

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 27, 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:

Neal Whitaker, Kansas Beer Wholesalers Association
Tuck Duncan, Kansas Wine and Spirit Wholesalers Association
Bob Alderson, Casey's General Stores Inc.
Philip Bradley, Kansas Licensed Beverage Association
Tom Palace, Petroleum Markets and Convenience Store Association
Martin Platt, Kansas Association of Beverage Retailers
Amy Campbell, Kansas Association of Beverage Retailers
Tom Groneman, Alcoholic Beverage Control, Department of Revenue

Others attending:

See Attached List.

Chairperson Brungardt called the meeting to order. He started the meeting with a bill introduction by Senator Gilstrap.

Senator Gilstrap stated that he would like the committee to introduce a bill that would amend KSA 19-228 concerning a county's quarterly reports of expenditures.

Senator Gilstrap made a move to introduce the bill. Senator Lyon seconded the motion. The motion passed.

Chairperson Brungardt briefed the committee on the agenda for the day concerning testimony to be presented for **SB 305** and called Neal Whitaker to testify.

Mr. Whitaker presented testimony for **SB 305, Liquor control act and cereal malt beverage laws; uniformity, Sunday sales, (Attachment 1)**.

Chairperson Brungardt thanked Mr. Whitaker and told the committee to hold questions until after all of the testimony has been presented. He welcomed Tuck Duncan to the podium.

Mr. Duncan presented testimony for **SB 305 (Attachment 2)**.

Chairperson Brungardt thanked Mr. Duncan and welcomed Bob Alderson to the podium.

Mr. Alderson presented testimony for **SB 305 (Attachment 3)**.

Chairperson Brungardt thanked Mr. Alderson and welcomed Philip Bradley to the podium.

Mr. Bradley presented testimony for **SB 305 (Attachment 4)**. Mr. Bradley added to his testimony by stating that in order to keep things uniform, micro-breweries and on-sight farm wineries that sell packaged products, should be allowed the same hours of operation as stated in the bill.

Chairperson Brungardt thanked Mr. Bradley and welcomed Tom Palace to the podium.

Mr. Palace presented testimony for **SB 305 (Attachment 5)**.

CONTINUATION SHEET

MINUTES OF THE SENATE FEDERAL AND STATE AFFAIRS COMMITTEE at 10:30 a.m. on January 27, 2004 in Room 231-N of the Capitol.

Chairperson Brungardt thanked Mr. Palace and welcomed Martin Platt to the podium.

Mr. Platt presented testimony for **SB 305** (Attachment 6).

Chairperson Brungardt thanked Mr. Platt and welcomed Amy Campbell to the podium.

Ms. Campbell presented testimony for **SB 305** (Attachment 7).

Chairperson Brungardt thanked Ms. Campbell and welcomed Tom Groneman to the podium.

Mr. Groneman presented testimony for **SB 305** (Attachment 8).

Chairperson Brungardt asked the committee for questions.

Senator Barnett asked Mr. Whitaker who would benefit from increased revenue due to Sunday sales.

Mr. Whitaker answered that a study done on Wyandotte County revealed an eight percent increase in sales for those liquor stores. He stated that a store in a less populace county also showed a 35 percent sales increase.

Senator Barnett stated that Sunday sales would increase revenue for the state.

Mr. Whitaker answered that revenue would increase for border counties.

Senator Barnett asked who would benefit from Sunday Sales.

Mr. Whitaker answered that distributors who serve those border counties would have an increase in revenue, as well as the state of Kansas, because of the increase in revenue from the gallonage and enforcement taxes.

Senator Barnett asked for the names of the distributors that would benefit from the increased sales.

Mr. Whitaker answered that Crawford Sales of Olathe, Schatz Distributors of Wyandotte County, and Big Sky Distributors of Lenexa distribute to the border counties of northeastern Kansas. He explained that these distributors have already benefitted from Sunday sales. He further stated that distributors of northwest and southwest Kansas would also benefit from Sunday sales.

Mr. Alderson stated that if **SB 305** was passed as is, there would also be an increase in revenue from the sale of CMB in those border counties.

Senator Barnett asked Mr. Duncan about problems in collecting gallonage taxes.

Mr. Duncan explained that there were no taxes collected on the illegal shipment of wine. He stated that the provision allowed for both the collection of the gallonage and the eight percent excise tax to be collected at the retail liquor store and would create no new tax collection system.

Senator Barnett stated he had heard that the state would not be able to collect all the taxes from wines shipped into the state.

Chairperson Brungardt called on Mr. Groneman to comment on Senator Barnett's question.

Mr. Groneman stated that he did not think there would be a problem with the collection of the gallonage tax, but that they needed to create new forms for the retailers. He stated that concerning the liquor excise tax, the only thing the local retail liquor stores would be collecting is a five dollar fee from the purchaser of the out-of-state wine. The excise tax, he further explained, is on gross receipts, and if the liquor store is only receiving five dollars for the transaction, then the excise tax would be on the five dollar fee.

CONTINUATION SHEET

MINUTES OF THE SENATE FEDERAL AND STATE AFFAIRS COMMITTEE at 10:30 a.m. on January 27, 2004 in Room 231-N of the Capitol.

Mr. Duncan stated that federal law requires a receipt of purchase, for the alcoholic beverage, to accompany the shipment of the beverage. This enables, he explained, the retailer to know the gross price of the product, so the retailer could apply the appropriate eight percent tax.

Senator Vratil asked if there was anything to discourage wineries from shipping product directly to customers.

