

MINUTES OF THE HOUSE JUDICIARY COMMITTEE

The meeting was called to order by Chairman Mike O'Neal at 3:30 P.M. on February 17, 2005 in Room 519-S of the Capitol.

All members were present except:
Dean Newton- excused

Committee staff present:
Jerry Ann Donaldson, Kansas Legislative Research
Jill Wolters, Office of Revisor of Statutes
Cindy O'Neal, Committee Secretary

HB 2104 - UCC securities interest in oil & gas productions

Representative Loyd made the motion to report HB 2104 favorably for passage. Representative Jack seconded the motion. The motion carried.

The committee recessed at 3:45 till 4:15 so the subcommittee on **HB 2114** could meet.

HB 2114 - Dram shop law; liquor licensee liability

Representative Kinzer provided the committee with two reports: #1 being the majority report (Attachment 1) and #2 (Attachment 2) being the consenting report. Both reports have the following:

- references to other sections have been deleted and the language found in those sections have been inserted into the bill
- package liquor stores are not included in the bill
- the term "visibly intoxicated is defined in (f)(3)
- absolute defense language for minors who use fake identification
- include safe harbor provision

In #1 the safe harbor provision applies to the action of the employee not being attributable to the employer if they have attended and passed a certified server training program.

In #2 the safe harbor provision provides for a rebuttable presumption that the actions of an employee shall not be attributable to the employer of they have attended and passed a certified server training program.

It was the goal of the sub committee to draft a narrower bill than the original which would provide protection for owners and prevent instances like we heard about during the hearing.

Representative Kinzer made the motion to adopt the sub committee #1 report. Representative Pilcher-Cook seconded the motion.

Discussion centered around the server training program. It was explained that the programs are monitored by the state but each program is provided by a private entity. Some were concerned that once a person got hired they would have to wait to go to work until they attended the program. Others wondered how long a server training certificate was good.

Representative Pauls wanted to clarify in section (2) that the act shall not apply to liquor stores. Chairman O'Neal commented that the intent was for it not to apply to package liquor stores and those who sell cereal malt beverages which are in packages and not consumed on the premises.

Representative Jack questioned the word "encouraged" in section (c)(3). Representative Kinzer responded that the word came from the Texas dram shop statute. Representative Jack preferred the word "permitted". Representative Colloton stated that they didn't want a standard where the employer would have to keep an eye on the employee at all times.

The motion to adopt the sub committee report #1 carried.

CONTINUATION SHEET

MINUTES OF THE House Judiciary Committee at 3:30 P.M. on February 17,2005 in Room 313-S of the Capitol.

Representative Pauls made the motion to clarify that the bill does not apply to licensees who sell, at retail, alcoholic liquor and cereal malt beverages. Representative Garcia seconded the motion. The motion carried.

Representative Kinzer made the motion to report **Substitute for HB 2114** favorably for passage. Representative Kelley seconded the motion. The motion carried 12-5.

The committee meeting adjourned at 5:00 p.m. The next meeting was scheduled for February 21, 2005 in room 313-S at 3:30 p.m.

Committee minutes from February 14 & 15 were distributed via e-mail with the notification that if no changes were requested by February 22, 2005 the minutes would stand approved.

AN ACT concerning civil procedure; relating to civil liability for serving alcoholic beverages.

Be it enacted by the Legislature of the State of Kansas:

Section 1. (a) An aggrieved party shall have a cause of action against a licensee who knowingly sells, gives away, or permits the sale, gift or procuring of any alcoholic liquor or cereal malt beverage to or for any person who is visibly intoxicated by the consumption of such alcoholic liquor or cereal malt beverage, or a licensee who directly or indirectly, sells to, buys for, gives or furnishes any alcoholic liquor or cereal malt beverage to any minor, if a jury or court finds, by clear and convincing evidence, the following: (1) That alcoholic liquor or cereal malt beverage was sold by the licensee on the licensed premises of such licensee to the minor or visibly intoxicated person and consumed by the minor or visibly intoxicated person on the licensed premises of such licensee; (2) the consumption of such alcoholic liquor or cereal malt beverage was a proximate cause of the damages sustained by the aggrieved party; and (3) the damages were a foreseeable consequence of such service of alcoholic liquor or cereal malt beverage by the licensee.

(b) Any claim under subsection (a) shall survive death for purposes of K.S.A. 60-1801, and amendments thereto, and may be maintained in a wrongful death action under K.S.A. 60-1901, and amendments thereto.

