

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 28, 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:

Sandy Jacquot, League of Kansas Municipalities
Henry Couchman, Unified Government of Wyandotte and Kansas City, Kansas
Terri Moses, Deputy Chief of Police, Wichita
Frances Wood
Diann Windmeyer
Norman Jennings, Kansas Grape Growers & Wine Makers Association

Others attending:

See Attached List.

Chairperson Brungardt called the meeting to order and asked the committee for announcements.

Senator Gilstrap introduced members of the audience to the committee.

Chairperson Brungardt welcomed the group and then welcomed Sandy Jacquot to the podium.

Ms. Jacquot presented testimony against **SB 305, Liquor control act and cereal malt beverage laws; uniformity, Sunday sales, (Attachment 1)**.

Chairperson Brungardt asked the committee for questions.

Senator Vratil observed that if preemption language was removed from the bill, it would invite uniformity problems the bill was supposed to correct in the first place.

Ms. Jacquot stated she was not suggesting the complete removal of preemption language. She stated the more restrictive and supplemental language is the problem.

Senator Vratil asked Ms. Jacquot if her suggestion called for the preemption provisions to be modified to allow cities to be more restrictive and supplemental.

Ms. Jacquot stated that Senator Vratil was correct.

Senator Vratil asked what Ms. Jacquot had meant by supplemental.

Ms. Jacquot answered that an example of supplemental would be the adult entertainment type of prohibited conduct.

Senator Vratil observed that as long as it did not conflict with state statute, and if there are no state statutes occupying the area, cities could regulate in that area.

Ms. Jacquot stated that Senator Vratil was correct. She explained the Supreme Court said that cities could not be looser, but the city can be more restrictive than the state.

Chairperson Brungardt asked the committee for additional questions.

CONTINUATION SHEET

MINUTES OF THE SENATE FEDERAL AND STATE AFFAIRS COMMITTEE at 10:30 a.m. on January 28, 2004 in Room 231-N of the Capitol.

Senator Barnett asked what the compliance rate is for CMB outlets within the state.

Ms. Jacquot answered that she did not have the figure. She stated that she was not sure the statistic was compiled anywhere by anybody.

Senator Barnett stated that it was his understanding that there is no requirement for compliance checks with CMB outlets.

Ms. Jacquot explained the compliance checks took place at the local level. She further explained the policing of liquor retail stores also happens at the local level.

Senator Barnett expressed concern over the opening of a number of alcoholic beverage outlets that have no structured compliance checks. He stated that some of the compliance rates he had read were extremely poor. Senator Barnett asked if there was a similar fine structure in the state for CMB outlets as the current structure for retail liquor stores.

Ms. Jacquot answered that the fine structure would be a city ordinance at the local level. She stated that if a city finds a violation of ordinance, the city could fine and could also suspend or invoke licenses.

Senator Barnett explained that there were 3.2 taverns from his district who sold alcohol to underage individuals because of an ordinance that required the owners to be on premise in order to be subject to fine or revocation of their license to sell alcohol.

Ms. Jacquot stated the ordinance was not in any code that she had done. She further stated she would never put that type of ordinance in a code.

Senator Lyon asked Ms. Jacquot if she thought there should be any state regulation on alcoholic beverages.

Ms. Jacquot stated that state regulation in the area of alcohol was not a bad thing. She stated she had never had a city tell her that the regulation of alcohol should be at the local level. She explained that the local communities, however, if they have a problem with the establishment, would like the right to take away the license of the establishment and prevent the establishment from doing business in the city for an amount of time. Ms. Jacquot explained that the alcoholic beverage industry would probably prefer regulation at the state level instead of the local level.

Senator Lyon observed cities want the ability to pose stricter and new regulation.

Ms. Jacquot stated that Senator Lyon was correct.

Senator Lyon asked Ms. Jacquot to explain what she meant when she said one of the reasons for local control was because of community values.

Ms. Jacquot explained that there were communities in Kansas that did not believe Sunday sales were appropriate for them.

Senator Lyon asked if there are such things as state values.

Ms. Jacquot stated that of course the state has values. She explained that the state has various interests it seeks to protect.

Chairperson Brungardt thanked Ms. Jacquot and welcomed Henry Couchman to the podium.

Mr. Couchman presented testimony against **SB 305** (Attachment 2).

Chairperson Brungardt thanked Mr. Couchman and welcomed Deputy Chief Terri Moses to the podium.

CONTINUATION SHEET

MINUTES OF THE SENATE FEDERAL AND STATE AFFAIRS COMMITTEE at 10:30 a.m. on January 28, 2004 in Room 231-N of the Capitol.

Deputy Chief Moses presented testimony against **SB 305** (Attachment 3).

Chairperson Brungardt thanked Deputy Chief Moses and welcomed Frances Wood to the podium.

Ms. Wood presented testimony against **SB 305** (Attachment 4).

Chairperson Brungardt thanked Ms. Wood and welcomed Diann Windmeyer to the podium.

Ms. Windmeyer presented testimony against **SB 305** (Attachment 5).

Chairperson Brungardt thanked Ms. Windmeyer and asked the committee for questions.

