

MINUTES OF THE SENATE FEDERAL AND STATE AFFAIRS COMMITTEE

The meeting was called to order by Chairman Pete Brungardt at 10:30 a.m. on January 22, 2004 in Room 231-N of the Capitol.

All members were present.

Committee staff present:

Russell Mills, Legislative Research  
Dennis Hodgins, Legislative Research  
Theresa Kiernan, Revisor of Statutes' Office  
John Beverlin, Committee Secretary

Conferees appearing before the committee:

Senator Dave Jackson  
Tom Groneman, Executive Director, Alcoholic Beverage Control, Department of Revenue

Others attending:

See Attached List.

Chairperson Brungardt called the meeting to order. He asked staff member Theresa Kiernan to review **SB 295, KU hospital authority; agricultural remediation board; terms of members thereon, expiration dates**, for the committee.

Ms. Kiernan reviewed **SB 295**. She stated that the bill conforms the Kansas agricultural remediation board and the KU hospital authority language to the confirmation language that the statutes have, when there is a multi-member board or commission.

Ms. Kiernan stated that the bill did pass the Senate last session.

Chairperson Brungardt asked the committee for questions. None were asked. Chairperson Brungardt thanked Theresa and welcomed Senator Jackson.

Senator Jackson reviewed **SB 290, Revising the membership of the capitol area plaza authority**, for the committee (Attachment 1). After the explanation of the bill, he explained that the fiscal note stated there would be no impact on the state's general fund. However, he explained that while members of the Capitol Area Plaza Authority receive no wages, there would be less money spent on travel expenses associated with an eleven member committee instead of one consisting of thirteen members.

Chairperson Brungardt asked the committee for questions. None were asked. The Chairperson asked staff member Theresa Kiernan to provide a briefing on **SB 305, Liquor control act and cereal malt beverage laws; uniformity, Sunday sales**.

In addition to a review of **SB 305** (Attachment 2), Ms. Kiernan also provided for the Committee a copy of the constitutional provision concerning a city's powers of home rule (Attachment 3).

Ms. Kiernan reviewed each section of **SB 305** for the committee.

Chairperson Brungardt wanted to know if there was a problem with how the bill would affect in-state wineries and their ability to ship product.

Ms. Kiernan answered that she did not currently know.

Chairperson Brungardt stated that if there is a problem that it may need to be addressed. He then asked whether the bill prohibited more restrictive language.

Ms. Kiernan answered that the bill did prohibit more restrictive language.

CONTINUATION SHEET

MINUTES OF THE SENATE FEDERAL AND STATE AFFAIRS COMMITTEE at 10:30 a.m. on January 22, 2004 in Room 231-N of the Capitol.

Chairperson Brungardt asked whether the prohibition of more restrictive language was problematic for home rule considerations or normal authorities of the city, such as zoning ordinances.

Ms. Kiernan answered no. She stated the bill does not limit cities' zoning authority, but it requires that if zoning exists the liquor stores must comply with local zoning ordinances.

Chairperson Brungardt asked the committee for questions.

Senator Barnett asked Ms. Kiernan to expand on the advertising language that was not enforceable.

Ms. Kiernan reviewed section 11 on page 13. She stated that it was of the Attorney General's opinion that the language was so vague, it was unenforceable.

Senator Barnett asked who was in charge of regulating adult entertainment establishments.

Ms. Kiernan answered that the local authorities were in charge of that regulation.

Senator Barnett asked how pre-emptive language would effect local authorities to regulate adult entertainment.

Ms. Kiernan answered that as long as the regulation is on adult entertainment and not liquor, it should not interfere with the local authorities' ability.

Senator Barnett asked for more information concerning the issue of adult entertainment and the bill's effect on the ability of local authority to regulate.

Chairperson Brungardt asked the committee for additional questions. None were asked. He thanked Theresa and welcomed Tom Groneman, Executive Director, Alcoholic Beverage Control, Department of Revenue.

Mr. Groneman presented more information concerning **SB 305** (Attachment 4).

Chairperson Brungardt asked Ms. Kiernan whether the wording concerning population would be problematic.

Ms. Kiernan answered that she did not believe it would be problematic.