Mr. Duncan answered no. He stated that the actual provision came from individuals who want to purchase wine lawfully. He explained that people have been forced into non-compliance of the law. Mr. Duncan further explained that once a mechanism was in place, the state can use the 21st Amendment Enforcement Act, which empowers the Attorney General to utilize the Federal Court to enjoin those shippers from out-of-state who are not complying with state law.

Senator Vratil observed that it would cost those Kansas residents who wanted to follow the law more money, than it would for those residents who had the wine shipped directly to their door.

Mr. Duncan explained that this was a way for vintages and small production products to reach customers lawfully.

Senator Clark asked whether marginal vendors would stay within the state system as it exists, or if they would move more toward direct sale to retailers.

Mr. Duncan explained that the sales in question were more for personal use. He further explained that the type of commerce in which Senator Clark was referring is called allocated goods. The bill only allows the purchase of the products for one's own personal consumption.

Senator Barnett addressed Ms. Campbell. He expressed concern about compliance rates of non-retail liquor store sales. He asked whether **SB 305** would maintain a uniform structure of compliance checks for retail liquor stores.

Ms. Campbell stated **SB 305** would make no change as it pertains to how the ABC regulates a retail liquor store. She also stated that the bill does not make a change to the fact the ABC does not regulate CMB outlets.

Senator Barnett observed that with increased access to retail outlets with lower compliance rates, you would increase access to underage individuals.

Rebecca Rice, from the audience, asked the committee to wait two years for the U.S. Supreme Court to rule, before allowing out-of-state wineries to ship into the state.

Chairperson Brungardt reviewed the agenda for the rest of the week. He then adjourned the meeting.

The meeting was adjourned at 11:45 a.m. The next meeting is scheduled for January 28, 2004, at 10:30 a.m. in room 231-N.

Senate Federal and State Affairs Committee

Date: JANUARY 27, 2004

Name:

Representing:

Neal Whiteaker

KBWA

Tom Groneman

ABC

Laura Graham

"

Janna Dunbar

Commerce

Norm Jennings

KCCWMA

Amy Campbell

KABR

Winnfield ATKINS

DIAGEO

Whitney Dameron

Distilled Spirits Council of the U.S.

BERMAN OBALDIA

DISTILLED SPIRITS Council of the U.S.

Andy Shaw

PMCA of Ks

Ross Schimmels

Standard Beverage

John Davis

Davis Retail Liqueur (Wichita)

MARC BLY

Bly's " " 12500 55th

Cheri Froetscher

Budget Div

Martin Platt

PLATT Liqueur / KABR

Tuck DUNCAN

Ks. wine & spirits wholesalers.

David Owen

Homeless Come Home

CRAZY LIQUOR LAWS

Stringent state laws handcuff local liquor sellers

Two days until the holiday party, and you still don't have your act together. You penciled in the caterer and the banquet hall, but

alcohol nationwide.

But America changed, writing another amendment that reversed prohibition. Kansas didn't do so until 1949,

SB 305

SENATE FEDERAL AND STATE AFFAIRS COMMITTEE

JANUARY 27, 2003

TESTIMONY - NEAL WHITAKER

THIS 1994 HEADLINE FROM THE *JOHNSON COUNTY BUSINESS TIMES* TELLS THE STORY TODAY. IF THE LAWS THAT APPLY TO THE ALCOHOLIC BEVERAGE INDUSTRY APPLIED TO GENERAL RETAILERS THEY WOULD BE CHANGED QUICKLY.

BUT, AS WE KNOW, THE ALCOHOLIC BEVERAGE INDUSTRY MUST OPERATE UNDER DIFFERENT RULES AND CONDITIONS THAN GENERAL RETAIL ESTABLISHMENTS.

ALTHOUGH THERE ARE SOUND REASONS FOR MANY OF THE DIFFERENCES BETWEEN THE THREE-TIERED ALCOHOLIC BEVERAGE INDUSTRY AND GENERAL RETAIL ESTABLISHMENTS, THERE ARE LESS SOUND REASONS FOR NOT SELLING ON SUNDAY. THE PRIMARY REASON FOR PROHIBITING PACKAGE SALES ON SUNDAYS IS AN ANCIENT ADHERENCE TO A BELIEF THAT ACTIVITY - INCLUDING PURCHASING, WORKING AND CONSUMING - SHOULD BE CURTAILED ON THE CHRISTIAN SABBATH. HOWEVER, KANSAS REPEALED ALL "BLUE LAWS" DECADES AGO...EXCEPT FOR PACKAGE LIQUOR AND CMB SALES.

EXCEPT FOR THE AFOREMENTIONED RETAILERS, ALL OTHER BUSINESS OWNERS DECIDE - WITHOUT THE "ASSISTANCE" OF THE STATE - WHETHER TO WORK ON THE CHRISTIAN SABBATH.

AND, AT THE PRESENT TIME, LOCAL COMMUNITIES ARE DECIDING WHETHER LOCAL STANDARDS SUPPORT OR OPPOSE THE SALE OF PACKAGE LIQUOR ON THE CHRISTIAN SABBATH. WE LIKE THE FACT THAT THIS LEGISLATION, AND SUB. FOR SB 2, RETAINS THE RIGHT OF COMMUNITIES TO DECIDE WHETHER LOCAL STANDARDS SUPPORT SUNDAY PACKAGE LIQUOR SALES. FOR AN ISSUE THAT IS SO CLOSELY TIED TO THE CHRISTIAN FAITH, WE BELIEVE LOCAL COMMUNITIES SHOULD MAKE THAT DECISION RATHER THAN THE KANSAS LEGISLATURE. ALTHOUGH THE U.S. SUPREME COURT HAS BEEN LARGELY SUPPORTIVE OF CHRISTIAN SABBATH CLOSING LAWS, DENYING THAT SUCH LAWS VIOLATE THE REQUIRED SEPARATION OF CHURCH AND STATE, WE BELIEVE THERE IS A LEGITIMATE CONSTITUTIONAL QUESTION ABOUT A STATUTE THAT FORCES GOVERNMENT CLOSING OF ONE TYPE OF LIQUOR SALE ESTABLISHMENT BUT NOT ANOTHER. ESPECIALLY WHEN ONE OF THE CONTINUAL AND REGULARLY STATED REASONS FOR THE FORCED CLOSING IS TO MANDATE THE OPPORTUNITY FOR SELLERS AND BUYERS ALIKE TO OBSERVE THE CHRISTIAN SABBATH".