Senator Barnett asked Ms. Windmeyer if dram shop liability was what she was most interested in for the committee to consider.

Ms. Windmeyer stated that Senator Barnett was correct.

Senator Barnett asked Ms. Windmeyer if there were other individuals in the state of Kansas interested in a dram shop law.

Ms. Windmeyer stated that Senator Barnett was correct.

Chairperson Brungardt asked the committee for additional questions.

Senator Vratil asked the Chair if the committee could have Ms. Jacquot work with the revisor to draft an amendment to **SB 305** that she would advocate .

Ms. Jacquot stated she would be happy to work with the revisor.

Chairperson Brungardt called the committee's attention to written testimony by the Kansas Grape Growers & Wine Makers Association (Attachment 6) and the City of Overland Park (Attachment 7). Chairperson Brungardt asked Norman Jennings if he would like to make a statement before the committee.

Mr. Jennings stated that the biggest issue, with regards to **SB 305**, for grape growers and wine makers, is the shipping of wine. He explained that as proposed in **SB 305**, the shipping section would allow for competition to enter into the market place but would not give the same rights to Kansas farm wineries. Mr. Jennings further stated, that the five dollar fee as proposed, would entice illegal shipment of wine.

Chairperson Brungardt thanked Mr. Jennings. He reminded the committee that those members who had amendments to the bill should talk with Theresa Kiernan. He then adjourned the meeting.

The meeting was adjourned at 11:20 a.m. The next meeting is scheduled for January 29, 2004, at 10:30 a.m. in room 231-N.

Senate Federal and State Affairs Committee

Date: JANUARY 28, 2004

Name:

Representing:

Kelly Greenore	MADD
Diann Windmeyer	MADD
Kenee McKain	MADD
Sandy Jacquet	UKM
Janna Dunbar	Commerce
Norman Jennings	KGGWMA
Gracia Burnham	Rose Hill, KS
Cheryl Spicer	Rose Hill
Paul Spicer	Rose Hill
Cheryl Berry	Rose Hill
Larrie Anderson	KS Governmental Consulting
Terri Moses	City of Wichita
Tom Groneman	ABC
Amy Campbell	KABR
Master Platt	Platt Liquor KABR
Witney Daman	Distilled Spirits Council of U.S.
Cheri Fretschner	Div of Budget
John Davis	Davis Leg, Wichita, KS
Peggy Ryan	Unified Gov. Treas.
Carolyn Seaton	Unified Gov. Treas.
Michele Biggs	Unified Gov. Treas.
Mildred Perrin	Unified Gov. Treas.
Linda Fritz	Guest Unified Treas Office
Neal W. Baker	KBWA

Senate Federal and State Affairs Committee

Date: ~~NOV 28, 2004~~

Name:

Representing:

TUCK DUNCAN MS. WINE & SPIRIT, WHOLESALER ASSN,



League of Kansas Municipalities

300 SW 8th Av.
Topeka, Kansas 66603-3912
Phone: (785) 354-9565
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TO: Senate Federal and State Affairs
FROM: Sandra Jacquot, Director of Law/General Counsel
DATE: January 28, 2004
RE: Opposition to SB 305

Thank you for allowing the League of Kansas Municipalities to testify on the issue of the Liquor Control Act and SB 305. Approximately a year and a half ago, the Unified Government of Wyandotte County/Kansas City, Kansas adopted Charter Ordinance 1-02, which submitted to voters of that community the question of whether to allow for the Sunday sales of packaged liquor. Since that time, there has been much discussion at the State level of whether or not cities should be preempted from being able to exempt themselves through the use of charter ordinances from the provisions of the Liquor Control Act. This could only be done through a recodification of the Act to make it uniformly applicable to all cities.

For those opponents who believe the State must take away local control to stop cities from creating "mischief" in its regulation of alcohol, there is a consequence. In fact, the more local control that is taken from cities, the less alcohol is truly regulated in our cities. In *Bigs v. City of Wichita*, 271 Kan. 455 (2001), the Kansas Supreme Court held that the Club and Drinking Establishment Act is uniform. One result is that cities have no control over whether or not establishments can lose their licenses to operate. Thus, if a drinking establishment has been a problem in the community and the city needs to take some sort of regulatory action the city is powerless to affect the license of the establishment. Cities can levy fines, but liquor establishments roll these fines into the cost of doing business. This is not better control over alcoholic liquor, it is merely control farther removed from the local officials who have more knowledge of their community. In fact, enforcement of the state's liquor laws occurs primarily at the local level through city police departments and county sheriffs' offices. Therefore, with all due respect to the Alcoholic Beverage Control Division, the statement in Mr. Groneman's testimony of January 27, 2004 that the myriad of local ordinances "creates a nightmare for enforcement" is a bit baffling, since it is the local government enforcing its own ordinances.

