

MINUTES OF THE HOUSE FEDERAL AND STATE AFFAIRS COMMITTEE

The meeting was called to order by Chairman John Edmonds at 1:30 P.M. on April 26, 2005 in Room 313-S of the Capitol.

All members were present except:

Representative Tom Hawk- excused
Representative Ray Merrick- excused

Committee staff present:

Dennis Hodgins, Kansas Legislative Research Department
Mary Torrence, Revisor of Statutes Office
Carol Doel, Committee Secretary

Conferees:

Tuck Duncan, Kansas Wine and Spirits Wholesale Association
Amy Campbell, Executive Director, Kansas Association of Beverage Retailers
Larry Knackstedt, Johnson County Retailers
Martin Platt, Sedgwick County Retailer
Tom Palace, Executive Director Petroleum Marketers and Convenience Stores Association
Neal Whitaker, Kansas Beer Wholesalers Association
Phil Bradley, Kansas Licensed Beverage Association
Sandy Jacquot, Kansas League of Municipalities
Dennis Hodgins, Legislative Research Department
Mary Torrence, Office of the Revisor of Statutes

Others attending:

See attached list.

Chairman Edmonds opened the meeting for bill introduction. With no one wishing a bill introduction, attention was turned to public hearing on **SB 298** concerning alcoholic beverages relating to regulation thereof.

Tuck Duncan representing the KWSWA (Kansas Wine and Spirits Wholesalers Association) was recognized as a proponent of **SB 298**. KWSWA supports uniformity, however, they do recommend some language changes and explanations which were described in the written testimony. They also would like the consideration of banning of the AWOL (Alcohol Without Liquid) device which is a vaporizer machine that mixes alcohol with pressurized oxygen and lets drinkers inhale shots of alcohol. (Attachment 1)

Executive Director of the Kansas Association of Beverage Retailers, Amy Campbell, provided testimony in support of **SB 298** relating that this bill would make the Liquor Control Act uniformly applicable - affirming to the Kansas Supreme Court that Kansas does intend to enforce its authority as a State to regulate the sale and distribution of alcoholic beverages. Three amendments were submitted for consideration. (Attachment 2)

Ms. Campbell also call attention to written testimony which she submitted on behalf of Marge Roberson of Roberson's Liquor Store in Newton, Kansas. Ms. Roberson also supports the passage of **SB 298**. (Attachment 3)

Next to rise in support of **SB 298** was Larry Knackstedt of Knocky's Retail Liquor in Overland Park, Kansas. Mr. Knackstedt related that for him the local ordinance allowing for Sunday sales and holiday sales have meant that his customers never have to go anywhere else to purchase their adult beverages. (Attachment 4)

Martin Platt, President, Kansas Association of Beverage retailers (KABR) and owner of a retail liquor store in Wichita, Kansas, related that this bill would allow local choice for Sunday sales and for selling on summer holidays. The KABR absolutely supports statewide liquor control act uniformity. (Attachment 5)

CONTINUATION SHEET

MINUTES OF THE House Federal and State Affairs Committee at 1:30 P.M. on April 26, 2005 in Room 313-S of the Capitol.

Tom Palace, Executive Director of the Petroleum Marketers and Convenience Store Association of Kansas (PMCA of Kansas) presented testimony supporting the passage of **SB 298** which would allow licensed retailers of cereal malt beverages and retail liquor dealers to sell packaged products on Sundays. **SB 298** will not only close the uniformity loophole, it will allow both CMB retailers and liquor stores to be open on Sunday. Mr. Palace also included a copy of the current Sunday Retail Liquor Sales (Attachment 6)

Bob Alderson, of Alderson, Alderson, Weiler, Conklin, Burghart & Crow, Attorneys at Law provided testimony supporting **SB 298** on behalf of Casey's General Stores, Incorporated. They believe that **SB 298** is a bona fide effort to authorize Sunday sales of alcoholic beverages, however, they did recommend several amendments in order that **SB 298** can accomplish its objectives fairly and effectively. (Attachment 7)

Phil Bradley, Executive Director of Kansas Licensed Beverage Association (KLBA) supports **SB 298** stating that they believe that Kansas is well served by having uniform liquor laws. They urge the passage of **SB 298**. (Attachment 8)

Neal Whitaker representing Kansas Beer Wholesalers Association, Inc. continues to believe that state regulation of the liquor industry is best. They support the amendments to **SB 298** to remove the language on pages 3 and 15 that was added on the Senate floor. They support an amendment to "tie together" liquor store sales with cereal malt beverage sales on Sundays and the amendments fixing the zoning problems. (Attachment 9)

With no other proponents to **SB 298**, the Chairman Edmonds recognized Sandy Jacquot, Director of Law/General Counsel, League of Kansas Municipalities who is in opposition to **SB 298**. While the League supports local control of packaged liquor, they feel it appropriate to make the Liquor Control Act uniform, and should support the Senate changes that allow for more local control and provide for Sunday packaged liquor sales on an opt-out basis. (Attachment 10)

Dennis Hodgins, presented information requested by Representative Mah regarding the number of cities that allow Sunday sales compared to the total population of the number of cities in the State of Kansas. (Attachment 11)

At the request of the Chairman, Mary Torrence from the Office of the Revisor of Statutes gave an overview of **SB 298**.

Chairman Edmonds distributed a balloon to **SB 298** which would take on county option and provide that unless the county opts in, they stay out which is the reverse to the Senate position. This was submitted for committee consideration.

Representative Siegfried made a motion to amend SB 298 by the adoption of the balloon as presented by Chairman Edmonds. Representative Johnson seconded the motion. Motion carried.