998,425 OR 37% OF KANSANS ALREADY LIVE IN A COUNTY THAT HAS RETAIL LIQUOR STORES OPEN ON SUNDAYS AND HOLIDAYS. ADDITIONALLY, MANY CITY COUNCILS HAVE CONSIDERED, THEN REJECTED, ADOPTING SIMILAR ORDINANCES BECAUSE THE COUNCIL MEMBERS EITHER (1) DID NOT BELIEVE THE CHANGES REFLECTED

Senate Federal and State Affairs Com.

Date: JANUARY 27, 2003

Attachment: # 1

THE DOMINANT STANDARDS IN THEIR COMMUNITY; OR (2) THERE WAS INSUFFICIENT INTEREST TO PERSUADE THEM TO ACT; OR (3) ARE WAITING ON THE KANSAS SUPREME COURT.

BECAUSE CITIES HAVE BOTH ADOPTED **AND** REJECTED THE ORDINANCES IMPLY THAT – **IN THIS INSTANCE** – LOCAL GOVERNMENTS SHOULD BE ALLOWED TO DETERMINE RETAIL SALE POLICY BASED ON LOCAL COMMUNITY STANDARDS.

WE BELIEVE THIS PHILOSOPHY SHOULD BE EXTENDED TO HOLIDAYS AS WELL. MANY CITIES THAT HAVE CHOSEN TO ALLOW PACKAGE SALES ON SUNDAY HAVE DETERMINED THAT SALES ON MEMORIAL DAY, FOURTH OF JULY, AND LABOR DAY ARE ALSO APPROPRIATE. ON-PREMISE SALES BEER WINE AND SPIRITS AND ALL CMB SALES ARE MADE ON THESE HOLIDAYS NOW. WE REQUEST THAT SB 305 BE AMENDED TO ALLOW COMMUNITIES TO CONTINUE TO DETERMINE WHETHER PACKAGE SALES ON THESE HOLIDAYS ARE APPROPRIATE.

BEER IS SOLD 24/7 IN OKLAHOMA. THEIR PER CAPITA CONSUMPTION IS LOWER THAN KANSAS. BEER IS ALSO SOLD ON SUNDAY IN MISSOURI, NEBRASKA, AND COLORADO. KANSAS RETAILERS IN BORDER COUNTIES HAVE REPEATEDLY ASKED THIS LEGISLATURE FOR THE RIGHT TO SELL THEIR PRODUCT ON THE SAME DAYS AS OUR BORDER STATES. MOST "BORDER COUNTY" KANSAS RETAILERS ARE ALREADY AT A SEVERE DISADVANTAGE BECAUSE OF KANSAS' HEAVY LIQUOR TAX BURDEN. LIMITING DAYS OF SALE ONLY ADDS TO THEIR DIFFICULT SITUATION.

IF KANSAS RETAILERS ARE LOSING SALES, THEN KANSAS IS LOSING TAX REVENUE – A SITUATION THIS LEGISLATURE SEEMS TO WANT TO LIMIT. AND, KANSAS IS NOT LOSING JUST LIQUOR TAXES. WHEN KANSAS CROSS THE STATE LINE TO PURCHASE ALCOHOLIC BEVERAGES, THEY PURCHASE OTHER ITEMS – ESPECIALLY THOSE THAT ARE TAXED LOWER OR NOT TAXED AT ALL BY THE BORDER STATE: GROCERIES, GASOLINE, AND TOBACCO PRODUCTS.

SB 305 MAKES THE LIQUOR CONTROL ACT UNIFORM.

THE RECENT CHARTER ORDINANCES ADOPTED IN LEAVENWORTH AND EDWARDSVILLE HAVE UNIQUELY DEMONSTRATED THAT HOME RULE IS NOT AN UNLIMITED AUTHORITY FOR CITIES. THE LEAVENWORTH AND EDWARDSVILLE ORDINANCES HAVE SHOWN THE DIFFICULTY IF NOT IMPOSSIBILITY OF CITIES TO CREATE A NEW LIQUOR DISTRIBUTION, REGULATION AND TAXATION SYSTEM WITHIN THEIR CITY LIMITS. WE BELIEVE THE CHARTER ORDINANCES ADOPTED BY LEAVENWORTH AND EDWARDSVILLE ARE FLAWED AND, THEREFORE, UNENFORCEABLE – IF CHALLENGED. IF UNCHALLENGED, WE BELIEVE GREAT CHANGE WILL OCCUR IN THOSE TWO TOWNS BUT NOT THE CHANGE THE CITY COUNCIL MEMBERS CLAIM TO DESIRE. WE BELIEVE DISTRIBUTORS – BOTH BEER AND SPIRITS DISTRIBUTORS - WILL BE PROHIBITED FROM MAKING DELIVERES TO LIQUOR RETAILERS **AND** CMB RETAILERS BECAUSE OF THE PARTICULAR STATUTES THAT WERE RENDERED NULL AND VOID BY THE CHARTER ORDINANCE.

I HEAR A VERY DRY WIND BLOWING THROUGH LEAVENWORTH AND EDWARDSVILLE...