Senator Vratil stated that there was a difference between home rule for cities and home rule for counties. He explained that cities acquire their power to home rule through the constitution, but counties are different. They can only acquire home rule powers by statutes, enabling the legislature to change that power by changing the statute. He explained that **SB 305** would place a provision in the statutes specifically preventing counties from chartering out of the provisions. He stated that he did not believe the township population provisions make the act subject to county local control.

Chairperson Brungardt asked about Kansas wineries and market breweries being able to ship their product.

Mr. Groneman answered that currently Kansas wineries and market breweries were unable to ship their product within the state.

Chairperson Brungardt asked what was problematic with the wineries and breweries being able to ship their product within the state.

Mr. Groneman answered that if Kansas wineries and breweries were able to, but outside retailers were not allowed to ship in the state, there would be lawsuits.

Chairperson Brungardt stated that maybe what is needed is to allow outside retailers to ship in the state, then also allow Kansas wineries and breweries to ship within the state.

Laura Graham from the audience stated that the provision in the bill requires direct shipment to the retailer. The consumer then would have to go to the retailer to receive the product.

CONTINUATION SHEET

MINUTES OF THE SENATE FEDERAL AND STATE AFFAIRS COMMITTEE at 10:30 a.m. on January 22, 2004 in Room 231-N of the Capitol.

Chairperson Brungardt asked if it then could be allowed for Kansas wineries and breweries to ship to the retailers for the customer.

Ms. Graham stated that she supposed that would be the case. She explained that a problem would occur with regards to the possibility of underage individuals receiving the product, if the product was shipped directly to the consumer.

Senator Vratil explained that there was interest within the legislature to allow Kansas wineries to have the same benefits already possessed by out-of-state wineries, by allowing them the ability to ship in Kansas through a licensed retail dealer, where the consumer picks the product up from the dealer.

Chairperson Brungardt stated that this would still enable the state's control mechanisms.

Senator Vratil stated the one problem that occurs is the issue of collecting the gallonage tax on the product. He stated that the committee needs to make certain that the bill imposes the gallonage tax, not on what the retailer licensee receives as a fee for handling the transaction, but on the wine itself.

Mr. Groneman stated that a new mechanism for collecting the tax will have to be put in place.

Senator Vratil stated it was the intent of the Interim Judiciary Committee that the gallonage tax be collected on the wine that was shipped in from out-of-state, by the local retail dealer, and remitted to the state.

Russell Mills asked whether in-state wineries could market through retail liquor stores under current law.

Ms. Graham answered that she believed they could.

Mr. Mills stated that in-state wineries could sell at the winery and through retail liquor stores.

Ms. Graham stated that Mr. Mills was correct.

Senator Clark asked if whether through the current system, the distributor pays all of the taxes.

Ms. Graham stated that Senator Clark was correct.

Ms. Kiernan asked whether the language for the gallonage tax needed to be changed.

Mr. Groneman answered that gallonage tax is a process that needs to be made familiar to the retailers. He stated that there may be a problem with the 8 percent enforcement tax which is collected at the retail level on gross receipts. He explained that the only thing the retail liquor store is going to have is the five dollar handling fee and that there needs to be a mechanism for its collection.

Senator Teichman asked whether it was possible to separate the issues of wineries and Sunday sales.

Chairperson Brungardt asked the committee to comment on the idea of separating the two issues.

Senator Barnett stated that he shared the same opinion as Senator Teichman.

Chairperson Brungardt stated that he would address committee members individually.

Senator O' Connor asked whether the gallonage tax was different or similar to the enforcement tax.

Mr. Groneman answered that the gallonage tax was different. He explained that the tax depended on volume and the percentage of the wine.

Senator O' Connor asked if the gallonage tax was a percentage of the retailer's total sales or whether it was a separate form the retailer had to fill out. She also wanted to know whether it would be complicated for the

CONTINUATION SHEET

MINUTES OF THE SENATE FEDERAL AND STATE AFFAIRS COMMITTEE at 10:30 a.m. on January 22, 2004 in Room 231-N of the Capitol.

retailer to perform this duty.

Mr. Groneman answered that it could be complicated for the retailer to fill the separate form out but the ABC would attempt to make it as uncomplicated as possible.

Senator O' Connor asked if the report could be included on the other paper work the retailer is already doing.

Mr. Groneman said the ABC would have to look into the idea.