If this committee deems it advisable to proceed with this legislation, however, it is imperative that the committee reconsider the preemption language in sections 2 and 13. The preemption in these two sections, one for packaged liquor sales and one for the cereal malt beverage act, would prohibit cities from adopting ordinances more restrictive or supplemental to the state law. It is difficult to anticipate all of the ramifications of the preemption language, but several are apparent. First, in the liquor control act, there is a prohibition that no liquor store could be licensed if it would be within 200 feet of a church or school. The preemptive language in the bill would not allow city ordinances that lessen the distance requirement to address a problem in an individual city, nor would it allow cities to protect other types of facilities such as day cares, libraries, halfway houses or any other facility. Since most smaller cities are not zoned, this type of restriction cannot be addressed other than in supplemental city regulations of retailers.

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Attachment: # 1

The cereal malt beverage preemption has an even broader impact, because the act covers both retailers and CMB establishments (bars or taverns). Cereal malt beverage regulation is almost all at the local level. Among other requirements, cities regulate the licensing and application procedures, restrict the location of CMB establishments, set licensing fees, determine a process for suspension and revocation of licenses, provide for sanitary conditions in establishments, and prohibit certain conduct on the premises. I have attached a code section that the LKM includes in every city code it codifies that enumerates prohibited conduct. The state does not regulate in most of the above-cited areas. If the preemption language is allowed to remain in this bill, there will be virtually no regulation of CMB and certainly not of adult entertainment at CMB establishments. It is not in the best interest of the state or its local communities to preempt cities from being more restrictive or providing for supplemental provisions in either the liquor control act or the cereal malt beverage act.

To conclude, LKM supports local control of packaged liquor. If, however, the committee deems it appropriate to make the Liquor Control Act uniform, then it should provide for the Sunday sale of packaged liquor and cereal malt beverage. It makes economic sense and honors the will of the many cities and their citizens that have chosen to allow the option of Sunday sales. This committee should further remove the preemptive provisions that would prohibit cities from having more restrictive and supplemental alcohol and cereal malt beverage regulations.

Section 14. PROHIBITED CONDUCT ON PREMISES. The following conduct by a cereal malt beverage licensee, manager or employee of any licensed cereal malt beverage establishment is deemed contrary to public welfare and is prohibited:

- (a) Remaining or permitting any person to remain in or upon the premises who exposes to view any portion of the female breasts below the top of the areola or any portion of males/females pubic hair, anus, buttocks or genitals;
- (b) Permitting any employee on the licensed premises to touch, caress or fondle the breasts, buttocks, anus, vulva or genitals of any other employee or any patron;
- (c) Encouraging or permitting any patron on the licensed premises to touch, caress or fondle the breasts, buttocks, anus, vulva, or genitals of any employee;
- (d) Performing or permitting any person to perform on the licensed premises acts of or acts which simulate:
 - (1) Sexual intercourse, masturbation, sodomy, or any other sexual act which is prohibited by law; or
 - (2) Touching, caressing or fondling such persons' breasts, buttocks, anus or genitals.
- (e) Using or permitting any person to use on the licensed premises, any artificial devices or inanimate objects to depict any of the acts prohibited by paragraph (d).
- (f) Showing or permitting any person to show on the licensed premises any motion picture, film, photograph, electronic reproduction, or other visual reproduction depicting:
 - (1) Acts or simulated acts of sexual intercourse, masturbation, sodomy, or any sexual act which is prohibited by law;
 - (2) The touching, caressing or fondling of the buttocks, anus, genitals or the female breasts;
 - (3) Scenes in which a person displays the buttocks, anus, genitals or the female breasts.
- (g) The term premises means the premises licensed by the city as a cereal malt beverage establishment and such other areas, under the control of the licensee or his or her employee or employees, that are in such close proximity to the licensed premises that activities and conduct of persons within such other areas may be viewed by persons on or within the licensed premises.



LEGAL DEPARTMENT of the UNIFIED GOVERNMENT OF
WYANDOTTE COUNTY/KANSAS CITY, KANSAS

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F. Charles Dunlay

To: Senate Federal and State Affairs Committee

From: Henry Couchman, Assistant Counsel, Unified Government of Wyandotte County/Kansas City, Kansas

Date: January 28, 2004

Re: Senate Bill No. 305

Thank you for allowing me to testify on behalf of the Unified Government of Wyandotte County/Kansas City, Kansas in opposition to Senate Bill No. 305. My testimony focuses on two (2) sections of the bill—Section 2, which would amend the Liquor Control Act, K.S.A. 41-101 *et seq.*, specifically K.S.A. 41-208, and New Section 13, which would add a section to the Kansas Cereal Malt Beverage Act, K.S.A. 41-2701 *et seq.* Both of these provisions would preempt cities' home rule authority to enact ordinary ordinances that are "more restrictive than, conflicting with or contrary or supplemental to" these respective acts.