EXCEPTIONS HAVE MADE THE LIQUOR CONTROL ACT SUBJECT TO ATTACK FROM INTERESTS OUTSIDE OF KANSAS.

KANSAS HAD A STATUTE THAT BARRED NON-RESIDENT COMPANIES AND INDIVIDUALS FROM BECOMING SPIRITS, WINE OR BEER WHOLESALERS. THEN A STATUTORY EXCEPTION WAS MADE: A LICENSE WOULD BE GIVEN TO NON-RESIDENTS WHO HAD HELD A LICENSE – AS A RESIDENT – FOR 10 CONSECUTIVE YEARS. THAT EXCEPTION WAS USED AGAINST THE STATE AS A PRIMARY ARGUMENT BY THE PLAINTIFFS - AND REFERENCED BY THE JUDGE - IN

THE LAZER LITIGATION. THE JUDGE SUBSEQUENTLY STRUCK THE RESIDENCY REQUIREMENT FOR WHOLESALERS. IT COST THE STATE HUNDREDS OF THOUSANDS IN LEGAL FEES. WE STRONGLY ADVISE AGAINST EXCEPTIONS THAT MIGHT CAUSE SIMILAR PROBLEMS IN THE FUTURE.

ACTIONS THAT HIGHLIGHT OUR CONCERNS REGARDING "SPECIAL LEGISLATION FOR A FEW" INCLUDE:

- MICHIGAN RECENTLY LOST A U. S. COURT OF APPEALS CASE THAT WILL FORCE THE STATE TO ALLOW DIRECT SHIPPING OF WINE TO ANYONE OF LEGAL AGE OR TO ANY BUSINESS. MICHIGAN – BECAUSE OF THE APPEALS DECISION – APPEARS TO HAVE UNREGULATED WHOLESALE DISTRIBUTION OF ALCOHOLIC BEVERAGES.
- AT LEAST SIX OTHER STATES HAVE BEEN SUED – AND LOST - IN FEDERAL COURT OVER THE PROHIBITION OF WINE SHIPMENT. ALTHOUGH SOME MAY ATTEMPT TO DISTINGUISH THE PREFERENTIAL TREATMENT OF *IN-STATE WINERIES* THAT EXISTED IN THE CHALLENGED STATES *VS.* SB 305 THAT ESTABLISHES A PREFERENCE FOR *OUT-OF-STATE* WINERIES, WE ARE UNAWARE THAT THE DORMANT COMMERCE CLAUSE ONLY ALLOWS CONSTITUTIONAL CHALLENGE WHEN THOSE DISCRIMINATED AGAINST RESIDE OUT OF STATE.
- AN ATTACK AGAINST THE ENTIRE WASHINGTON STATE DISTRIBUTION AND REGULATORY SYSTEM HAS BEEN LOBBED BY COSTCO, A GIANT MULTI-STATE, NATIONAL RETAILER.
- WE FEAR THAT THE LANGUAGE IN SB 305 THAT CREATES AN ELABORATE EXCEPTION FOR OUT-OF-STATE WINE SHIPMENT AND IS THE EXCEPTION THAT WILL ATTRACT A DORMANT COMMERCE CLAUSE LAWSUIT.
- AND, IF AN EXCEPTION IS ALLOWED FOR BOTH IN-STATE AND OUT-OF-STATE WINE SHIPMENTS, HOW WILL THE STATE SUCCESSFULLY DEFEND THE REMAINING DISTRIBUTION SYSTEM WHEN THE SPIRITS AND BEER MANUFACTURERS DECIDE THEY WANT TO SELL "DIRECT" AS WELL. ONCE THE STATE BEGINS TO LOSE BITS AND PIECES OF CONTROL OVER THE DISTRIBUTION SYSTEM, THE ABILITY TO COLLECT TAXES AND CONTROL WHO CONSUMES WILL EVENTUALLY BE LOST.

WE ASK THE COMMITTEE TO REMOVE THE WINE SHIPMENT LANGUAGE AND AVOID ANOTHER LAWSUIT. AND, WITHOUT DISRESPECT TOWARDS ANY, WE WOULD LIKE TO REMIND THE COMMITTEE THAT KANSAS IS 0-2 SO FAR IN DEFENDING THE LIQUOR CONTROL ACT AND MAY BE 0-3 BEFORE TOO LONG. WE DO NOT BELIEVE THE RISK IS WORTH THE DESIRE OF A FEW WHO FIND THE VAST WINE SELECTION IN KANSAS TO BE INSUFFICIENT. IF, HOWEVER, THE COMMITTEE DECIDES TO TAKE THAT RISK BUT ATTEMPTS TO LESSEN THE RISK WITH A SPECIFIC SEVERABILITY CLAUSE (VS. THE GENERAL SEVERABILITY CLAUSE IN K.S.A. 41-1105), WE WANT TO REITERATE HOW ARTFULLY IT MUST BE WRITTEN AS IT WILL BE AN ATTEMPT TO TIE THE COURT'S HANDS REGARDING THE GRANTING OF RELIEF.

THE PREVIOUSLY MENTIONED WINE SHIPMENT CASES DID NOT RESULT IN THE COURTS STRIKING THE UNCONSTITUTIONAL STATUTES AND PROHIBITING THE SHIPMENT OF ALL WINE. THE COURTS, INSTEAD, OPENED THE DOOR TO **ALL** WINE SHIPMENTS. IN THE MICHIGAN CASE, THE STATE IS UNCERTAIN WHAT CONTROL, IF ANY, IT HAS OVER LIQUOR DISTRIBUTION. WE DON'T BELIEVE THAT MEMBERS OF THE KANSAS LEGISLATURE WANT THAT OUTCOME. AND NEITHER DO WE.