Representative Myers made a motion to further amend SB 298 by limiting sales to retail liquor sales only and excluding cereal malt beverages. The motion was seconded by Representative Burroughs. Motion failed.

Representative Novascone made a motion to further amend SB 298 by striking the language of the Barnett motion. Motion was seconded by Representative Ruff.

Representative Huy made a priority motion to table SB 298. Representative Miller seconded the motion. Motion failed by a count of 12 to 8.

Representative Mah made a substitute motion to remove the language from SB 298 and substitute with the language from SB 267. Representative Loganbill seconded the motion. Motion failed.

Representative Myers made a conceptual substitute motion to further amend SB 298 to establish general election by county - those who vote for the bill would have Sunday sales and those who don't vote for the bill would not have Sunday sales. Representative Morrison seconded the motion. Motion failed.

CONTINUATION SHEET

MINUTES OF THE House Federal and State Affairs Committee at 1:30 P.M. on April 26, 2005 in Room 313-S of the Capitol.

Chairman Edmonds returned to the original motion by Representative Novascone to further amend **SB 298**.

Vote was taken on the original motion by Representative Novascone to repeal the Barnett amendment from **SB 298**. Motion carried.

Mary Torrence explained that there are inconsistencies in the original bill where before the Barnett amendment, it authorized county resolutions which are more restrictive than or supplemental to the liquor control act. Ms. Torrence wished to know if the language should be removed everywhere.

Chairman Edmonds requested clarification by Representative Novascone who referred to the testimony delivered by Amy Campbell for The Kansas Association of Beverage Retailers recommendation amendment 1 to remove the Senate amendment which creates the authority for local ordinances which are "stricter than or supplemental to" the Act- making it consistent with the Club and Drinking Establishment Act.

The Chairman asked that Representative Novascone make this into a motion.

Representative Novascone moved **SB 298** further be amended by striking all other provisions which explicitly authorize cities and counties to adopt further regulations more restrictive than or supplemental to the Liquor Control Act or Cereal Malt Beverage Act. Representative Cox seconded the motion. Motion carried.

Representative Siegfroid moved that **SB 298** further be amended by including Easter as a prohibited sales day. Representative Craft seconded the motion. Motion carried.

Representative Kinzer made a conceptional motion to leave the structure of the present bill, **SB 298**, in place, but change it so that the vote that occurs in November 2006 would be done at a city level as opposed to the county level. Representative Oharah seconded the motion. Motion carried by a vote of 10 to 6.

Returning to the amended bill, Representative Siegfroid made a motion to pass **SB 298** out favorable for passage as amended. Representative Novascone seconded the motion. Motion carried.

With no further business before the committee, Chairman Edmonds adjourned the meeting.

FEDERAL AND STATE AFFAIRS

GUEST LIST

Date 4-26-05

MARTIN PLATT	PLATT Liaison / KABR
CINDY PLATT	PLATT, Liaison
BOB ANDERSON	CASEY'S GENERAL STORES
Phil Bradley	KS Licensed Beverage Assn.
Scott Schneider	CITY OF WICHITA
Ken Seiber	Kan Law Firm
Bill Brody	A-B Cos.
Stacy Jacquet	LKM
Tom Groneman	ABC
Ted Powers	A-B
John Pelton	AB
JUC JUCAN	KWSWA
Val At Fern	SQE
Ann Miller	Wamun + Assoc.
Erik Sartorius	City of Overland Park
Jeff Botteby	Polsinelli, et al.
Denny Burgess	Cours
Neal Redhartz	KBWA
Amy Campbell	KABR
Blessin Fin	KBWA

Kansas Wine & Spirits
Wholesalers Association

April 26, 2005

To: House Committee on Federal & State Affairs
From: R.E. "Tuck" Duncan
RE: SB 298 – Uniformity of the Liquor Control Act

The KWSWA has supported uniformity bills. We still support the concept but candidly we believe with only three (3) working days left in the session this is too complex a topic to tackle. We have several concerns about the current bill including:

At lines 35 page 4 it provides that:

(A) Counties may not exempt from or effect changes in the Kansas liquor control act except as provided by paragraph (B).

(B) Counties may adopt resolutions which are not in conflict with or ~~contrary~~ [are more restrictive than or supplemental] to the Kansas liquor control act.

And on page 4 line 27 it is provided that:

[No city or county shall enact any ordinance or resolution] which is in conflict with or contrary to the provisions of the Kansas liquor control act [and any such ordinance or resolution] shall be null and void.

However at line 38 on that page it is provided that:

(c) Nothing in this section shall be construed as prohibiting cities and counties from enacting ordinances and resolutions which are not in conflict with or [which are] more restrictive than or supplemental to the Kansas liquor control act.

What does **supplemental** mean? What does **more restrictive** mean? Does this mean that a city can prevent the sale of certain products or certain sizes of products? Does it mean that a city can establish more requirements for the issuance of a retailer's license? Or establish requirements for other types of licenses? Or even create additional more limited licenses? Current law says you must be a resident of the state to be eligible for a retailer's license, could the city provide that you must be a resident of the city? There are many other examples one could invoke. Is it supplemental to also allow the sale of products in places other than as set forth in the Liquor Control Act? Ironically do not these provisions create a lack of uniformity?

The same concerns above apply to New Sec. 12. (page 15).

(a) K.S.A. 41-2701 through 41-2727 and section 14, and amendments thereto, shall be known and may be cited as the Kansas cereal malt beverage act.

