 ment of second and third degree burn wounds involving 20% or
27 more of the victim's body and requiring hospitalization of the vic-
28 tim, which reporting is hereby authorized notwithstanding any pro-
29 vision of K.S.A. 60-427, and amendments thereto, to the contrary;

30 (8) requiring administrators of public and private schools and
31 educational institutions, except community colleges, colleges and
32 universities, to establish tornado procedures, which procedures
33 shall provide for at least three tornado drills to be conducted each
34 year at some time during school hours, aside from the regular dis-
35 missal at the close of the day's session, shall describe the manner in
36 which such tornado drills are to be conducted, and shall be subject
37 to approval by the state fire marshal;

38 (9) requiring administrators of community colleges, colleges
39 and universities to establish tornado procedures, which procedures
40 shall be subject to approval by the director of the disaster agency
41 of the county;

42 (10) the development and implementation of a statewide system
43 of hazardous materials assessment and response; ~~and~~

1 (11) *The use of pyrotechnics, pyrotechnic devices and pyrotechnic ma-*
2 *terials, and*

3 ~~++~~ (12) *other safeguards, protective measures or means*
4 *adapted to render inherently safe from the hazards of fire or the*
5 *loss of life by fire any building or other place in which people work,*
6 *live or congregate from time to time for any purpose, except build-*
7 *ings used wholly as dwelling houses containing no more than two*
8 *families.*

9 (b) *Any rules and regulations of the state fire marshal adopted*
10 *pursuant to this section may incorporate by reference specific edi-*
11 *tions, or portions thereof, of nationally recognized fire prevention*
12 *codes.*

13 (c) *The rules and regulations adopted pursuant to this section*
14 *shall allow facilities in service prior to the effective date of such*
15 *rules and regulations, and not in strict conformity therewith, to*
16 *continue in service, so long as such facilities are not determined by*
17 *the state fire marshal to constitute a distinct hazard to life or prop-*
18 *erty. Any such determination shall be subject to the appeal provi-*
19 *sions contained in K.S.A. 31-140, and amendments thereto.*

20 *New Sec. 8. Notice of a conviction of a violation of K.S.A. 21-*
21 *4106 or 21-4107, and amendments thereto, for maintaining or per-*
22 *mitting a public nuisance on the premises of a club or drinking*
23 *establishment licensed under the club and establishment act shall*
24 *be given to the director of the division of alcoholic beverage control.*
25 *In the case of a retailer licensed under K.S.A. 41-2701 et seq., and*
26 *amendments thereto, such notice shall be given to the governing*
27 *body of the city or county which issued the license to the retailer.*

28 *Sec. 9. K.S.A. 22-3902, 22-3904, 31-133 and 41-2611 and*
29 *K.S.A. 2002 Supp. 22-3901 and 41-2708 are hereby repealed.*

30 *Sec. 10. This act shall take effect and be in force from and after*
31 *its publication in the Kansas register.*

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Directs fire marshal to adopt rules and regulations regarding the use of
pyrotechnics

Sec. 8.

Provides for notice to the licensing authority of convictions of maintaining or
permitting a public nuisance; may need to be amended to specify who provides
the notice

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



TOPEKA

SENATE CHAMBER

Testimony SB 254

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

Mr. Chairman and members of the House Federal and State Affairs Committee, thank you for the opportunity to speak in support of SB 254.

The extremely unfortunate fire that occurred in Rhode Island and claimed the lives of 97 people could occur in our state as well. Following the news report of the Rhode Island club fire, representatives from the State Fire Marshall's office, the Division of Alcohol and Beverage Control, Tuck Duncan from the Kansas Wine and Spirits Wholesalers Association, and Philip Bradley from the Kansas Licensed Beverage Association met with the undersigned to introduce legislation to prevent such an event in our state.

Club and drinking establishment owners represent our friends and neighbors. They operate businesses that desire to maintain safe environments for their customers. However, recent events, such as the one in Rhode Island, demonstrate that occupants may be at an increased risk. Currently, a club fire like the one that occurred in Rhode Island could occur in our state.

SB 254 is introduced to prohibit the use of pyrotechnic material or devices in buildings that do not have sprinkler systems installed or buildings that are not built with fire retardant material.

I ask that the House Federal and State Affairs Committee consider this bill carefully as we attempt to provide a safe environment for our fellow Kansans.

Signed:

A handwritten signature in black ink, appearing to read 'Jim Barnett', written over a horizontal line.