WE REQUEST: REMOVAL OF THE DIRECT WINE SALES PROVISIONS AND THE ADDITION OF MEMORIAL DAY, LABOR DAY AND THE FOURTH OF JULY AS ADDITIONAL DAYS OF SALE. WITH THOSE CHANGES, WE ASK THAT YOU RECOMMEND THE BILL FAVORABLE FOR PASSAGE.

THANK YOU,
NEAL WHITAKER, EXECUTIVE DIRECTOR
KANSAS BEER WHOLESALERS ASSOCIATION

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

January 27, 2004

To: Senate Committee on Federal and State Affairs
From: R.E. "Tuck" Duncan
Kansas Wine & Spirits Wholesalers Association
RE: SB305

The Kansas Wine & Spirits Wholesalers Association supports SB305. KWSWA supports the Legislature reaffirming its supremacy in the regulation of beverage alcohol distribution in Kansas as was intended by the Kansas Constitution. One question before you is, should there be uniformity of the Kansas Liquor Control Act? The Kansas Supreme Court has settled the question of whether or not the Club and Drinking Establishment act is uniform. *"The provisions of the Club and Drinking Establishment Act, K.S.A. 41-2601 et seq., are uniformly applicable to all cities in counties which elect to come under the Act. Thus, the Act is applicable uniformly to all cities within the meaning of Article 12, § 5 of the Kansas Constitution."* Biggs. V. City of Wichita, Kansas, Docket No. 83,168, decided June 1, 2001.

With regard to the Liquor Control Act uniformity is likewise important. Most of the Liquor Control Act deals with the maintenance of an orderly market in the manufacture and distribution of beverage alcohol. These aspects of the industry absolutely require uniform regulation at the state level. In addition to the concerns that were raised by the Sunday sales ordinances and the Wyandotte County court decision affecting the lack of uniformity, the recent Leavenworth and Edwardsville actions regarding the sale of beer in convenience stores reinforce the necessity for uniformity.

I suggest that when Kansans enacted the repeal of Prohibition in 1947, they provided in Article 15, Section 10 of the Kansas Constitution that the Legislature, not local units of government, may regulate and license the sale and possession and transportation of intoxicating liquors. *"(b) The legislature may regulate, license and tax the manufacturer and sale of intoxicating liquors, and may regulate the possession and transportation of intoxicating liquors."* - Art.15, Sec. 10, KS. Constitution. This was reaffirmed by a vote amending this section in 1986.

We support the preemption language that is similar to that initially found in the Liquor Control Act when it was enacted in 1949 which provides that:

Senate Federal and State Affairs Com.

Date: JANUARY 27, 2004

Attachment: # 2

41-208. Power to regulate alcoholic liquor vested exclusively in the state; exception; powers of cities; ordinances, power to enact, certain declared void. The power to regulate all phases of the control of the manufacture, distribution, sale, possession, transportation and traffic in alcoholic liquor and the manufacture of beer regardless of its alcoholic content, except as specifically delegated in this act, is hereby vested exclusively in the state and shall be exercised as provided in this act. No city shall enact any ordinance in conflict with or contrary to the provisions of this act and any ordinance of any city in effect at the time this act takes effect or thereafter enacted which is in conflict with or contrary to the provisions of this act shall be null and void. Nothing contained in this section shall be construed as preventing any city from enacting ordinances declaring acts prohibited or made unlawful by this act as unlawful or prohibited in such city and prescribing penalties for violation thereof, but the minimum penalty in any such ordinance shall not exceed the minimum penalty prescribed by this act for the same violation, nor shall the maximum penalty in any such ordinance exceed the maximum penalty prescribed by this act for the same violation. **History:** L. 1949, ch. 242, § 13; March 9.

The Legislature has recognized the importance of preemption language in regulating beverage alcohol as most recently found in the Keg Registration Act: **41-2902. Same; regulation by cities and counties, limitations.** Any ordinance or resolution adopted by a city or county which supplements or is in conflict with or contrary to the provisions of the beer and cereal malt beverage keg registration act shall be null and void. **History:** L. 2002, ch. 44, § 2; July 1.

We support the provisions for Sunday sales and suggest that not to continue to authorize same would deny many Kansans the opportunity they currently enjoy to buy in Kansas, rather than crossing state lines on Sunday and taking their commerce elsewhere. When Kansans cross the border they not only take their beverage purchases to Missouri, they likewise buy fuel, groceries and other durable goods and pay that state's sales taxes.

And we support the provision herein that would allow a wine consumer to purchase wines not otherwise available in Kansas from a lawful out-of-state source. The purchase would be shipped to the consumer's locally licensed Kansas retail liquor store where taxes would be paid and the purchaser's age verified. This very practical solution in providing access for wine not otherwise available in Kansas, due to vintage or production limits; in collecting Kansas taxes and in ensuring that minors not have access to same, while respecting the dry laws of some parts of this state, deserves the committee's support. Unlike the reciprocity laws of some states, or the discriminatory laws of other states that have resulted in litigation, SB305 is non-discriminatory and preserves the state's rights in controlling the distribution and sale of beverage alcohol.

We respectfully request that the Committee preserve the work of the interim judiciary committee that endeavored to find common denominators that would find support in both Chambers consistent with Senate Bill 2 which was approved by the Kansas House last session and which we believe has substantial support in the Kansas Senate.