(b) Except as specifically provided in the Kansas cereal malt beverage act, the power to regulate all phases of the manufacture, distribution, sale, possession, transportation and traffic in cereal malt beverages is vested exclusively in the state and shall be exercised as provided in the Kansas cereal malt beverage act. ~~Any city ordinance or county resolution~~ *[No city or county shall enact any ordinance or resolution] which is in conflict with or contrary to the provisions of the Kansas cereal malt beverage act [and any such ordinance or resolution] shall be null and void.*

We believe this committee should take the same approach to pre-emption in the Liquor Control Act that it did recently in New Sec. 10 of SB195 regarding firearms as passed by the legislature and approved by the Governor.

At page 10, line 9 the bill provides that: (a) No retailer's license shall be issued for premises ~~which are located in areas not zoned for general commercial or business purposes, if the city or township in which the premises are located is zoned or are not approved by the director, if the premises sought to be licensed are located outside an incorporated city in a township which is not zoned~~ *unless such premises comply with all applicable zoning regulations.*

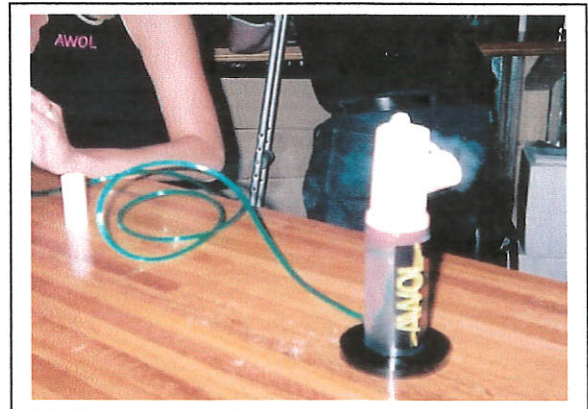
Does this change in the language of KSA 41-710 mean that any store currently "grandfathered" must now comply with all current zoning ? Would the committee consider adding language stating "at the time of the issuance of the initial license for said location."

I recognize that some of these provisions have been considered previously, however, in light of the numerous wine cases and the *Costco* case (pending in Washington state) our antenna are extremely sensitive to the potential unintended consequences that such changes may arouse.

If you work this bill please also consider banning the AWOL device,

Alcohol inhaling machine goes on display From USA TODAY 8-21-2004

NEW YORK (AP) — A machine that lets drinkers inhale shots of alcohol went on display Friday night, even as one local lawmaker warned the device was "a disaster waiting to happen." The Alcohol Without Liquid vaporizer mixes the alcohol with pressurized oxygen. Makers say it takes about 20 minutes to breathe in one shot, giving drinkers the effect of alcohol without the drunkenness, or hangover. Democratic state Sen. Carl Kruger pledged to introduce legislation to ban its use, calling the inhaler, manufactured in England and distributed domestically by North Carolina-based Spirit Partners, a "new form of pipe smoking" and saying it could encourage underage drinking and drunken driving... Westchester County Executive Andrew Spano said he also feared the machine would attract underage drinkers. ..



We also are aware that some would prefer language to allow for the "opting in" to Sunday and holiday sales rather than the Senate amendments to require cities to "opt-out". However, we do not believe it is equitable to consumers in markets which currently allow for such sales to cause those cities that have already opted for Sunday and holiday sales to begin again. Further, however, at this point in the session we have no difficulty in allowing this bill to rest in this committee until the start of next session when we can review these and other concerns. *Thank you for your attention to and consideration of these matters.*



The Kansas Association of Beverage Retailers

P.O. Box 3842
Topeka, KS 66604-6842
www.kabr.org

Phone 785-266-3963
Fax 785-234-9718
kabr@amycampbell.com

Martin Platt, President

Amy A. Campbell, Executive Director

TESTIMONY PRESENTED TO THE HOUSE COMMITTEE ON FEDERAL AND STATE AFFAIRS APRIL 26, 2005

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 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.

This is the third time since August of 2002 that KABR has asked the State to clarify its authority over the licensing and regulation of liquor stores, distributors, and manufacturers. Currently, the clarification of State control and regulation of the liquor control act is our number one priority. KABR opposes making SB 298 a conglomeration of various initiatives unrelated to the primary objective.

Please find attached an amendment which amends the bill to reflect current law as it pertains to local regulation of liquor licensees.

SB 298 will make the Liquor Control Act uniformly applicable - affirming to the Kansas Supreme Court that Kansas does intend to enforce its authority as a State to regulate the sale and distribution of alcoholic beverages.

We would ask that you remember several things:

- SB 298 is NOT an attempt to add profits to the retail liquor stores.
- SB 298 does NOT ADD to Sunday Sales across the State. That horse is already out of the barn. The bill does affirm uniform rules by which cities and counties may enact local option Sunday Sales, stopping the hodge podge of ordinances which mark the industry today.
- SB 298 does include local option Sunday Sales for cereal malt beverage retailers.

FEDERAL AND STATE AFFAIRS

Date 4-26-05

Attachment 2

Why would KABR feel this is so important? Doesn't a wide open Act provide the chance for licensee stores to seek special treatment by cities and counties to benefit their stores? Please consider the following:

- Off premise licensees are uniquely affected by the current question of law.
- Off premise licensees are licensed by the State and not local units of government.
- Off premise licensees must meet strict qualifications, unmatched by other types of liquor or cereal malt beverage licensees.
- Employees of licensees must meet strict qualifications, unmatched by other types of liquor or cereal malt beverage licensees.
- Kansas retail liquor stores post the highest compliance rates when targeted by ABC agents for underage buys. This percentage continues to improve year after year.