The Unified Government believes that the proposed amendment to K.S.A. 41-208 in section 2 of Senate Bill No. 305 is contrary to the best interests of its citizens and those of other cities throughout Kansas for two (2) reasons. First, the amendment is unnecessary. K.S.A. 41-208 is largely irrelevant to the debate over whether cities can exempt themselves by charter ordinance from the provisions of the Liquor Control Act, such as the prohibition on Sunday sales in K.S.A. 41-712. Rather, the provisions of the Liquor Control Act are subject to charter ordinance because some of those provisions, including K.S.A. 41-301, -302, and -719(c)(3), are non-uniform. K.S.A. 41-208 limits cities' power to enact *ordinary* ordinances. In its present form, K.S.A. 41-208, by restricting cities from enacting ordinances "in conflict with or contrary to the provisions of" the Liquor Control Act, contains some of the strongest preemptive language to be found in the Kansas Statutes Annotated. Making K.S.A. 41-208 even more restrictive—by prohibiting cities from enacting ordinances "*more restrictive than, conflicting with or contrary or supplemental to*" the Liquor Control Act—will not make the Act uniform. K.S.A. 41-208 was enacted in 1949 and has been interpreted by the Kansas Supreme Court on several occasions. The statute has been effective in limiting cities' power to enact ordinary ordinances that conflict with or are contrary to the provisions of the Liquor Control Act. In the absence of any pressing need, it is unwise to amend a statute that has over time defined the balance between state and city power in the area of liquor control.

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Attachment: # 2

Second, the proposed amendment to K.S.A. 41-208 would effectively deprive cities of the power to enact ordinances affecting any phase of the manufacture, distribution, sale, possession, transportation, or traffic in alcoholic liquor or the manufacture of beer *even if such laws serve local interests and neither conflict with nor are contrary to the Liquor Control Act*. As the Kansas Supreme Court has recognized on a number of occasions, cities, as well as the State, have an interest in regulating alcoholic liquor.

New Section 13 of Senate Bill No. 305, which would add a preemption provision to the Cereal Malt Beverage Act, is objectionable for similar reasons. There is no preemption provision in the Cereal Malt Beverage Act for a reason: Regulation of cereal malt beverages is primarily a city and county, not a State, function. The Cereal Malt Beverage Act itself is only a few pages long.

Section 4-71 of the 1988 Code of Ordinances of the City of Kansas City, Kansas provides an example of an ordinance that could be precluded under the restrictive provisions of Senate Bill No. 305:

Sec. 4-71. Duty to maintain order on premises.

No person licensed to sell cereal malt beverages, beer or alcoholic beverages under the ordinances of the city or any agent or employee of same, or anyone acting under the licensee, shall so knowingly conduct such business as to create a disturbance of the peace and quiet of the neighborhood located in the general vicinity of the licensed premises. No licensee, the agents or employees of same, anyone acting under the licensee shall knowingly permit any other disturbance, noise or any misconduct whatsoever amounting to either a misdemeanor or a felony on, in front of, or about the premises wherein such person is licensed to sell cereal malt beverages, beer or alcoholic beverages or licensed to operate a private club. No licensee or any agents or employees of same or anyone acting under the licensee shall knowingly allow any of the patrons to drink cereal malt beverages, beer or alcoholic liquor in front of or about the premises, which cereal malt beverages, beer or alcoholic liquor the patrons have either purchased or had in their possession while inside the premises licensed to operate under the ordinances of the city.

Section 4-71 imposes duties on persons licensed to sell cereal malt beverages that are not imposed by the Cereal Malt Beverage Act, but which are important to the citizens of Kansas City, Kansas. Section 4-71 neither conflicts with nor is contrary to the Act. But is it “more restrictive than” or “supplemental to” the Act? That this question would have to be decided by the Kansas Supreme Court demonstrates that the language in section 13 is more sweeping than is either necessary or desirable.



Police Department

TESTIMONY — DEPUTY CHIEF TERRI MOSES

January 28, 2004

Sen. Pete Brungardt, Chair
Senate Federal & State Affairs Committee
State Capitol, Rm. 231-N
Topeka, Kansas

Subject: Testimony in Opposition to SB 305 – Liquor Control Act

The City of Wichita appears in opposition to SB 305. This bill would greatly impact the City of Wichita with the preemption provision regarding the regulation of retail sales of alcoholic liquor and CMB. Language in Section 2 of the bill specifically states that, “*Any ordinance or resolution enacted by a city or county which is more restrictive than, conflicting with or contrary or supplemental to the provisions of the Kansas liquor control act shall be null and void.*”

This language would eliminate the ability of the City of Wichita to regulate the sale of alcoholic liquor or CMB in any manner other than that set forth in state law.

This morning I will present to you information regarding home rule and local control, examples of how the loss of local control will impact the City of Wichita some perceived consequences of SB 305. To conclude I will tell you a little bit about community policing and the impact local control has on public safety.

HOME RULE AND LOCAL CONTROL

- The City of Wichita is opposed to legislation that diminishes the Home Rule authority of cities, and removes the right of citizens, through their locally elected representatives, to decide the standards that are appropriate for their community.
- The authority to license and regulate the sale of liquor, without limitation, based upon locally developed criteria, along with the ability to revoke or suspend a license when local regulations are violated is essential to the **health, safety and welfare of all cities**.
- Clearly, the regulation of the sale and consumption of alcoholic liquor and CMB is an **area of local concern**. While there is concurrent state concern in this area, state statutes should not be an impediment to the exercise of Home Rule authority by cities so long as there is no conflict. The governing bodies of some cities may conclude there is sufficient protection in the state statutes regulating alcoholic liquor, while others may see the necessity for more stringent rules.