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

ALDERSON, ALDERSON, WEILER,
CONKLIN, BURGHART & CROW, L.L.C.
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**LICENSED TO PRACTICE IN
KANSAS AND MISSOURI

TESTIMONY OF BOB ALDERSON
ON BEHALF OF CASEY'S GENERAL STORES, INC.
BEFORE THE SENATE COMMITTEE ON
FEDERAL AND STATE AFFAIRS
January 27, 2004

Chairman Brungardt and Members of the Committee:

I am Bob Alderson, a lawyer in private practice in Topeka, and I am appearing today on behalf of Casey's General Stores, Inc. in support of Senate Bill No. 305. Casey's is a member of a statewide coalition of grocers and convenience stores supporting the enactment of legislation that would enable local governments to provide for the sale of cereal malt beverage (CMB) on Sunday. The provisions of SB 305 would accomplish that objective.

Casey's, like other members of the coalition, believes that the enactment of this legislation is long overdue. From our perspective, the current situation does not make much sense. A licensed Drinking Establishment may sell alcoholic liquor by the drink to its patrons on a Sunday afternoon; yet, on that same Sunday afternoon, alcoholic beverages in the original and unopened containers cannot be purchased for later consumption in the purchaser's own home.

Having said that, I hasten to add that we realize there are those who do not share our opinion. We recognize that there are a variety of viewpoints and perspectives throughout our state regarding the sale and consumption of alcoholic beverages. In many instances, geography can influence those attitudes. That is why the local option provision in SB 305 is so important. By vesting in the governing bodies of the cities and counties the right to authorize Sunday sales of packaged alcoholic beverages, subject to an election if an appropriate petition is filed, each community will be able to decide for itself whether the sale of packaged alcoholic

Senate Federal and State Affairs Com.

Date: JANUARY 27, 2004

Attachment: # 3

beverages on Sunday is appropriate for that community. Each community will be able to exercise the same right of self determination that has been afforded by many of the other state laws enabling the local sales of alcoholic liquor. However, the ability of the various communities throughout the state to make these choices depends on the Legislature and the passage of SB 305.

For these reasons, Casey's General Stores, Inc., requests that you recommend Senate Bill No. 305 favorable for passage. Thank you for your attention to these remarks. I will be pleased to respond to any questions you may have.



*Kansas
Licensed
Beverage
Association*

*President
Tom Intfen*

*Secretary/Treasurer
Tammy Davis*

Vice Presidents

Robert Farha
Glenda Dewey
Jim Hendricks
James Fager
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*Testimony on SB-305, Tuesday, August 26, 2003
Senate Federal & State Affairs Committee*

Mr. Chair, Mr. Vice-Chair and Senators of the Committee,

I am Philip Bradley representing the Kansas Licensed Beverage Assn., a group of men and women, in the hospitality industry, who own and manage bars, clubs, caterers, restaurants and hotels where beverage alcohol are served. Thank you for the opportunity to speak. I recognize your time limitations and will be brief.

Our members *support* the amending of the Liquor Control act that would correct the non-uniform sections. We further support the unified efforts of the last session and the current bill that would accomplish this goal. We ask you to act promptly and pass SB-305.

In addition we would ask you to ammend this bill to bring microbrewery and farm winery Sunday off premise sales hours into conformity with the retail store hours in this bill.

As always we are available for questions. Thank you for your time.

Philip B. Bradley
Executive Director

What is the KLBA?

The Kansas Licensed Beverage Association is a non-profit group of men and women licensed to serve beverage alcohol in the state of Kansas. We are 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 women and men who as a part of their business hold a license for on premise alcohol service. We are the restaurants, hotels, clubs, bars, breweries, vineyards and caterers you frequent and enjoy. We are in the hospitality business. We advocate safe responsible consumption and are training our servers to practice these principals.

We work with the ABC to educate, train and promote compliance and responsible practices. We have a server-training program certified by the ABC for Kansas. We believe that education is the single most useful tool in reducing alcohol-related incidents.

Senate Federal and State Affairs Com.

Date: **JANUARY 27, 2004**

Attachment: # **4**



Testimony: Senate Federal and State Affairs Committee
From: Thomas M. Palace
Date: January 27, 2004
RE: SB 305 Sunday Sales, Revision of Liquor Control Act

Mr. Chairman, and members of the Senate Federal and State Affairs Committee:

My name is Tom Palace. I am Executive Director of the Petroleum Marketers and Convenience Store Association of Kansas (PMCA of Kansas), a statewide trade association representing over 300 independent Kansas Petroleum companies and convenience store owners throughout Kansas.

We appreciate the opportunity to appear before you in support of SB 305.

This bill would allow licensed retailers of cereal malt beverages and retail liquor dealers to sell packaged products on Sundays. PMCA has worked with a coalition of businesses that has pushed for Sunday sales legislation the past few years. The coalition is comprised of QuikTrip, Casey's General Stores and the Kansas Food Dealers Association.

It is no secret that PMCA members support Sunday sales, and I should add that we would also favor legislation that would change the definition of cereal malt beverage to include all beer that contains 5% alcohol or less, better known as "one strength beer" in Kansas. I understand, Mr. Chairman, that this bill does not contain language allowing one strength beer; however Senator Barnett inquired as to the percentage of CMB sold compared to so called "strong beer," hence my opportunity to convey some brief thoughts on the issue. Of the two issues, the convenience store industry would prefer that Kansas move to one strength beer concept. There is a wide gap between liquor store sales of beer and CMB sales....it's an 80/20 advantage to the liquor stores. The reason for this drastic sales variance of CMB compared to "strong" beer is the public perception that liquor store beer is something very different than that of CMB. On the contrary, studies prove that there is very little difference in liquor store beer vs CMB (if alcohol content is measured the same way).