Why would the State intentionally give up its authority over liquor stores, beer distributors, wine distributors, farm wineries, and microbreweries -- while maintaining a uniform law over clubs and drinking establishments?

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.

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 and summer holiday sales.

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, prohibiting location near a church or school and by zoning regulation.

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.

AMENDMENT 1

Senate Bill 298

Remove the Senate amendment which creates the authority for local ordinances which are "stricter than or supplemental to" the Act - making it consistent with the Club and Drinking Establishment Act.

Page 3, lines 35 through Page 4, line 1.

(35) (A) Counties may not exempt from or effect changes in the Kansas liquor control act . ~~except as provided by paragraph (B):~~

~~(B) Counties may adopt resolutions which are not in conflict with or contrary (are more restrictive than or supplemental) to the Kansas liquor control act.~~

(36) (A) Counties may not exempt from or effect changes in the Kansas cereal malt beverage act . ~~except as provided by paragraph (B):~~

~~(B) Counties may adopt resolutions which do not conflict with or are more restrictive than or supplemental to the Kansas cereal malt beverage act.~~

Also on page 4, delete lines 38 through 41 and renumber (d) on line 42 as (c).

~~(c) Nothing in this section shall be construed as prohibiting cities and counties from enacting ordinances and resolutions which are not in conflict with or (which are) more restrictive than or supplemental to the Kansas liquor control act.~~

~~(d) (c)...~~

Also on page 15, lines 36 - 39:

~~(c) Nothing in this section shall be construed as prohibiting cities and counties from enacting ordinances and resolutions which are not in conflict with or (which are) more restrictive than or supplemental to the Kansas cereal malt beverage act.~~

~~(d) (c)...~~

AMENDMENT # 2

Senate Bill 298

Amend the ordinance section to require any city or county which passes Sunday sales for liquor stores or cereal malt beverage licensees to pass the ordinance for both. In other words, do not allow ordinances which favor one type of licensee over another.

Depending on the Committee's preference for how to adopt the days of sale, the two licensees must be linked on page 9, lines 13 - 20 (liquor stores in townships), pages 10-11 for licensed liquor stores and pages 16-17 for cereal malt beverage licensees.

AMENDMENT # 3

Senate Bill 298

Amend the ordinance section to allow for a locality to later consider an ordinance to allow for Sunday and holiday sales even if they had previously rejected the concept.

The Senate bill would allow for cities and counties to choose to NOT adopt Sunday and holiday sales for either the liquor stores or the cereal malt beverage stores, but there is no provision to allow them to come back later and consider the question again. Would need to amend the same sections as above.

Roberson's Liquor Store
115 W 5th Street
Newton, KS 67114
316-283-0980

April 26, 2005

House Federal and State Affairs Committee:

I am Marge Roberson, owner of Roberson's Liquor Store in Newton, KS. I am also a director and past president of the Kansas Association of Beverage Retailers.

I am an active community member and currently serve as a Harvey County Commissioner. Today, I am speaking to you as a retailer.

25 years ago I applied for a liquor license through the ABC Division of the Department of Revenue. At that time, every new licensee met with the Director, who made it very clear what were the responsibilities of owning a liquor store. I took very seriously my partnership with the State in selling alcohol to legal aged citizens, and worked very hard at making sure I understood and followed all the rules and regulations. To this day, I take my business very seriously because I believe in being personally responsible.

I have chaired the Beverage Alcohol Training Program, under which we travel across the state to train liquor stores owners and their employees to follow the laws in their day to day businesses. This becomes difficult if the rules are different in every locality. It presents the same problem for the ABC - as they work to train local law enforcement officers about liquor laws.

During my time as an officer with KABR, we have spent years trying to understand the position of the Legislature when it comes to the liquor control act. We worked with a committee to revise the Act to get rid of its unenforceable provisions and contradictory language - which was never adopted by the Legislature.

The Club and Drinking Establishment Act is considered uniform. The Cereal and Malt Beverage Act is considered uniform. Why would the Legislature give up its authority over the Liquor Control Act?

The members of KABR are very diverse. Many times our meetings include some active debate. Some stores need to work on Sunday to compete. Some don't. But we are united in our support of a statewide uniform law.

We have worked with the Legislature in the past to create a uniform keg registration act -- which has added to our responsibility to the State. The State should be a reliable partner to us as well.

Please work with us to clean up this issue once and for all by passing Senate Bill 298.

Sincerely,

Marge Roberson

FEDERAL AND STATE AFFAIRS

Date 4-26-05

Attachment 3

Larry Knackstedt
Knocky's Retail Liquor
9541 Nall
Overland Park, KS 66207
913-341-5054

April 26, 2005

House Federal and State Affairs Committee
Rep. John Edmonds, Chairman

Thank you for scheduling a public hearing on Senate Bill 298. I am Larry Knackstedt and I own a retail liquor store in Overland Park. I am a member and a board member of the Kansas Association of Beverage Retailers.

For my business, the issue of days of sale is not a matter of increasing the size of my store. It is a matter of protecting my store. My customers have had the option of going to Missouri for their purchases for a long time. In Missouri, beer is cheaper. Liquor is cheaper. Cigarettes and gasoline are cheaper. They sell on Sunday. They sell on holidays. They can sell as early as 9:00 a.m. on Sundays.

In order to keep my customers, I must offer good service, a selection of products and convenience. For me, the local ordinances allowing for Sunday sales and holiday sales have meant that my customers never have a need to go anywhere else to purchase their adult beverages. It is worth noting that many liquor stores have voluntarily decreased the number of hours they are open during the week in order to staff their stores on Sundays.