- **Total dependence on state enforcement proceedings to revoke or suspend retail liquor licenses.** The City could maintain ordinances that exactly mirror the state liquor control act and continue to prosecute criminal violations of such ordinances, but could take no action on a local level to revoke a retail liquor license. The state liquor control act clearly provides that all license suspension and revocation hearings are before the director of ABC. Appeals are then taken to the secretary of revenue, and finally to the district court.
- **Citizens would lose their right to determine what standards are appropriate for their communities.** Without local control, the citizens of Wichita would be limited to state law remedies for criminal and nuisance activity that can accompany the sale of alcohol. Our citizens would continue to pay taxes for the necessary enforcement efforts, but would have no voice regarding the regulation of such activity through the local political process.

EXAMPLES OF LOSS OF LOCAL CONTROL

- **The city could no longer use violations of local nuisance laws as ground to revoke local retail liquor licenses.** Wichita has used its home rule power in the past to create a licensing scheme that requires nightclubs and taverns to comply with local nuisance laws as a condition of licensing. This potential local enforcement tool would be eliminated for use against retail liquor establishments with the passage of SB 305. While the state liquor control act does allow for the prosecution of nuisance illegal alcohol sales, this must be done by the director of ABC, or by the district attorney of Sedgwick County. The City would lose any direct input into this prosecution process.
- **Loss of regulatory control over the location of retail liquor establishments.** SB 305 would limit the restrictions the City of Wichita could place on the location of retail liquor stores to what is presently set forth in state statute. The City would lose the ability to impose any additional or more stringent standards. E.g., Current law provides that no retail sales of liquor are allowed within 200 feet of any public or parochial school, college or church. The city could not impose its own restrictions that might include, for example, public parks, day care centers, nursing homes or residential areas.
- **Loss of local regulation of criminal penalties for violation of certain liquor and CMB ordinances.** The criminal penalties for violations of city ordinances that mirror state liquor and CMB statutes would be limited to the minimum and maximum penalties set forth by the state legislature. The language of SB 305 clearly preempts cities from having any ordinance that is more restrictive than state statute. If passed, the bill would strip the city of the flexibility to adjust criminal penalties and impose mandatory minimum sentences that are not present in state law, even if local needs and public safety concerns call for such regulation.

- **Loss of local control over qualification of licensees.** Cities would be prevented from imposing qualifications for retail liquor and CMB licensees that are more restrictive than those set forth in state law. State law provides that persons convicted of felonies or certain misdemeanors are not eligible for liquor or CMB licenses. Wichita currently goes further than state statute and does not allow persons to obtain drinking establishment, tavern, CMB retail sales or private club licenses who have been placed on diversion for these same crimes. Should SB 305 become law, Wichita could no longer maintain this requirement, nor could any other more restrictive requirements be imposed on potential licensees.

- **Possible loss of our local licensing scheme designed to keep minors out of nightclubs.** Wichita has used its Home Rule power to create a licensing scheme that prohibits the presence of minors in nightclubs. Our ordinances have changed the definition of “drinking establishment” as that term is defined in state law, to include an establishment open to the public who are 21 years of age or older. State law does not contain this provision. This term is defined in the definition section of the state liquor control act. Since the City’s definition conflicts with the State’s it appears that under the terms of SB 305, the ordinance containing Wichita’s definitions would have to be repealed. (At the very least, the City’s ordinances would require extensive redrafting into two separate definition sections - one for retail sales and one for liquor by the drink.) A review of the definition section in our ordinance reveals several other definitions that are not contained in state law, and would probably be null and void by the preemption language of SB 305.

CONSEQUENCES

- After the amendments, the Act still relies on **local enforcement of the laws**. The ABC does not have the resources to provide effective regulation in south central Kansas. This becomes another unfunded mandate for cities.

- It is unclear whether the Act would allow cities to **revoke licenses for prohibited conduct**. If that authority is lost, a major reason for licensing is lost. Wichita police officers have indicated that the most effective tool they have in fighting criminal activity at establishments that sell alcohol and CMB, is the threat of suspending or revoking a license. Under current ordinances, several grounds exist pursuant to local regulation for the chief of police or the City Council to suspend or revoke a local license. When this occurs, the establishment can no longer do business for a designated period of time.

- **Traditional criminal sanctions alone cannot provide effective regulation.** An **argument** against local control of alcohol through licensing is that the police and code enforcement officials can take action against offending establishments in the courts through the use of traditional criminal sanctions. While such enforcement is always an option, it is costly, labor intensive and time consuming, with minimal penalties. Jail for offenders is usually not an option and fines are easily paid by establishments that continue to operate and reap the profits of illegal alcohol sales. The ability of the City of

Wichita to regulate a local establishment's liquor or CMB license clearly impacts the owner's ability to do business in a profitable manner, and provides a much needed enforcement hammer to wield against offending establishments.