On the other hand, the Sunday sales issue has generated a lot of interest these past few years, not only in the legislature, but also with the consumer as well. Regardless of how the issue surfaced as a major concern today, one thing is clear: your constituents are speaking in a unified voice that they want Sunday sales. The liquor industry has been split on this issue, and we continually read in the paper that liquor retailers don't want to be open for one simple reason: they want a day off. However, in Kansas City, retail liquor dealers who compete for business with retailers in Missouri who can sell alcohol on Sunday, pushed their city council to do something about this. In an effort to allow retail liquor stores to compete with Missouri, several city council's have set the tone for Sunday sales by opting out of the liquor control act, opening the door for other cities.

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Senate Federal and State Affairs Com.

Date: JANUARY 27, 2004

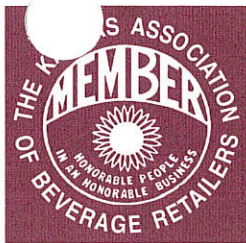
Attachment: # 5

to do the same thing.

In the last few years, our convenience store members have been saddled with increased excise taxes on cigarettes and gasoline, leaving them at a tremendous competitive disadvantage as small businesses that compete on the border. Unfortunately, without legislative approval last year, CMB retailers that sell the "weak beer," were unable to compete with Missouri or Oklahoma for beer sales because the CMB laws are uniform. Absent legislative action last year CMB retailers were placed in a terrible position: not only could we not compete with Missouri convenience stores for beer sales, we could not compete with a liquor retailer in our own town! Today we welcome the fact that we are included in this bill, giving everyone the opportunity to sell "all of their products."

SB 305 will help codify the current liquor laws and help small businesses be competitive with our neighboring states. Additionally, many times laws are passed without allowing the "local community" to voice their opinion on a particular subject. The local option provision gives communities throughout Kansas the opportunity to "opt in or opt out" as to whether or not Sunday sales should be permitted, allowing the consumer to have a say.

Thank You



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SENATE COMMITTEE ON FEDERAL AND STATE AFFAIRS -- SB 305 JANUARY 27, 2004

MARTIN PLATT, PRESIDENT

Thank you, Mr. Chairman and members of the Committee. I am Martin Platt, owner of a liquor store in Wichita and newly elected president of the Kansas Association of Beverage Retailers (KABR). I have owned my store since November of 1996 and prior to that had wholesale experience since 1979. I have worked in this industry for 24 years.

In anticipation of the issues arising this legislative session, John Davis and I personally visited and surveyed 102 retail liquor stores in Sedgwick County in late November and early December of 2003. One of the questions we asked the store owners is exactly what this Committee is addressing today: Should the Liquor Control Act be uniform? All of the 102 store owners stated that they favored State control and uniformity. This opinion is shared by the members of KABR.

We know that there is support for some of the local ordinances which have passed. This bill would allow local choice for Sunday sales and we do not oppose that choice. I do not understand why the bill doesn't also include the local choice for selling on summer holidays. It seems to be the same type of question.

Since we've done this survey, the cities of Leavenworth and Edwardsville are attempting to opt out of 6 sections of the Liquor Control Act and the Cereal Malt Beverage Act. It doesn't make any sense, because the Cereal Malt Beverage Act is already uniform. The city is attempting to do this at the request of a law firm representing an out of state corporation that is not currently operating any stores in the city of Leavenworth. Mr. Davis and I drove to Leavenworth and met with 5 of the 6 stores in Leavenworth. In spite of those citizens' questions to their own city commissioners and mayor, they have been unable to get an explanation of what their local elected officials were trying to accomplish and how that would affect their businesses if it were to go into effect. In fact, no one can even understand the object of the ordinance by reading it. Who will deliver beer to their stores? How will the taxes be paid? No one knows.

When I entered this industry, I knew it was a highly regulated industry and I was selling a highly regulated product. The more involved I became in our association, the more knowledgeable I became about our partnership with the State of Kansas. I understand my responsibility in this partnership - to sell my products safely and legally. The State also has a responsibility - fair and consistent enforcement of the laws. Clearly, it is time for the State to step up and say to the cities and the courts that the sale of beer, wine and liquor is to be regulated by the state. These products are 100% of my business.

Senate Federal and State Affairs Com.

Date: JANUARY 27, 2004

Attachment: # 6

As far as wine imported to a liquor store, I would be happy to have any new customer walk through my door. As long as other wine sellers didn't use this option to avoid state brand registration, it might be a chance for me to see new faces in my store and I could show them similar wines at cheaper prices. But it is a concern for me that different lawyers have different opinions about how this would work and if it would destroy Kansas law. Kansas could lose a lot of tax income if that were to happen and I could lose access to my customers' favorites. Also, I know that in-state wineries are asking for some new way to deliver their wine. This is confusing because I already sell Kansas wines through my store and they have their own stores, as well. This bill wouldn't do anything different for them. Maybe the issue needs more research.

Thank you for letting me talk to you today. I hope that you will consider just how important these issues are to me and 713 other Kansas owned businesses.

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TESTIMONY PRESENTED TO THE SPECIAL COMMITTEE ON FEDERAL AND STATE AFFAIRS JANUARY 27, 2004

AMY A. CAMPBELL, EXECUTIVE DIRECTOR

Thank you, Mr. Chairman, for permitting me to speak to the committee regarding the Liquor Control Act and uniformity. The Kansas Association of Beverage Retailers represents State licensed retail liquor store owners. Off premise licensees have a unique position in the current struggle for control of the Liquor Control Act.

Liquor store owners are engaged in a unique partnership with the State of Kansas. As the first access point to the public for this highly regulated product, licensees submit themselves to strict regulation and enforcement. This cooperative relationship is designed to privatize the sale of the product while maintaining the State's interest in its distribution. As adult beverages are subject to three levels of taxation, the State has an obvious interest in tracking and regulating the three tier distribution system. We believe that this partnership extends beyond the issue of taxation to the mutual interest of maintaining an even playing field and the safe and legal sale of adult beverages.