- I support the local ordinances for Sunday Sales.
- I support the local ordinances for allowing sales on the summer holidays of Memorial Day, July Fourth, and Labor Day.
- It is time for Kansas to set up a uniform liquor control act and I support that effort 100 percent. I also ask that the Legislature protect my business from the competition across the border by preserving my ability to open the store on the days we have now.
- I oppose the Senate amendment to give cities power to pass ordinances which are "stricter than or supplemental to" the Act. My store is a clean, family owned neighborhood business which doesn't deserve to be singled out for more regulation than a bar or drinking establishment. (*The club and drinking establishment act is uniform and does not allow "stricter than or supplemental ordinances".*)

Right now - with or without this bill, I have the option of opening my store on Sundays and summer holidays. So - why pass the bill? Because it is the right thing to do.

I would be happy to answer questions.

FEDERAL AND STATE AFFAIRS

Date 4-26-05

Attachment 4

HOUSE COMMITTEE ON FEDERAL AND STATE AFFAIRS -- SB 298

APRIL 26, 2005

**MARTIN PLATT, PRESIDENT
KANSAS ASSOCIATION OF BEVERAGE RETAILERS**

Thank you, Mr. Chairman and members of the Committee. I am Martin Platt, President of the Kansas Association of Beverage Retailers (KABR). I have owned my store in Wichita 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 last 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 for selling on summer holidays. The fact is, most Wichita stores do not really support Sunday sales -- but we know that our city may pass it at any time.

We absolutely support statewide liquor control act uniformity.

We think it is important because before the Biggs vs. City of Wichita case, our city was passing ordinances which were illegal against clubs and bars. The Court put a stop to it by declaring the Club and Drinking Establishment Act uniform. Now - the Court says the Liquor Control Act is not uniform, which puts liquor stores in jeopardy, while the drinking establishments are protected.

Since we did our survey, the cities of Leavenworth and Edwardsville tried to opt out of 6 sections of the Liquor Control Act and the Cereal Malt Beverage Act in order to put strong beer / liquor into grocery and convenience stores. It didn't make any sense, because the Attorney General says the Cereal Malt Beverage Act is already uniform. Eventually, those cities suspended their ordinances - waiting to see what the Legislature would do.

Right now, lawyers have given a different version of that ordinance to Wyandotte County. These lawyers work for an out of state corporation that wants to sell alcohol in their convenience stores.

When I entered this industry, I knew it was a highly regulated business 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.

I am much more comfortable having the industry regulated by 165 State legislators than three to nine councilmen or commissioners. It adds stability to our industry and to my investment. Please amend Senate Bill 298 back to a statewide uniform bill.

FEDERAL AND STATE AFFAIRS

Date 4-26-05

Attachment 5

Remove the amendment added by the Senate. Someone in the Senate said the amendment was needed so that cities could stop a liquor store from being next door to a day care center. Do we have a problem with this in Kansas? If so, why haven't any of the cities passed ordinances to stop a liquor store from being next door to a day care center?

Instead, they passed 25 ordinances expanding sales. This tells me they support their locally owned liquor stores and want to help them to compete against Missouri retailers.

The current liquor control act prohibits liquor stores from being next to a church, school or a college. I think that a rash of liquor stores going in next to day care centers could be stopped in their tracks by adding day care centers to the list.

The fact is that liquor stores are not usually a problem. We visit many of our members' stores when we travel across the state for our board meetings. The stores are clean and customer friendly. Some are in historic buildings. Some look like the corner grocery store. Some look like a convenience store. They have to meet all of the cities' business codes and ordinances. Every one of them is locally owned.

If there are problems with liquor stores in the future, I will come to Topeka to sit down with you and work out solutions. We already meet with the ABC regularly to identify areas that need improvement. If it is a good rule for one part of the State, maybe it ought to be applied everywhere. Please let us be part of the solution.

Thank you for letting me talk to you today. I hope that you will consider just how important these issues are to me and more than 700 other Kansas owned small businesses.

Martin Platt
Platt Retail Liquor
725 W 29th Street
Wichita, KS 67204
316-838-8880
mliqplatt@hotmail.com



Testimony: House Federal and State Affairs Committee
From: Thomas M. Palace
Date: April 26, 2005
RE: SB 298 Uniformity, Sunday Sales

Mr. Chairman and members of the House 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. I am also authorized to present this testimony on behalf of Quik Trip Corporation, the Kansas Food Dealers Association and Casey's General Stores.

We appreciate the opportunity to appear before you in support of SB 298.

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 have pushed for Sunday sales legislation the past few years. The coalition is comprised of PMCA, QuikTrip, Casey's General Stores and the Kansas Food Dealers Association.

The Sunday sales issue has generated a lot of interest these past few years, not only in the legislature, but with consumers as well. A number of cities and counties have opted out of the liquor control act because the act is not uniform, allowing liquor stores to be open on Sunday. Cereal malt beverage retailers, operating under a uniform law don't have the opportunity to opt-out of a law. Obviously this puts all CMB retailers at a competitive disadvantage in cities and counties where Sunday sales are allowed.

SB 298 will not only close the uniformity loophole, it will also allow both CMB retailers and liquor stores to be open on Sunday. In 2004, the uniformity and Sunday Sales issue passed with more than 70 votes in the House but failed in the Senate on a 20-20 vote.