- Loss of local regulation of alcohol sales will foreclose many public health, safety and welfare issues, all of which are important to the **quality of life of the citizens** in the Wichita community. The preemption language of SB 305 removes all local control of retail alcohol sales and in doing so, takes with it some very effective tools our ordinances have provided for our law enforcement officers. Most devastating, however, is that by seizing local regulatory power in favor of state regulation, this bill removes our local citizens from the process of determining the appropriate rules and standards for our community.
- The City of Wichita does not have a position on Sunday sales and other local option matters.

THE POLICE PRESPECTIVE

In the mid 1990's crime rates were at all time highs in many areas throughout our country, including Wichita. In 1993 Wichita experienced 57 homicides, compared to 20 in 2003. The resources of local law enforcement were stretched and the feeling of safety among citizens was dwindling.

The Wichita Police Department and many other Police Departments across the nation implemented a new style of policing to deal with the issues faced during the decade of the 1990's. The policing style was named "Community Policing". Many of you are aware of this philosophy and its principals.

There are ten principals of Community Policing, two of which would be directly impacted by SB 305. One, It is a community based philosophy. Under this philosophy it is understood that not every community is alike and that the efforts of public safety should be tailored to meet the needs of the community. This principal works at the City level as well as areas as small as a city block. Second, It focuses on creative problem solving. The Police, in partnership with the community are encouraged to look at creative ways to deal with situations.

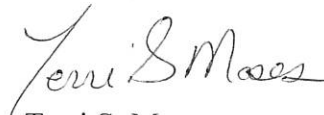
SB 305 removes from public safety the idea that police can tailor their services to meet the needs of the community; it assumes that all communities are alike. It also removes the use of ordinances as a creative problem-solving tool.

In 1996 the Wichita Police Department used local ordinances to deal with a serious prostitution issue that plagued one area of town. Prostitution led to other types of crime and poor community self-image. Thru ordinance changes and community involvement the level of prostitution in the

area dropped, the amount of violent crime dropped and community self-image grew. In this case local control allowed the use of creative problem solving and a community based approach.

SB 305 removes a viable and proven tool from law enforcement. That tool is local control. Our opposition to the bill results from its lack of local option, which is essential to a successful police/community collaboration.

Sincerely,

A handwritten signature in cursive script that reads "Terri S. Moses".

Terri S. Moses
Deputy Chief of Police
Wichita Police Department

FEDERAL AND STATE AFFAIRS COMMITTEE

January 27, 2004

Senator Brungardt and Committee members:

My name is Frances Wood, 3342 SW Chelsea Circle, Topeka, KS 66614 phone 271-9320, E-mail franwood@cox.net.

I come before you as an opponent although there are portions of Senate Bill 305 that probably should be enacted. There are two main points to my opposition.

1. I attended the committee hearing this summer while they were trying to come up with a satisfactory bill. The issue that seemed to prevail at that meeting was the word "uniformity." Indeed, the reasoning that some cities and counties used for opting out of the regulations was because the laws were not uniform. I want to say that I find little "uniformity" in SB 305 letting each county or city have their own regulations regarding the sale of packaged alcohol on Sundays and certain holidays. As I see it the only way to have "uniformity" would be to not allow it – which by the way, would seem to have been the case originally.
2. Perhaps my main reason for opposing any additional breakdown of restrictions is because of the product itself. Certainly all of you are aware of the scare "Mad Cow Disease" has created in the United States. Do you realize that there have only been 150 deaths WORLDWIDE from Mad Cow Disease? Do you realize that alcohol related traffic deaths in the United States alone for the year 2002 were 17, 419? Do you realize that averages almost 50 per DAY! In the state of Kansas, alcohol related traffic deaths increased in 2002 over 2001. How many of you know how many alcohol related traffic deaths there were in Kanas in 2002? Well, I will tell you – There were 229. If we had that many deaths by Mad Cow Disease, Ephedra, Tylenol or any other substance, we would be enforcing all kinds of restrictions. So, why are we even considering lessoning the restrictions on alcohol? You need to be thinking about tightening the regulations – pushing for lower availability and consumption of this killer of Kansans and Americans. One way to do this would be to make it "uniform" that Sunday and other holiday sales of packaged alcohol would be FORBIDDEN state wide.

Source for statistics is the National Highway Traffic Safety Administration.

Senate Federal and State Affairs Com.

Date: JANUARY 28, 2004

Attachment: # 4

**Testimony on Senate Bill 305
Federal and State Affairs Committee
Senator Pete Brungardt, Chairperson**

Chairperson Brungardt and members of the Senate Federal and State Affairs Committee, thank you for the opportunity to testify pertaining to Senate Bill 305.

Sadly, the State of Kansas has a serious alcohol problem. Today this committee is considering Senate Bill 305 allowing alcohol to be sold by retailers on Sundays throughout the State of Kansas.

I will first admit that I am not an expert on the Senate Bill 305; however, I speak from the harsh reality that my husband Fred Windmeyer was killed this past year by a drunk driver on a Sunday--May 18, 2003. The 21 year-old drunk driver, Dustin Deppe had reportedly been drinking at a friend's house and directly prior at a local sports bar less than four miles from my husband who was walking our dog in the neighborhood that afternoon. Deppe pleaded "no contest" and received the State of Kansas maximum sentence for his offense--barely 48 to 52 months.