Currently, the clarification of State control and regulation of the liquor control act is our number one priority. It is unclear to us what directions the State will pursue in the immediate future. The briefing on Senate Bill 305 certainly created more questions than answers. It appears this bill is in danger of becoming a conglomeration of various initiatives unrelated to the primary objective. The position of our Association will depend on the issues involved. We would ask that you remember several things:

1. Off premise licensees are uniquely affected by the current question of law.
2. Off premise licensees are licensed by the State and not local units of government.
3. Off premise licensees must meet strict qualifications, unmatched by other types of liquor or cereal malt beverage licensees.
4. Employees of licensees must meet strict qualifications, unmatched by other types of liquor or cereal malt beverage licensees.
5. Last year, Kansas retail liquor stores posted an impressive 88% compliance rate when targeted by ABC agents for underage buys. This percentage continues to improve year after year.

Historically, KABR has supported the recodification of state liquor statutes. The Association was represented on the Beverage Alcohol Advisory Task Force in 1996 and testified in support of cleaning up the statutes in 1998, 1999, and to an Interim Committee in 2000. Even at that time, it was clear that municipal governments did not agree that the elements of the Liquor Control Act were off limits to local control. The lack of action by the Legislature at that time left licensees concerned.

Senate Federal and State Affairs Com.

Date: JANUARY 27, 2004

Attachment: # 7

KABR representatives volunteered to serve on the Beverage Alcohol Advisory Task Force, which spent months sorting through the state liquor laws to eliminate unnecessary laws and regulations. Led by the Director of the Alcoholic Beverage Control, the Task Force discovered duplication, as well as statutes which were simply unenforceable. The Task Force intentionally avoided recommending policy changes in the resulting bill, and KABR supported this effort. The recodification bill benefitted both the regulators and the regulated businesses by clarifying the statutes which shape the three tiered distribution system that is so important to our industry.

As legislators, you are periodically exposed to the complicated network of statutes and regulations that govern the liquor industry. The laws may have confused you from time to time, but imagine the frustration of running a highly regulated business based on these laws and regulations. Add to that the potential complication of new ordinances established on the local level, potentially inconsistent with the priorities of the State and unenforceable against your competitor possibly only blocks away in a different jurisdiction.

Today, you have the opportunity to clarify the State's control and regulation of wine, liquor and beer simply by amending the statute to stop any further questions about uniformity. This bill provides that opportunity and grants local control over the question of Sunday sales. In the spirit of allowing local control of days of sale, it would seem appropriate to also add the option of certain holiday sales to the bill.

It should be remembered that local governments will continue to have the ability to generally regulate liquor stores through regular business related ordinances and specifically by limiting hours of business or zoning. The issue of adult entertainment is not a part of this bill, as adult entertainment can be regulated on its own basis.

The section of this bill which permits certain wines "not currently available" in Kansas to be delivered to the customer through a retail liquor store adds other questions of law. At first, it appears harmless and retailers are always looking for better ways to serve our customers. As much as we would like to pursue greater access to some of the rarer wines, retailers would like to receive some confirmation that it will not jeopardize other aspects of our laws which prohibit direct delivery of out of state wine, beer and liquor.

We appreciate the opportunity to be here today and hope that you will seek our input further if amendments are being entertained. Our support of this bill rests on the central theme of the bill and we hope you will maintain that focus.

Testimony on Senate Bill No.305
Concerning Alcoholic Beverages and Regulation thereof

To

The Senate Committee on Federal and State Affairs

By Tom Groneman
Director
Alcoholic Beverage Control

January 27, 2004

Mr. Chairman, members of the committee, thank you for the opportunity to appear this morning in support of SB 305. The ABC feels strongly that the Liquor Control Act should be uniform and that control for liquor issues should be maintained by the State. Licensing, administration and enforcement of liquor laws statewide would be impossible if cities and/or counties have the option of picking and choosing which statutes and regulations they want applied within their jurisdictions.

Currently, there are 14 cities and one county that have used home rule to charter out of the provision of the Liquor Control Act prohibiting Sunday sales of alcohol. Of the 15, six have different provisions for their hours of sale. This creates a nightmare for enforcement.

In addition, two cities, Leavenworth and Edwardsville, have also chartered out of several provisions of the Liquor Control Act and the Cereal Malt Beverage Act, purportedly to allow the sale of strong beer in convenience and grocery stores, including Sunday sales. These charter ordinances are due to go into effect the middle of March.

The Alcohol Beverage Control Division strongly endorses the passage of legislation which would make the Liquor Control Act uniform and maintain regulation with the state.

With that said, there are two amendments we would like to see made to the bill.

Senate Federal and State Affairs Com.

Date: JANUARY 27, 2004

Attachment: # 8

First, in Section 5 of the bill, we would ask that the 5,000 minimum population requirement for licensing within a township be removed. In the past, the licensing department inadvertently issued licenses for premises in townships that did not meet the population requirement. In these instances, the application was accompanied by a zoning certification signed by the respective county clerk, and we did not catch that the licensed premises was in a township with a population less than 5,000. There are five such active licensees at this time.

Second, retailers are currently required to maintain records (i.e. invoices, sales receipts, etc.) for three years (three months must be kept on-site). Section 16 (c) (3) requires the retailer to retain record of the sale of direct shipped wine for two years. For consistency, we ask that the bill be amended to follow the current practice.

Again, we strongly support the passage of legislation creating uniform liquor laws in Kansas, and request consideration of the proposed amendments.