The sale of alcohol on Sunday has been allowed for years. Restaurants, private clubs and country clubs by law, can sell alcohol on Sunday. Kansas statutes allow a person to go to a sports bar and drink all day while watching ball games on TV...and drive home, but deny the person that does not plan ahead to purchase a six pack of beer to consume in their home. Is it me or is there something wrong with this picture? It would be in the interests of public safety to allow a person to buy packaged products to consume at home, rather than have that person driving home after several hours of drinking at a sports bar.

Petroleum Marketers and Convenience Store Association of
201 NW Highway 24 • Suite 320 • PO Box 8479
Topeka, KS 66608-0479
785-233-9655 Fax: 785-354-4374

FEDERAL AND STATE AFFAIRS

Date 4-26-05
Attachment 6

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 "weak beer" were unable to compete with Missouri or Oklahoma retailers 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 the products they are legally allowed to sell.

Mr. Chairman, SB 298 was amended on the Senate floor to allow counties to adopt ordinances that are more restrictive than state law. We feel that a consistent set of rules is far better and easier to comply with rather than trying to comply with different laws in every city or county. Our coalition requests that the bill be amended back to the original language on page 3, line 38, and page 15, line 38.

SB 298 will help codify the current liquor laws and help small businesses be competitive with our neighboring states.

Thank you.

SUNDAY RETAIL LIQUOR SALES

LOCATION	CHARTER ORDINANCE	EFFECTIVE DATE	PROVISIONS	NOTES
Auburn	December 6, 2004	December 6, 2004	Sundays 11-7	Holidays to be closed are Easter, Thanksgiving and Christmas
Bonner Springs	May 27, 2003	August 24, 2003	Sundays 11-11	Holidays to be closed are Thanksgiving & Christmas
Edgerton	July 22, 2004	November 9, 2004	Sundays 1-7	Holidays to be closed are Thanksgiving & Christmas
Edwardsville	August 2, 2002	November 2, 2002	Sundays 12-7	No mention of holidays in ordinance
Gardher	November 2, 2004	November 15, 2004	Sundays 10-6	Holidays to be closed are Easter, Thanksgiving and Christmas
Kansas City/Unified Government	August 2, 2002	November 2, 2002		
	May 3, 2002	July, 2002	Sundays, 11-8	Holidays to be closed are Thanksgiving & Christmas
Lansing	June 5, 2003	August, 2003	Sundays 12-7	No mention of holidays in ordinance
Lawrence	July 1, 2003	September 28, 2003	Sundays 11-7	Holidays to be closed are Thanksgiving & Christmas
Leavenworth	June 3, 2003	August, 2003	Sundays 9-6	Holidays to be closed are Thanksgiving & Christmas
Leawood	June 16, 2003	September 1, 2003	Sundays 11-7	Holidays to be closed are Thanksgiving & Christmas
Lebo	February 2, 2004	April, 2004	Sundays 12-7	Holidays to be closed are Easter, Memorial, Independence, Labor, Thanksgiving & Christmas
Lenexa	April 3, 2003	June 22, 2003	Sundays 12-7	Holidays to be closed
Merriam	June 23, 2003	September 14, 2003	Sundays	No language on hours or holidays per Clerk's office
Mission	August 3, 2004	August 8, 2004	Sundays 11-7	Holidays to be closed are Easter, Thanksgiving & Christmas
Olathe	August 17, 2004	November 2, 2004	Sundays 11-8	Holidays to be closed are Easter, Thanksgiving and Christmas
Olpe	September 3, 2004	November 16, 2003	Sundays 12-7	Holidays to be closed are Easter, Memorial, Independence, Labor, Thanksgiving & Christmas
Overland Park	May 19, 2003	July 29, 2003	Sundays 11-8	Holidays to be closed are Thanksgiving & Christmas
Prairie Village	July 7, 2003	September 7, 2003	Sundays 11-8	Holidays to be closed are Memorial, Independence, Labor, Thanksgiving & Christmas
Roeland Park	August 20, 2003	November 2, 2003	Sundays 9-11	No mention of holidays in ordinance
Shawnee	June 24, 2003	August, 2003	Sundays 11-8	No mention of holidays in ordinance
Shawnee County	July 21, 2003	September 21, 2003	Sundays 12 - 7	No mention of holidays in ordinance
Spring Hill	May 13, 2004	September 2, 2004	Sundays 11-7	Holidays to be closed are Memorial, Independence, Labor, Thanksgiving & Christmas
Strong City	May 11, 2004	July, 2004	Sundays 1-7	Holidays to be closed are Easter, Thanksgiving and Christmas
Topeka	August 12, 2003	June 13, 2004	Sundays 11-7	Holidays to be closed are Easter, Thanksgiving and Christmas
Valley Falls	June 21, 2004	November 9, 2004	Sundays 9-7	Holidays to be closed are Thanksgiving & Christmas

25

**ALDERSON, ALDERSON, WEILER,
CONKLIN, BURGHART & CROW, L.L.C.**
ATTORNEYS AT LAW

COPY

W. ROBERT ALDERSON, JR.
ALAN F. ALDERSON*
JOSEPH M. WEILER
DARIN M. CONKLIN
MARK A. BURGHART*
DANIEL W. CROW**
MICHELLE L. MILLER

2101 S.W. 21ST STREET
TOPEKA, KANSAS 66604-3174
MAILING ADDRESS: P.O. Box 237
TOPEKA, KANSAS 66601-0237

—
(785)232-0753
FACSIMILE: (785)232-1866
WEB SITE: www.aldersonlaw.com

OF COUNSEL:
BRIAN FROST
SCOTT S. SUMPTER
THOMAS C. HENDERSON

—
LL.M., TAXATION
*LICENSED TO PRACTICE IN
KANSAS AND MISSOURI

**TESTIMONY OF BOB ALDERSON
ON BEHALF OF CASEY'S GENERAL STORES, INC.
BEFORE THE HOUSE COMMITTEE ON
FEDERAL AND STATE AFFAIRS
April 26, 2005**