My fear with Senate Bill 305 is that we are in denial and that we are not addressing the real issues at hand. The State of Kansas is neglecting the responsibility to protect Kansas families -- like my family, my husband--Fred Windmeyer. Instead, we are passing laws that make alcohol more readily available through retailers in the State of Kansas. The Kansas Legislature should be focused on passing laws that will enhance criminal penalties for drunk drivers who kill behind the wheel and passing a dram shop law that will hold those responsible who serve alcohol. According to the National Highway Safety Transportation Administration, Kansas ranked second in the percentage increase in the alcohol-related fatality rate between 1998-2002. Kansas reflected a 32 percent increase in alcohol-related crash fatalities.

We believe Kansas families have lost far too many fathers, mothers, sisters, and brothers to senseless and irresponsible acts of drunk driving. Senate Bill 305 overlooks the victims of drunk drivers, like mine, that have lost a loved one to a drunk driver on a Sunday. It is a slap in our face to have alcohol more readily available through retailers on Sundays and then with the same hand do nothing to protect our families and pass laws to address the real alcohol problems in the State of Kansas. According to MADD, approximately 20 percent of all alcohol-related crashes and crash related fatalities occur on Sunday in Kansas. 35 percent of Sunday alcohol-related crashes and 37 percent of crash related fatalities, occur from 12:00 noon and 11:50 p.m. Sunday is already a deadly day for drinking and driving in the State of Kansas.

We are sending the wrong message. The sentencing of the drunk driver Dustin Deppe to only 52 months sends the wrong message and the fact that Kansas is only one of seven states that currently lacks a dram shop law that holds responsible those who serve alcohol sends the wrong message. The wrong message is quite clear: Kansas is weak on drunk drivers. We have a serious problem and we are in denial. We have not admitted that the criminal and civil penalties in the State of Kansas for drunk driver liability are wholly inadequate for the administration of true justice and for creating a culture of responsibility.

Senate Bill 305 sends the wrong message by making alcohol more readily available on Sundays. My family stands committed to passing laws that will send the correct message -- a strong message that if you drink and drive you will suffer maximum consequences. For the sake of Kansas, don't let Senate Bill 305 be all you do, we deserve more, my husband who was killed on a Sunday by a drunk driver deserves more. We deserve a dram shop law and we deserve enhanced penalties for drunk drivers who kill behind the wheel.

I respectfully request your consideration of my views on Senate Bill 305 and ask for your future leadership on tackling the real issues of drunk driver liability laws.

Signed: *Diann Windmeyer*

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Topeka, Kansas 66617
(704) 277-6710

Senate Federal and State Affairs Com.

Date: JANUARY 28, 2004

Attachment: # 5

Kansas Grape Growers & Wine Makers Association

Kansas Liquor Control Act – Farm Winery specific

Changes proposed on January 23, 2004

The following changes are being placed in order to continue the growth of state revenues and the economies as impacted by the grape growing and wine-making industry within the state of Kansas. These changes are intended to grow and diversify the value added agriculture products of this state, increase the tourism interests and economic benefits thereof, as well as providing support to the small businesses found within rural Kansas.

K.S.A. 41-308a. Farm winery license; rights of licensee.

(a) A farm winery license shall allow: **Add**

(6) The donation of wine produced to a non-profit charitable or government sponsored fundraising event.

(7) The serving of samples and/or sales of in the original unopened container at industry seminars, festivals, trade shows and charitable events including the Kansas State Fair, providing the event is located within such a facility and in such a county whereas there are provisions allowing for the use or sales of alcohol.

(b) Upon application and payment of the fee prescribed by K.S.A. 41-310, and amendments thereto, by a farm winery licensee, the director may issue not to exceed ~~two~~ *five* winery outlet licenses to the farm winery licensee. A winery outlet shall allow:

(c) Notwithstanding the availability of adequate quantities of fruit of the quality and varital parameters, as on file with the farm winery, Not less than 60% of the products utilized in the manufacture of domestic table wine and domestic fortified wine by a farm winery shall be grown in Kansas except when a lesser proportion is authorized by the director upon the director's findings and judgment. ~~The label of domestic wine and domestic fortified wine shall that a majority of the products utilized in the manufacture of the wine at such a winery were grown in Kansas.~~ (Label of contents governed and superseded by Federal Labeling Law).

(d) Without forfeiting any rights and/or privileges allowed by K.S.A. 41-308a, and/or other statutes and/or amendments thereto governing a farm winery, A farm Winery having a capacity of 50,000 gallons per year or more which sells to any distributor shall be required to comply with all provisions of article 4 of chapter 41 of the Kansas Statutes Annotated and of K.S.A. 41-701 through 41-705 and 41-709, and amendments thereto, in the same manner and subject to the same penalties as a manufacture.

K.S.A. 41-312. Licenses; issuance of more than one to same person, when prohibited. No person holding a manufacturer's or distributor's license shall be permitted to receive any retailer's, microbrewery or farm winery license. No person holding a retailer's, microbrewery or farm winery license shall be permitted to receive any manufacturer's or distributor's license or another retailer's, microbrewery ~~or farm winery~~ license.