(c) Except as provided further, any claim under subsection (a) shall be subject to and determined under K.S.A. 60-258a, and amendments thereto. The actions of an employee shall not be attributable to the employer if:

- (1) The employer requires its employees to attend a server/seller training program certified by the director of alcoholic beverage control of the department of revenue;
- (2) the employee has actually attended such a training program; and
- (3) the employer has not directly or indirectly encouraged the employee to sell, give away, or permit the sale, gift or procuring of any alcoholic liquor or cereal malt beverage to or for any person who is visibly intoxicated by the consumption of such alcoholic liquor or cereal malt beverage, or directly or indirectly, sell to, buy for, give or furnish any alcoholic liquor or cereal malt beverage to any minor.

(d) Blood alcohol content obtained at a different time than the point when the alcoholic liquor or cereal malt beverage was served and evidence that the visibly intoxicated person was furnished such alcoholic liquor or cereal malt beverage without additional evidence that the licensee acted knowingly or intentionally shall not constitute *prima facie* evidence of liability under this section.

(e) It shall be an absolute defense in any civil cause of action claimed under subsection (a), in regard to a minor, if the licensee shows, by clear and convincing evidence that: (1) At the time of the occurrence of the act giving rise to the cause of action, the licensee held a valid

license or valid temporary permit; (2) the licensee sold the alcoholic liquor or cereal malt beverage to the minor with reasonable cause to believe that the minor was 21 or more years of age or of legal age for the consumption of alcoholic liquor or cereal malt beverage; and (3) to purchase the alcoholic liquor or cereal malt beverage, the person exhibited to the licensee a driver's license, Kansas nondriver's identification card or other official or apparently official document, containing a photograph of the minor and purporting to establish that such minor was 21 or more years of age or of legal age for the consumption of alcoholic liquor or cereal malt beverage. This defense shall not apply if the minor is an visibly intoxicated person.

(f) As used in this section:

(1) "Aggrieved party" means a person who sustains damages as a consequence of the acts or conduct of a minor or visibly intoxicated person, but does not include: (A) Such minor or visibly intoxicated person or such minor or visibly intoxicated person's spouse, dependents, personal representative, heirs or assigns; or (B) any person who aided or abetted in the furnishing or sale of the alcoholic liquor or cereal malt beverages to the minor or visibly intoxicated person.

(2) "Licensee" means a licensee under the Kansas liquor control act, article 1 of chapter 41 of the Kansas Statutes Annotated, and amendments thereto; the club and drinking establishment act, article 26 of chapter 41 of the Kansas Statutes Annotated, and amendments thereto; or except as provided further, the provisions of article 27 of chapter 41 of the Kansas Statutes Annotated, and amendments thereto. "Licensee" shall not include a license to sell only cereal malt beverages in original and unopened containers, and not for consumption on the premises.

(3) "Visibly intoxicated person" means a person who is physically or mentally intoxicated by the consumption of alcoholic liquor or cereal malt beverage to the extent that such person presents a clear danger to such person's self and others.

(4) "Alcoholic liquor", "cereal malt beverage" and "minor" shall have the meanings ascribed thereto in K.S.A. 41-102, and amendments thereto.

Sec. 2. This act shall take effect and be in force from and after its publication in the statute book.

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(b) Any claim under subsection (a) shall survive death for purposes of K.S.A. 60-1801, and amendments thereto, and may be maintained in a wrongful death action under K.S.A. 60-1901, and amendments thereto.

(c) Except as provided further, any claim under subsection (a) shall be subject to and determined under K.S.A. 60-258a, and amendments thereto. There shall be a rebuttable presumption that the actions of an employee shall not be attributable to the employer if:

- (1) The employer requires its employees to attend a server/seller training program certified by the director of alcoholic beverage control of the department of revenue;
- (2) the employee has actually attended such a training program; and
- (3) the employer has not directly or indirectly encouraged the employee to sell, give away, or permit the sale, gift or procuring of any alcoholic liquor or cereal malt beverage to or for any person who is visibly intoxicated by the consumption of such alcoholic liquor or cereal malt beverage, or directly or indirectly, sell to, buy for, give or furnish any alcoholic liquor or cereal malt beverage to any minor.

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license or valid temporary permit; (2) the licensee sold the alcoholic liquor or cereal malt beverage to the minor with reasonable cause to believe that the minor was 21 or more years of age or of legal age for the consumption of alcoholic liquor or cereal malt beverage; and (3) to purchase the alcoholic liquor or cereal malt beverage, the person exhibited to the licensee a driver's license, Kansas nondriver's identification card or other official or apparently official document, containing a photograph of the minor and purporting to establish that such minor was 21 or more years of age or of legal age for the consumption of alcoholic liquor or cereal malt beverage. This defense shall not apply if the minor is an visibly intoxicated person.

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