Chairman Edmonds and Members of the Committee:

I am Bob Alderson, and I am appearing today on behalf of Casey's General Stores, Inc. in support of Senate Bill No. 298. Casey's is a member of a statewide coalition of grocers and convenience stores supporting the enactment of legislation that would provide for the sale of alcoholic beverages on Sunday. The provisions of SB 298 would substantially 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 298 is so important. By vesting in the governing bodies of the cities and counties the option whether to have Sunday sales of alcoholic beverages, each community will be able to decide for itself whether the sale of packaged alcoholic beverages on Sunday is appropriate for that community. Each community will be able to exercise the same right of self determination that

FEDERAL AND STATE AFFAIRS

Date 4-26-05

Attachment 7

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 298.

While the coalition of convenience and grocery stores believes that SB 298 is a bona fide effort to authorize Sunday sales of alcoholic beverages, there are several amendments needed, in order that SB 298 can accomplish its objectives fairly and effectively. First, and of primary importance to coalition members, the authorization to sell alcoholic beverages on Sunday must include both alcoholic liquor sold by the package in retail liquor stores and cereal malt beverages sold by the package in convenience stores and grocery stores. It would violate principles of fundamental fairness to authorize the Sunday sales of one without authorizing the other.

Second, one of the very important considerations of SB 298 is that it amends the Kansas Liquor Control Act, so as to make it uniformly applicable to all cities, thereby preventing a city from exempting itself from the act by charter ordinance. While uniformity that prevents separate treatment of this issue in the various cities is important, so too is the issue of preemption. The Kansas Constitution vests in the legislature the power to "regulate, license and tax the manufacture and sale of intoxicating liquors." And, that is where this authority should reside. We respectfully request that the legislature not abdicate its constitutionally delegated authority and refer any portion of it to local units of government. SB 298 should be amended, as necessary, to make it clear that the power to regulate the sale of alcoholic beverages is vested solely in the legislature. Dual regulation of the sale of alcoholic beverages can only lead to costly and needless litigation.

Finally, in order to avoid costly elections in those jurisdictions which currently have authorized Sunday sales by charter ordinance, the coalition urges the Committee to amend SB 298 so as to assure that it provides local government an option to "opt out" of Sunday sales. To impose an "opt in" requirement will invalidate lawfully adopted local ordinances and resolutions.

For these reasons, Casey's General Stores, Inc., requests that you recommend Senate Bill No. 298 favorable for passage, with the suggested amendments. 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
James "Jim" Fager

Vice Presidents
Tammy Davis
Tom Intfen
Robert Farha
Jim Hendricks
Curt Melzer
Richard Markle
Paul Boone
Billy Long
Leigh Watkins
Drew Mullen
Sean Haydock

Treasurer
Mark Barrett

National Director
Tammy Davis

Executive Director
Philip Bradley, PhD.

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

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



Testimony on SB-298, April 26, 2005
House Federal and State Affairs Committee

Mr. Chairman, and Senators of the Committee,

I am Philip Bradley representing the Kansas Licensed Beverage Assn., the men and women, in the hospitality industry, who own and manage bars, clubs, caterers, restaurants, breweries and hotels where beverage alcohol is served. Thank you for the opportunity to submit testimony today.

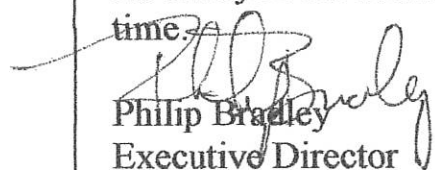
We support SB-298.

We believe all of Kansas is well served by having uniform liquor laws. Consistency of what is, and more importantly is not, allowed throughout our state makes for less confusion and a greater compliance with all statutes and regulations. With our mobile society it is very difficult for the general public to understand, let alone keep track of differing jurisdictions as they go about their lives. The 21st amendment to the U.S constitution gives the states the right to regulate alcohol issues and we believe that uniformity serves Kansas best.

We in the KLBA are fortunate that most of the statutes that concern our members are in the Club and Drinking Establishments Act which has been confirmed uniform recently by the BIGS v. City of Wichita ruling of the Kansas Supreme Court. The regulation of on-premise activities for clubs and drinking establishment licensees are in this act and not in the Liquor Control Act that you are looking at today. However several pieces that regulate our operations still reside in the Liquor Control Act.

Therefore, we ask and urge you to pass SB-298.

As always I am available for questions. Thank you for your time.


Philip Bradley
Executive Director

Drink Responsibly
Drive Responsibly FEDERAL AND STATE AFFAIRS

Date 4-26-05
Attachment 8



800 SW Jackson STE 1017, Topeka, Kansas 66612

SB 298
House Federal and State Affairs
April 26, 2005

The Kansas Beer Wholesalers appear in support of HB 298 and certain proposed amendments.

We along with many members of the legislature were concerned when the Supreme Court ruled that the liquor control act was not uniform. We were concerned that local units of government would take the regulation of alcoholic beverages into their own hands, creating a confusing quilt of regulation across the state. But we have found that cities and counties have been willing to work with the industry and have resisted the few misdirected efforts to dilute the state's authority.