Senator O' Connor asked how many distributors were in the state.

Senator Vratil answered that there were two or three distributors of wine in the state.

Senator Lyon expressed concern about the many different aspects of the current bill.

Chairperson Brungardt stated that there were some unresolved questions concerning liquor regulations and adult entertainment as well as the issue of how to collect the taxes in an orderly process. He asked the staff members and the ABC to do more research into these issues.

Senator O' Connor expressed concern over section 10.

Senator Barnett asked about the fiscal impact of Sunday sales. He stated that he had read new reports stating Sunday sales would increase revenue for the state. He stated he was surprised with Mr. Groneman's comment that Sunday sales would not increase revenue for the state.

Mr. Groneman stated border counties would feel an increase in business from individuals who would normally travel across state lines to buy alcohol. However, he explained, other counties not on the border have not shown an increase in volume of sales.

Mr. Barnett asked whether the additional tax revenue from the border counties were significant for the state.

Mr. Groneman answered that when the increase gained by the border counties is spread over the entire state, the revenue generated is determined not to be that significant.

Senator Barnett stated there were several issues in which he had interest in knowing. He asked for a comparison between Missouri and Kansas with regards to liquor laws, minimum drinking age and when it was enacted, legal blood alcohol level, and tax rates.

Senator Barnett asked Mr. Groneman if he could provide a comparison of sales in cereal malt beverage versus a retail store's age qualifications and background checks.

Chairperson Brungardt asked the committee for questions. None were asked.

The meeting was adjourned at 11:30. The next meeting is scheduled for January 27, 2004, at 10:30 a.m. in room 231-N.

Senate Federal and State Affairs Committee

Date: JANUARY 22, 2004

Name:

Representing:

Sandy Jaquet	LKM
Rob Anderson	CASEY'S GEN. STORES
Hal Damron	Miller Brewing Co.
Mary Jane Stankiewicz	KARB
BILL SNEED	U.K.H.A.
Jesse McCumy	Commerce
Janna Dunbar	Commerce
Kelly Peak	SRS - AAPS
Kathy Decker	Beverage DeCS
Amy Campbell	KARB
Judy Shaw	PMCA of Kansas
TOM PALACE	PMCA OF Kansas
Neal Whitaker	K BWA
Phil BRADLEY	KLBA
Carolyn Muddendorf	45 St No. Cass
Erik Sartorius	City of Overland Park
Garr Young	Secretary of Administration
Whitney Damron	Distilled Spirits Council of the U.S.



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 TOPEKA STATE HOSPITAL CEMETERY  
 MEMORIAL ADVISORY COMMITTEE  
 JOINT COMMITTEE ON CHILDREN'S ISSUES  
 SPECIAL COMMITTEE ON KANSAS SECURITY

**Testimony on Senate Bill 290**  
 Before the Senate Federal and State Committee  
 Pete Brungardt, Chairman

This past summer I was notified by our Senate President that I had been appointed to the Capitol Area Plaza Authority. Having only a vague notion of this body, I requested from the Legislative Research Department information regarding duties, functions and membership of the Authority.

The following information was provided by Leah Robinson, Principal Fiscal Analyst for the Legislative Research Department:

The Authority was established under KSA 75-2237 as a successor to the Capitol Area Planning Commission which had been created in 1965 to address long-range planning for the area adjacent to the State Capitol. The Authority consists of the following 13 members who serve four-year terms:

- One member of the House of Representatives appointed by the Speaker;
- One member of the Senate appointed by the President of the Senate;
- One member of the House of Representatives appointed by the House Minority Leader;
- One member of the Senate appointed by the Senate Minority Leader;
- The Secretary of Administration;
- A representative of the city government of Topeka appointed by the Mayor
- A person experienced in land use planning appointed by the Governor;
- The Judicial Administrator; and
- Five additional members appointed by the Governor

The Capitol Area Plaza Authority is attached to the Department of Administration for all budgeting, purchasing, and related management functions. The Governor names the Chairman of the Authority, and the Authority is required to have at least two regular meetings each year. The Secretary of Administration serves as the ex officio Secretary of the Authority but is not a voting member.

The basic responsibilities of the Authority are established under the provisions of KSA 75-2240a. The Authority is charged with the development and continued oversight of a long-range plan of development for the State Capitol area, which is defined as the area around the State Capitol

Senate Federal and State Affairs Com.