Senator Jim Barnett

JAB/gkp

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DISTRICT OFFICE
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EMPORIA, KS 66801
620-342-2521

House Federal & State Affairs
January 22, 2004
Attachment 2

Date: Wed. 1-14-04

- () Topeka Capital Journal
- () Wichita Eagle
- () Kansas City Star
- () Chanute Tribune
- () Dodge City Daily Globe
- () Emporia Gazette
- () Garden City Telegram
- () Hays Daily News
- () Hutchinson News
- () Iola Register
- () Johnson County Sun
- () Junction City Daily Union
- () Kansas City Kansan
- () Lawrence Journal World
- () Leavenworth Times
- () Manhattan Mercury
- () Olathe Daily News
- () Parsons Sun
- () Pittsburg Morning Sun
- () Salina Journal
- () Winfield Daily Courier

Fire marshal says R.I. bar tragedy could happen in Kansas

Bill Draper
Associated Press Writer

TOPEKA — On Feb. 20, 2003, the State Fire Marshal's office received a complaint about a Montgomery County bar that one inspector deemed a "disaster waiting to happen."

The same day, 96 people died when a blaze roared through a packed West Warwick, R.I., nightclub. A similar tragedy could have happened anywhere in Kansas, State Fire Marshal Joe Odle said Tuesday.

"Probably Rhode Island went for a lot of years before something that horrific happened," he said. "But somehow everything came together and it did."

Odle told the Senate Federal and State Affairs Committee there are nightclubs all across Kansas that don't meet building and fire codes, his department can do nothing unless someone complains.

"A lot of clubs in the rural part of Kansas, we don't even know they're there," he said.

Odle, who was appointed by Gov. Kathleen Sebelius a week after the Rhode Island blaze, said his office doesn't have enough resources in its \$3.5 million budget to inspect all the bars in the state.

The problem is, he said, many counties don't have the resources, either.

"A lot of counties don't have building inspectors, and they have volunteer fire departments where nobody knows anything about building codes," Odle said after the

committee meeting. "It's not anybody's fault."

Tom Groneman, director of the state Division of Alcoholic Beverage Control, said his agents could keep an eye out for violations and report them to Odle's office. But with only 18 ABC employees in the field, the problem still won't be resolved, Goneman said.

"We need to sit down with our compliance people and enforcement people and see where we go," he said. "We offer a different set of eyes, and if something doesn't look right, we can report it. Any time we can cooperate, we will."

“ A lot of clubs in the rural part of Kansas, we don't even know they're there.

— Joe Odle
State Fire Marshal

In Montgomery County, one bar, which officials did not identify, could hold 1,000 people, but the exits would allow only 400 to leave quickly, said Karl McNorton, chief deputy state fire marshal, who investigated the complaint.

"That building holds three times the number of people as the Rhode Island bar," he

said. "There were no fire alarms, no sprinklers and exits built for half of its capacity. It was a disaster waiting to happen."

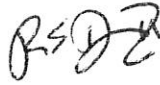
Odle said his office also received a complaint from Cloud County that a bar had a capacity of 550 people but sometimes had more than 1,400 jammed inside.

On the Net:
State Fire Marshal:
<http://www.accesskansas.org/firemarshal/>
Kansas Legislature: <http://www.kslegislature.org>

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

To: House Federal and State Affairs Committee

Re: SB 254

From: R.E. "Tuck" Duncan 
Kansas Wine & Spirits Wholesalers Association

Date: January 22, 2004

The Kansas Wine and Spirits Wholesalers Association (KWSWA) supports SB254 as amended by the Senate Committee and the Senate Committee of the Whole. KWSWA has worked closely with the sponsor of this bill to assure fairness, its broad applicability and secure public safety.

KWSWA would oppose any amendments to the bill regarding any other subject matter than the primary subject of the use of pyrotechnics.

Thank you for your kind attention to and consideration of this matter.

House Federal & State Affairs
January 22, 2004
Attachment 3



***Kansas
Licensed
Beverage
Association***

President
Tom Intfen

Secretary/Treasurer
Tammy Davis

Vice Presidents
Robert Farha
Glenda Dewey
Jim Hendricks
James Fager
Curt Melzer
Richard Markle
Paul Boone
Billy Long

Executive Director
Philip Bradley

745 New Hampshire
Suite Four
P.O. Box 442066
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Voice/Fax: 785.331.4282
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www.klba.org



*Testimony on ammended SB-254 on January 22, 2004
House Federal and State Affairs Committee*

Chairman and Representatives of the Committee,

I am Philip Bradley of the Kansas Licensed Beverage Association 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 realize the value of your time and will be brief.