However, we continue to believe that state regulation of the liquor industry is best. Therefore, despite our positive interaction with local governments, we request passage of SB 298. We support the amendments to remove the language that was added on the Senate floor on pages 3 and 15. The legislature can revert to the current preemption language of K.S.A. 41-208. It has been the law since 1949 and the Court left it intact. Or the committee could use the total preemption language included in the recent firearms legislation. Either is acceptable to the KBWA.

We certainly support the public policy that has become known as "opt-out": a governing body must take action to prohibit Sunday sales in their jurisdiction. A majority of the population lives within 20 miles of a store that is currently open on Sundays. In addition, beer is available on Sunday in all surrounding states. The issue is not whether or not we want Sunday sales, but whether we want a law uniform.

Last, we support an amendment to "tie together" liquor store sales with cereal malt beverage sales on Sundays and the amendments fixing the zoning problems that have been (or will be) requested by other conferees.

Thank you for your consideration.

Neal Whitaker

FEDERAL AND STATE AFFAIRS

Date 4-26-05

Attachment 9



League of Kansas Municipalities

TO: House Federal and State Affairs Committee

FROM: Sandra Jacquot, Director of Law/General Counsel

DATE: April 26, 2005

RE: Opposition to SB 298

Thank you for allowing the League of Kansas Municipalities to testify in opposition to SB 298. Approximately two and one-half years 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, which is what SB 298 purports to do.

For many years, the regulation of alcoholic beverages has occurred at both the local and state levels. Cities have had licensing requirements for retailers that, for the most part, paralleled the state's requirements. The Unified Government's ordinance was the first instance of cities exempting themselves from the Liquor Control Act. Despite the alarm expressed by some, cities have shown no interest in altering state law to allow for other than Sunday and some holiday sales of packaged liquor. The Constitutional Home Rule Amendment has the provision for citizens to compel an election by petition. This is to assure that the local officials are in touch with the wishes of their citizens. In addition, there is a long history of allowing the citizens of cities and counties to decide whether to allow liquor by the drink or packaged liquor stores in their communities and because of this we still have dry communities in Kansas. Thus, the alarm over what city officials might do to their unsuspecting citizens is without merit. The League continues to wonder why this bill is necessary as more and more cities adopt charter ordinances to allow for the Sunday sale of packaged liquor.

If this committee passes out a uniform liquor control act bill, however, the League would like to point out changes that were made by the Senate to SB 298. Section 2(c) began as a totally preemptive clause for cities and counties. Under this provision, not only would local governments have been prohibited from adopting ordinances or resolutions in conflict, but they could not even adopt provisions more restrictive or supplemental to SB 298. Thus, for example, in a community that wished to prohibit a liquor store from being too close to a day care center, it could not have added a distance provision, because that would be supplemental to K.S.A. 41-710. The League has often pointed out that most regulation of alcohol is actually done at the local level and the needs of each city differ. The change to a less preemptive provision is supported by the League and we urge this committee not to change that provision if the bill moves forward.

www.lkm.org

FEDERAL AND STATE AFFAIRS

Date 4-26-05

Attachment 10

The second provision the League wants to point out to the committee is Section 9. This provision started out as an opt-in provision, allowing a city to permit the Sunday sale of packaged liquor by adopting an ordinance. This was subject to a protest to compel an election. Thus, the numerous cities that had adopted ordinances and, in addition, those that already had an election, would once again have had to opt in to provide for Sunday packaged liquor sales. That would negate the will of those cities whose voters have already made that decision and would possibly subject those cities to yet another election. The Senate changed this provision to be an opt-out, rather than opt-in process and allows for sale on the summer holidays. The League supports this change, but suggests that the committee allow for more flexibility in the times a store may be open on Sunday. Some cities have earlier and later times than provided for in the bill.

To conclude, LKM supports local control of packaged liquor. If, however, the Legislature deems it appropriate to make the Liquor Control Act uniform, then it should support the Senate changes that allow for more local control and provide for Sunday packaged liquor sales on an opt-out basis. Thank you for allowing the League to testify in opposition to SB 298.

City Name	Total Population	Population 21 and over in 2000	Population 21* and over in 2005
Auburn city	1,121	688	767
Bonner Springs city	6,768	4,604	5,053
Edgerton city	1,440	893	1,008
Edwardsville city	4,146	2,938	3,201
Gardner city	9,396	5,993	6,526
Kansas City city	146,866	98,122	109,414
Lansing city	9,199	6,842	7,453
Lawrence city	80,098	53,895	66,794
Leavenworth city	35,420	24,294	26,541
Leawood city	27,656	18,639	20,372
Lebo city	961	656	711
Lenexa city	40,238	28,391	31,111
Merriam city	11,008	8,306	8,904
Mission city	9,727	7,894	8,310
Olathe city	92,962	60,526	67,230
Olpe city	504	323	361
Overland Park city	149,080	105,917	114,293
Prairie Village city	22,072	16,727	17,726
Prairie Village city	22,072	16,727	17,726
Shawnee city	47,996	33,586	36,460
Shawnee County	169,871	120,152	132,068
Spring Hill city	2,727	1,763	1,940
Strong City city	584	412	460
Valley Falls city	1,254	844	958
Total Selected Cities	893,166	619,132	685,387
Total of all cities in data source	2,173,576	1,494,228	1,667,097

* Includes persons ages 16+

Data Source: Summary File Set 2, Census 2000 Table PCT 003

Percentage of cities allowing Sunday sales compared to total # of cities in study

Total Population	Population 21 and over in 2000	Population 21* and over in 2005
41.09%	41.43%	41.11%