Date: JANUARY 22, 2004

Attachment: # 1

building which is deemed appropriate by the Authority for the planning required. The plan is to include the following elements:

- A determination of the building, land, and parking needs of state agencies in the Capitol area;
- Recommendations on the proper use of land in the Capitol area;
- Recommendations concerning traffic management, landscaping, and beautification in the Capitol area; and
- Recommendations for implementation of the plan.

The Authority is also directed to work in close association with the city of Topeka on issues of potential overlapping jurisdiction, including widening of streets, relocation of utility lines, zoning requirements, and determination of proportionate shares of costs to the state and the city for street and utility changes.

KSA 75-2240a also authorizes the Capitol Area Plaza Authority to issue bonds for the purpose of planning, architectural services or other services for the development of or constructing, furnishing, and equipping any building, improvement, or facility located within the county. No bonds can be issued, however, without the authorization of the Legislature.

As I reviewed the background information regarding the duties, I noticed that the authority, among its duties, made recommendations regarding landscaping and beautification of the Capitol grounds and areas which clarified the reason that I had received this prestigious appointment.

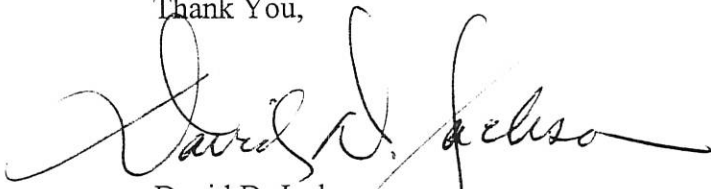
I also noticed that the authority consisted of 13 members, 7 of which serve at the appointment of the Governor. Only 4 serve as appointments by the Legislature.

Because I believe that smaller committees are more functional than larger committees and because I felt that narrowing the ratio of members between the Executive Branch and the Legislative Branch would be a positive step. I checked with our Senate President to determine if he agreed.

The proposed SB 290 therefore reduces the Governor's additional appointees from 5 to 3 and the remainder of the language changes provide the mechanics to accomplish this.

I would request your approval and stand for questions.

Thank You,



David D. Jackson  
Senator, 18<sup>th</sup> District

NORMAN J. FURSE, ATTORNEY  
REVISOR OF STATUTES

JAMES A. WILSON III, ATTORNEY  
FIRST ASSISTANT REVISOR



LEGAL CONSULTATION—LEGISLATIVE  
COMMITTEES AND LEGISLATORS  
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### MEMORANDUM

**To:** Senate Committee on Federal and State Affairs  
**From:** Theresa Kiernan, Senior Assistant Revisor of Statutes  
**Date:** January 20, 2004  
**Subject:** Senate Bill No. 305

- Amends various provisions within the liquor control act to eliminate nonuniform provisions.
- Extensive clean up amendments were adopted to delete archaic or confusing language.
- Amends K.S.A. 19-101a by specifically prohibiting the exercise of county home rule authority to exempt from any provision in the liquor control act. (Sec. 1)
- Strengthens the preemption language in K.S.A. 41-208. (Sec. 2)
- Provides a procedure for authorizing Sunday sales of alcoholic liquor and cereal malt beverage at the option of cities and townships. (Secs. 5 and 10)
- Amends K.S.A. 41-714 to delete the prohibition against the display of liquor in any window of a liquor store. (Sec. 11)
- Names K.S.A. 41-2701 et seq. as the Kansas Cereal Malt Beverage Act and adds strong preemption language similar to that in the Liquor Control Act. (Sec. 13)

Senate Federal and State Affairs Com.

Date: JANUARY 22, 2004

Attachment: # 2



- Repeals numerous statutes relating to requirements for minimum price mark-ups.
- Authorizes the direct shipment of out of state wine not otherwise available for sale in Kansas under the liquor control act. (Sec.15)

MemoSB305.wpd

Article 12 § 5 Cities' powers of home rule.

(a) The legislature shall provide by general law, applicable to all cities, for the incorporation of cities and the methods by which city boundaries may be altered, cities may be merged or consolidated and cities may be dissolved: Provided, That existing laws on such subjects not applicable to all cities on the effective date of this amendment shall remain in effect until superseded by general law and such existing laws shall not be subject to charter ordinance.