We applaud the 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. As ammended this bill is a unencumbered change that will provide another tool to ensure safe entertainment venues.

In its original form we had serious objections, however in discussions with Senator Barnett, the State Fire Marshall, Staff, the ABC and members of our industry, we were able to forge this ammended bill. It now clearly addresses the concern and adds a solution.

It is worthy to note that this is an issue that is also covered by the local units of government and they already have two(2) 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.

We support SB-254 as ammended 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

Who is the KLBA

We are a group of small business owners who formed to educate ourselves about this industry and in the process help the public to understand as well. We represent the interests of over 3000 establishments, the men and women who as a part of their business hold a license for on premise alcohol service. We are the restaurants, hotels, clubs, bars, and caterers you frequent and enjoy.

House Federal & State Affairs
January 22, 2004
Attachment 4



K A N S A S

JOSEPH P. ODLE
FIRE MARSHAL

OFFICE OF THE KANSAS STATE FIRE MARSHAL

KATHLEEN SEBELIUS
GOVERNOR

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

Date: January 21, 2004

By: Joseph P. Odle
State Fire Marshal

presented by:
Rose Roxmiarek,
Director, Investigation Div.
Fire Marshal's Office

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 recent tragedies in Chicago and Rhode Island cause concern with the operation, crowd management, and entertainment activities in places of assembly. We perform inspections annually on all health care facilities, schools and universities, daycare centers, and correctional institutions. We also inspect fuel and propane facilities, and explosive storage magazines. We have occasion to inspect places of assembly, bars, taverns, clubs, or restaurants only when a complaint is filed. We have worked with the Division of Alcohol and Beverage Control to train their personnel to identify potential problems and notify us for an inspection. This has worked very well to date and we thank them for the cooperative effort.

The facilities we have inspected frequently have violations which include locked or blocked exits, no panic hardware, 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.

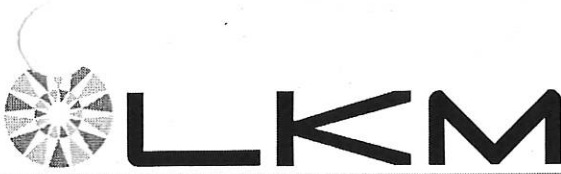
The use of pyrotechnics in these types of facilities causes us greater concern for the patrons. We certainly don't want a Rhode Island type of fire in our state and we want to insure that the facility and the pyrotechnic operators are compliant with the Kansas Fire Prevention Code. We are introducing a bill to address fireworks, both indoor and outdoor, as well as the qualifications of the operators.

We encourage passage of this bill.

700 SW JACKSON STREET, SUITE 600, TOPEKA, KS 66606

Voice 785-296-3401 Fax 785-296-0151 www.accesskansas

House Federal & State Affairs
January 22, 2004
Attachment 5



League of Kansas Municipalities

300 SW 8th Ave
Topeka, Kansas 66603-3912
Phone: (785) 354-9565
Fax: (785) 354-4186

TO: House Federal and State Affairs Committee
FROM: Sandy Jacquot, Director of Law/General Counsel
DATE: January 22, 2004
RE: SB 254

This bill would add violation of the criminal nuisance statutes 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 use of pyrotechnics, pyrotechnic devices and pyrotechnic materials is added to the list of activities that create a public nuisance. 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 this kind of law has to come from local officials. Simply fining club and drinking establishments for ordinance violations 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 of 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 actions serious enough to be deemed a public nuisance under the criminal statutes. 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.

House Federal & State Affairs
January 22, 2004
Attachment 6

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.

(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

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Ronald R. Hein

Attorney-at-Law

Email: rhein@heinlaw.com

**Testimony Re: SB 254
House Federal and State Affairs Committee
Presented by Ronald R. Hein
on behalf of
Kansas Restaurant and Hospitality Association
January 22, 2004**

Mr. 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 past, there have been two tragic incidents involving pyrotechnics which have prompted the sponsor to introduce SB 254. The incidents which occurred might have been avoided with this type of legislation. A review of less recent history will reveal other incidents which also might have been avoided if there had been sufficient safeguards regarding fire safety and building safety.

When SB 254 was originally introduced, KRHA did not object to the intent of the bill, but had concerns about the language in the bill. The KRHA requested that the original language be amended. Other groups made similar requests. The sponsor worked diligently to redraft the bill to accomplish his intent and goals, and yet to resolve the concerns which were raised about the original wording.

The KRHA not only has no objection to the bill, but stands in support of the legislation as it has been amended by the Senate. Since a lot of work and compromise went into this bill, we would be concerned about any substantive amendments to this legislation.

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