Submitted by: Kansas Grape Growers and Wine Makers Association of Kansas, Norman Jennings-
Legislative Chair

Kansas Grape Growers & Wine Makers Association

Reciprocal Shipment Bill Principles

January 23, 2004

- 1) The purpose of this section is to facilitate consumer access to a broad range of wines, especially wines from small producers, by allowing consumers to use e-commerce and other remote mechanisms in order to obtain limited direct shipment of wine with a minimum of unnecessary burdens.
- 2) Notwithstanding other provisions of law, an adult resident or holder of an alcoholic beverage license in this state or a state which affords Kansas licensees or adult residents an equal reciprocal shipping privilege may ship, for personal use and not for resale, not more 2 cases (18 liters) of wine per year to any adult resident of this state. Delivery of a shipment pursuant to this section shall not be deemed to constitute a sale in this state
- 3) No shipper located outside this state may advertise in this state the availability of wine by shipment to residents of this state pursuant to this section.
- 4) The shipping containers for all wine shipped directly to residents shall be conspicuously labeled as follows: "Alcoholic beverage: Do not deliver to anyone under 21 years of age or is visibly intoxicated."

Prepared utilizing models of existing reciprocal shipment statutes within the United States of America

Submitted by: Kansas Grape Growers and Wine Makers Association of Kansas, Norman Jennings-Legislative Chair

Kansas Grape Growers & Wine Makers Association

Direct Shipment Permit Bill Principles

January 23, 2004

- 1) The purpose of this section is to facilitate consumer access to a broad range of wines, especially wines from small producers, by allowing consumers to use e-commerce and other remote mechanisms in order to obtain limited direct shipment of wine with a minimum of unnecessary burdens.
- 2) Notwithstanding other elements of the state's law, a producer from this or another state, holding a valid license within their state of production, may obtain a shipper permit allowing the holder to ship up to 2 cases (18 liters) of wine per month to residents who are at least 21 years of age for their personal use and not for resale.
- 3) The shipper's permit should be available for a nominal fee (no more than \$50.00). Permit renewals should cost no more than \$10.00. Because the permit is a mechanism for obtaining nexus and general regulatory control but does not require detailed in-state supervision, the fee should be at the low end of in-state fees. Fees for direct shipping range from "no fee" to \$150, with renewals ranging from "no fee" to \$50.
- 4) Shippers shall be required to collect and annually transmit all appropriate excise and use taxes to the appropriate authorities.
- 5) States may require a reasonable bond against payment of taxes.
- 6) No shipper located outside this state may advertise in this state the availability of wine by shipment to residents of this state pursuant to this section.
- 7) The shipping containers for all wine shipped directly to residents shall be conspicuously labeled as follows: "Alcoholic beverage: Do not deliver to anyone under 21 years of age or is visibly intoxicated."

Prepared under the assistance of Bill Nelson, Wine American Association

Submitted by: Kansas Grape Growers and Wine Makers Association of Kansas, Norman Jennings-Legislative Chair



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January 28, 2004

TO: Senator Pete Brungardt, Chair
Members of the Senate Federal and State Affairs Committee

RE: Senate Bill 305

The City is opposed to the loss of home rule authority in such a public safety sensitive area as retail sales of liquor and cereal malt beverage (CMB) sales. It is not realistic to believe that the limited number of state enforcement officers can effectively deal or be familiar with the ever-changing local alcohol issues. In reality, the majority of law enforcement efforts concerning such violations are conducted by local law enforcement agencies. Municipal police departments, particularly those like the Overland Park Police Department, who are involved in community policing programs, are well suited to deal with liquor and CMB issues that arise within the community. These local police officers quickly recognize the licensees who ignore the laws. Local licensing and regulation provide these officers with an effective tool to ensure licensees do not establish a pattern of non-compliance resulting in activity that is threatening to the safety of the citizenry of the City. Licensees realize that the local law enforcement officer not only has the ability to issue criminal citations but also can present the violation to the local CMB licensing authority for review and possible license suspension or revocation.

Addition of the preemption language contained in Senate Bill 305 will be devastating to the ability of local governments to address the unique public safety needs of their individual communities. State regulation and enforcement is not tailored to the specific needs of a community. Cities should be permitted to deal with specific problems related to liquor and CMB sales as they arise. Cities are aware of the issues in their particular community and are thus uniquely qualified to regulate.

While the City is opposed to making the liquor control act uniform, the City is even more concerned that the preemption language that has been added to both the liquor control act and the CMB act will deny local communities the ability to effectively regulate in the public safety sensitive area of liquor control. The proposed preemption language of Senate Bill 305 would make it impossible for a City to have more restrictive and/or supplemental regulations necessary for preserving the public safety in its own community.

In summary, any limitation on the authority of Kansas municipalities to enact more restrictive or supplemental regulation in the area of retail liquor and CMB sales will adversely impact local communities. Thank you for the opportunity to present these important issues with this Committee.

Senate Federal and State Affairs Com.
Date: JANUARY 28, 2004
Attachment: # 7