(b) Cities are hereby empowered to determine their local affairs and government including the levying of taxes, excises, fees, charges and other exactions except when and as the levying of any tax, excise, fee, charge or other exaction is limited or prohibited by enactment of the legislature applicable uniformly to all cities of the same class: Provided, That the legislature may establish not to exceed four classes of cities for the purpose of imposing all such limitations or prohibitions. Cities shall exercise such determination by ordinance passed by the governing body with referendums only in such cases as prescribed by the legislature, subject only to enactments of the legislature of statewide concern applicable uniformly to all cities, to other enactments of the legislature applicable uniformly to all cities, to enactments of the legislature applicable uniformly to all cities of the same class limiting or prohibiting the levying of any tax, excise, fee, charge or other exaction and to enactments of the legislature prescribing limits of indebtedness. All enactments relating to cities now in effect or hereafter enacted and as later amended and until repealed shall govern cities except as cities shall exempt themselves by charter ordinances as here in provided for in subsection (c).

**(c)(1) Any city may by charter ordinance elect in the manner prescribed in this section that the whole or any part of any enactment of the legislature applying to such city, other than enactments of statewide concern applicable uniformly to all cities, other enactments applicable uniformly to all cities, and enactments prescribing limits of indebtedness, shall not apply to such city.**

(2) A charter ordinance is an ordinance which exempts a city from the whole or any part of any enactment of the legislature as referred to in this section and which may provide substitute and additional provisions on the same subject. Such charter ordinance shall be so titled, shall designate specifically the enactment of the legislature or part thereof made inapplicable to such city by the adoption of such ordinance and contain the substitute and additional provisions, if any, and shall require a two-thirds vote of the members-elect of the governing body of such city. Every charter ordinance shall be published once each week for two consecutive weeks in the official city newspaper or, if there is none, in a newspaper of general circulation in the city.

(3) No charter ordinance shall take effect until sixty days after its final publication. If within sixty days of its final publication a petition signed by a number of electors of the city equal to not less than ten percent of the number of electors who voted at the last preceding regular city election shall be filed in the office of the clerk of such city demanding that such ordinance be submitted to a vote of the electors, it shall not take effect until submitted to a referendum and approved by a majority of the electors voting thereon. An election, if called, shall be called within thirty days and held within ninety days after the filing of the petition. The governing body shall pass an ordinance calling the election and fixing the date, which ordinance shall be published once each week for three consecutive weeks in the official city newspaper or, if there be none, in a newspaper of general circulation in the city, and the election shall be conducted as elections for officers and by the officers handling such elections. The proposition shall be: "Shall charter ordinance No. \_\_\_\_\_, entitled (title of ordinance) take effect?" The governing body may submit any charter ordinance to a referendum without petition by the same publication of the charter ordinance and the same publication of the ordinance calling the election as for ordinances upon petition and such charter ordinance shall then become effective when approved by a majority of the electors voting thereon. Each charter ordinance becoming effective shall be recorded by the clerk in a book maintained for that purpose with a statement of the manner of adoption and a certified copy shall be filed with the secretary of state, who shall keep an index of the same.

**(4) Each charter ordinance enacted shall control and prevail over any prior or subsequent act of the governing body of the city and may be repealed or amended only by charter ordinance or by enactments of the legislature applicable to all cities.**

**(d) Powers and authority granted cities pursuant to this section shall be liberally construed for the purpose of giving to cities the largest measure of self-government.**

(e) This amendment shall be effective on and after July 1, 1961.

Senate Federal and State Affairs Com.

Date: JANUARY 22, 2004

Attachment: # 3

Briefing on SB 305  
Concerning Alcoholic Beverages and Regulation thereof

To

The Senate Committee on Federal and State Affairs

by Tom Groneman  
Director  
Alcoholic Beverage Control

January 22, 2004

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**Brief of Bill**

Senate Bill 305, as Introduced, relates to alcoholic beverages. The proposal corrects existing statutes as it relates to uniformity, allows for Sunday sales of beer and cereal malt beverage (CMB) after approval by the city or county, and allows for the purchase of wine from out of state retailers. The proposal amends the liquor control act to remove existing language that had been determined to make the statute nonuniform towards cities. Sunday sales of beer and CMB must be approved by the city or county and it is restricted to the hours of 12:00 pm to 8:00 pm. The section enabling out of state purchase of wine requires the wine not otherwise be available for sale in Kansas, be delivered to a licensed Kansas liquor retailer, and the retailer is required to collect all taxes imposed, which would include the liquor gallonage tax in addition to the liquor enforcement tax.

The act would be effective July 1, 2004.

**Fiscal Impact**

The proposal would have minimal positive impact on state tax receipts. Allowing Sunday sales of beer and CMB would not result in new liquor tax revenues. The ability to purchase wines from out of state retailers for shipment into Kansas would result in additional gallonage and enforcement tax, but it is believed to be minimal.

**Administrative Impact**

Changes in forms and processing will be required to enable liquor retailers to remit the gallonage tax on wine delivered to their stores as a result of an out-of-state purchase by an individual. There would also be additional changes to management of the wine brand database for use by the public and tracking cities and counties authorizing Sunday sales. The costs would be absorbed by the department.

The estimated IS resources necessary to implement this bill are 10 days on in-house APA time. If the combined impact of implementing all changes from enacted legislation affecting the Department of Revenue exceeds the Department's programming resources, or if the time period for implementing such changes is sufficiently short, expenditures for contract programmer services, which are beyond the Department's budget, may be required.

**Taxpayer/Customer Impact**

Consumers would have a larger selection of wines to choose from in Kansas, and would have the option of purchasing beer and cereal malt beverage on Sundays where approved. Retailers who accept direct shipment of wines would be subject to greater reporting requirements and be required to collect the gallonage tax.

**Administrative Problems, Legal Impact and Comments**

The primary goal of this bill appears to be to make the Liquor Control Act uniform so that cities and counties cannot charter out of any of its provisions. The bill accomplishes that goal with regard to cities, but it may not with regard to counties. Section 5, which amends K.S.A. 41-303, may still allow room for a

Senate Federal and State Affairs Com.

Date: JANUARY 22, 2004

Attachment: # 4

“nonuniform” argument to be made in that some counties do not have any townships with a population of more than 5,000, whereas others clearly do. In order to ensure uniformity throughout the Act so as to altogether close the door on any city or county attempting to charter out of the Act, all provisions tied to population or size—and particularly those setting different rules depending on such variables—should be eliminated from the Act.

Section 5 requiring a township to have a population of at least 5,000 for a liquor store should be deleted as it may raise nonuniformity issues. The population requirement is the issue that Shawnee County used to opt out of the liquor control act. Even though it is not believed that the county had the right to opt out based on that requirement, it was never challenged, and it would be safer to delete that requirement.

In Section 10, subsection (a), we believe the word “resolution” throughout instead should be “ordinance,” due to the governing body at issue being a city, rather than a county.

In Section 16, concerning the importing of wine into Kansas, liquor retailers would be responsible for the collection of the gallonage tax. At the present time all gallonage taxes are collected at the distributor level. The enforcement tax is a tax on gross receipts and the only tax that would be collected would be on the amount of receipts received by the retailer from the handling fees. Most probably, the cost of the wine would be paid to the out-of-state retailer and there would be no enforcement tax collected on the actual cost of the wine.

There is also the possibility that the provision to allow direct shipment of wine could have some unintended effects. Only wines, not otherwise available in Kansas, can be purchased by direct shipment. Some wineries with brands that have a low sales volume could cancel that brand in Kansas, and then sell them through the new direct shipment provision. There is a real possibility someone may challenge the restrictions in the bill, and if they were to win, it could open direct shipment beyond the scope intended in the bill, basically unrestricted direct shipment. The whole issue of direct shipment has been the subject of many legal challenges. Although the provision, as drafted, is different from most scenarios that have been challenged, it still could result in litigation. Currently, Kansas licensees who sell alcoholic liquor at retail in original, unopened containers, for consumption off the licensed premises (i.e. retailers, farm wineries and microbreweries), are prohibited from making delivery anywhere but on the licensed premises; in other words, they can't ship alcoholic products to a customer. Granted, the legislation drafted still would require that customers accept delivery of out-of-state wines on a licensed retailer's premises, but Kansas-licensed industry members still may view this as disparate treatment and challenge it.